

CIMARRON METROPOLITAN DISTRICT  
8390 E. Crescent Parkway, Suite 300  
Greenwood Village, CO 80111  
Phone: 303-779-5710

www.candelascommunity.com

**NOTICE OF REGULAR MEETING AND AGENDA**

**DATE:** Tuesday, October 17, 2023  
**TIME:** 3:30 p.m.  
**LOCATION:** Candelas Parkview Swim and Fitness Club  
19865 W. 94<sup>th</sup> Avenue  
Arvada, CO 80007

You can also attend the meeting in any of the following ways:

**URL:**

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_YzZiOTVhZTItZjQ5ZS00NmRjLWI2YmYtMzRIYWE1ZmExODM4%40thread.v2/0?context=%7b%22Tid%22%3a%224aaa468e-93ba-4ee3-ab9f-6a247aa3ade0%22%2c%22Oid%22%3a%227e93cd08-3bae-48d3-b32e-d8f57cd88c24%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzZiOTVhZTItZjQ5ZS00NmRjLWI2YmYtMzRIYWE1ZmExODM4%40thread.v2/0?context=%7b%22Tid%22%3a%224aaa468e-93ba-4ee3-ab9f-6a247aa3ade0%22%2c%22Oid%22%3a%227e93cd08-3bae-48d3-b32e-d8f57cd88c24%22%7d)

**Dial in:**

**1-720-547-5281** United States, Denver  
Phone Conference ID: **452 253 004#**

**Board of Directors**

Brian Mulvany  
Patrick Vaughn  
Brian Daly  
Vacant  
Vacant

**Office**

President  
Secretary  
Treasurer  
N/A  
N/A

**Term Expires**

May, 2025  
May, 2027  
May, 2025  
May, 2027  
May, 2027

**I. ADMINISTRATIVE MATTERS**

- A. Call to order and approval of agenda.
- B. Present disclosures of potential conflicts of interest.
- C. Confirm quorum, location of meeting and posting of meeting notice.
- D. Discuss creation of District website separate from Vauxmont Metropolitan District.

**II. PUBLIC COMMENT** – Members of the public may express their views to the Board on matters that affect the District that are otherwise not on the agenda. Comments will be limited to three (3) minutes per person.

**III. CONSENT AGENDA**

A. Review and consider approval of the Minutes of the September 26, 2023 and October 10, 2023 Special Meetings (enclosed).

**IV. FINANCIAL MATTERS**

A. Review draft 2024 Budget (to be distributed).

B. Review and accept unaudited financial statements for the period ending TBD, 2023 (to be distributed).

C. Review and ratify/approve payment of claims in the amount of \$TBD through the period ending TBD, 2023 (to be distributed).

D. Review and ratify/approve payment of capital claims in the amount of \$TBD (to be distributed).

**V. LEGAL MATTERS – Adjourn to Executive Session, if necessary, for any of the following items:**

A. Discuss status of transition from Cimarron Metropolitan District to Vauxmont Metropolitan District under Master Intergovernmental Agreement.

B. Discuss status of repairs to Block 28, Tract A6 and authorize necessary action in conjunction therewith.

1. Possible Executive Session to receive legal advice from District counsel on specific legal questions and to determine positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators pursuant to Sections 24-6-402(4)(b) and (e), C.R.S., regarding current, pending or potential litigation related to Block 28, Tract A6.

C. Discuss matters relative to ongoing litigation regarding Block 24, Tract A4 and authorize necessary actions in conjunction therewith.

1. Possible Executive Session to receive legal advice from District counsel on specific legal questions and to determine positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators pursuant to Sections 24-6-402(4)(b) and (e), C.R.S., regarding current, pending or potential litigation related to Block 24, Tract A4.

## VI. CAPITAL IMPROVEMENTS

- A. Discuss status of infrastructure installation for Candelas Project (reports by IDES from July, August and September) (enclosed).
- B. Review and consider ratification/approval of contracts, work orders and change orders.
  - 1. Contract documents for Mail Kiosk Relocation with Colorado Custom Rock.
  - 2. Contract documents for Candelas Slope Failure Repair Storm Sewer and Drains with CJB's Excavation.
  - 3. Task Order No. 11 for Filing 1 Tract A4 Slope Stability Services from IDES, LLC in the amount of \$45,000.
  - 4. Change Order No. 1 for New Location for Mailbox Kiosk, Sidewalk Approach and Kiosk Beams and Roof Panels, Demo for Reuse from CJBs Excavating in the amount of \$7,075.
  - 5. Task Order No. 25 for Tract A4 Filing 1 Geotechnical Slope Failure Testing, Observation and Coordination from CTL Thompson in the amount of \$55,000.
  - 6. Change Order No. 2 for Additional Civil Engineering Support Services for Tract A4 Filing 1 Slope Stability from Martin / Martin, Inc. in the amount of \$30,000.
  - 7. Contract documents for Candelas Slope Failure Reticulated Micro-Pile Wall with Coggins & Sons, Inc.
  - 8. Task Order No. 19 for Tract A4 Candelas Slope Failure Repairs/Monitoring from Aztec Consultants, Inc. in the amount of \$10,000.
  - 9. Change Order No. 1 for Deduction for Others to Complete the Roof Posts Demo for Reuse and Addition for Temporary Placement of Mailboxes During Construction in the amount of \$0.
  - 10. Change Order No. 2 for Bench Construction for Coggins Work and Bond Cost Reimbursement from CJB's Excavating in the amount of \$15,326.
  - 11. Change Order No. 3 for Tract A4 Emergency Drain Installation from CJB's Excavating in the amount of \$111,494.
- C. Review and consider acceptance of costs for construction of, and services related to, District improvements under the Verification of District Expenditures Reports for July, August and September prepared by Independent District Engineering

Services, LLC (“IDES”) for reimbursement to Arvada Residential Partners, LLC (“ARP”), and consider release and/or transfer of non-District improvements to ARP pursuant to the Facilities Funding and Acquisition Agreement between the District and ARP, based upon the recommendation of IDES (enclosed).

**VII. OTHER BUSINESS**

**VIII. ADJOURNMENT**

**The next regular meeting is scheduled for Tuesday, November 21, 2023 at 3:30 p.m.  
(Budget Hearing)**



## RECORD OF PROCEEDINGS

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MINUTES OF A SPECIAL MEETING OF  
THE BOARD OF DIRECTORS OF THE  
CIMARRON METROPOLITAN DISTRICT (THE “DISTRICT”)  
HELD  
SEPTEMBER 26, 2023

A special meeting of the Board of Directors (referred to hereafter as “Board”) of the Cimarron Metropolitan District (referred to hereafter as the “District”) was convened on Tuesday, September 26, 2023, at 12:00 p.m. via Microsoft Teams. The meeting was open to the public.

### ATTENDANCE

#### **Directors In Attendance Were:**

Brian Mulvany  
Patrick Vaughn  
Brian Daly

#### **Also In Attendance Were:**

Lisa Johnson, Alex Clem and Gigi Pangindian; CliftonLarsonAllen LLP (“CLA”)  
Matt Ruhland, Esq.; Cockrel Ela Glesne Greher & Ruhland, P.C. (“CEGR”)

### ADMINISTRATIVE MATTERS

**Call to order and approval of agenda:** The meeting was called to order at 12:00 p.m. There was distributed, for the Board’s review and approval, a proposed agenda for the District’s special meeting. Following review, upon a motion duly made by Director Daly, seconded by Director Vaughn and upon vote unanimously carried, the Board approved the agenda, as amended.

**Disclosures of potential conflicts of interest:** The Board discussed the requirements pursuant to the Colorado Revised Statutes to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board of Directors and to the Secretary of State. Attorney Ruhland requested members of the Board disclose any potential conflicts of interest with regard to any matters scheduled for discussion at this meeting and incorporated for the record those applicable disclosures made by the Board members prior to this meeting in accordance with statute, noting that conflict disclosure statements for all of the Directors have been filed, and that no additional conflicts were disclosed at the meeting.

**Quorum, location of meeting, and posting of meeting notices:** It was noted that a quorum was present. The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District’s Board meeting. The Board determined that the meeting would be held in a virtual manner, with participants attending by video/telephonic means. It was noted that the notice of the location and manner of the meeting was duly posted, and that no objections to the location and manner of the meeting or any

## RECORD OF PROCEEDINGS

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requests that the location and manner of the meeting be changed by taxpaying electors within the District boundaries have been received.

**PUBLIC COMMENT** The Board received no public comment.

**CONSENT AGENDA** **Approve Minutes of the July 31, 2023 Special Meeting**

Following review, upon a motion duly made by Director Vaughn, seconded by Director Daly and upon vote unanimously carried, the Board approved the consent agenda item, as presented.

**FINANCIAL MATTERS** **Public Hearing on the Amendment of the 2022 Budget and Resolution to Amend the 2022 Budget:** Ms. Johnson opened the public hearing to consider an amendment to the 2022 Budget at 12:03 p.m.

It was noted that publication of Notice stating that the Board would consider amendment of the 2022 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to the public hearing.

No public comments were received, and the public hearing was closed at 12:04 p.m.

Ms. Pangindian reviewed the amendment of the 2022 Budget to the Board. Following review, upon motion duly made by Director Daly, seconded by Director Mulvany and upon vote unanimously carried, the Board approved the amendment of the 2022 Budget and adopted the Resolution to Amend the 2022 Budget, as presented.

**Draft 2022 Audit:** Ms. Pangindian reviewed the draft 2022 Audit with the Board. Following discussion, upon a motion duly made by Director Mulvany, seconded by Director Daly and upon vote unanimously carried, the Board accepted the draft 2022 Audit, subject to the receipt of a clean auditor opinion, and authorized the execution of the management representation letter, and directed CLA to file the audit by the September 30<sup>th</sup> deadline.

**LEGAL MATTERS** **Project Funding and Reimbursement Agreement with Arvada Residential Partners, LLC:** Attorney Ruhland reviewed the agreement with the Board. Following review, upon a motion duly made by Director Daly, seconded by Director Mulvany and upon vote unanimously carried, the Board ratified the approval of the Project Funding and Reimbursement Agreement with Arvada Residential Partners, LLC, as presented.

**Change Order No. 4 to Service Agreement (Project Management Services) with Stewardship Land Services, Ltd.:** Attorney Ruhland reviewed the

## RECORD OF PROCEEDINGS

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change order with the Board. Following review, upon a motion duly made by Director Mulvany, seconded by Director Vaughn and upon vote, the Board ratified the approval of Change Order No. 4 to Service Agreement (Project Management Services) with Stewardship Land Services, Ltd., as presented. Directory Daly abstained from the vote.

**Additional Retention Agreement with Garnett Powell Maximon Barlow for Legal Counsel:** Attorney Ruhland reviewed the agreement with the Board. Following review, upon a motion duly made by Director Mulvany, seconded by Director Daly and upon vote, the Board ratified the approval of the Additional Retention Agreement with Garnett Powell Maximon Barlow for Legal Counsel, as presented.

### **CAPITAL IMPROVEMENTS**

**Various Slope Mitigation Issues:** Director Daly provided an update to the Board regarding the slope stability issues at Tract A6 and Tract A4.

### **OTHER BUSINESS**

**Status of Transfer of Ownership Assets:** The Board discussed asking general counsel of the Vauxmont Metropolitan District for a meeting with a committee of the Board of Directors to meet with a committee of the District's Board of Directors to continue discussions regarding transfer of ownership of assets. Attorney Ruhland noted that after consultation with and receiving direction from Director Mulvany he will contact the general counsel of Vauxmont Metropolitan District to make this request.

### **ADJOURNMENT**

Upon a motion duly made by Director Daly, seconded by Director Mulvany and upon vote unanimously carried, the Board adjourned the meeting at 1:24 p.m.

Respectfully submitted,

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Secretary for the Meeting

## RECORD OF PROCEEDINGS

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MINUTES OF A SPECIAL MEETING/WORK SESSION OF  
THE BOARD OF DIRECTORS OF THE  
CIMARRON METROPOLITAN DISTRICT (THE “DISTRICT”)  
HELD  
OCTOBER 10, 2023

A special meeting/work session of the Board of Directors (referred to hereafter as “Board”) of the Cimarron Metropolitan District (referred to hereafter as the “District”) was convened on Tuesday, October 11, 2023, at 5:00 p.m. at Candelas Parkview Swim & Fitness Club, 19865 W. 94<sup>th</sup> Avenue, Arvada, Colorado 80007. This District Board meeting was also held via Microsoft Teams. The meeting was open to the public.

### ATTENDANCE

#### Directors In Attendance Were:

Brian Mulvany  
Patrick Vaughn  
Brian Daly

#### Also In Attendance Were:

Alex Clem and Rachel Alles; CliftonLarsonAllen LLP (“CLA”) Peter Dyer, Tom Clement, Ron and Marilyn Shyma, Debbie Paglia, Brenda Atkins, Dennis Fry, Cliff Laurin, Cindy and John Ditallo, Mariela Brassell, Alexis and Michael Brown, Dale Seber, Stephen and Sandy Pauline, Steve and Darcy Good, Michelle Fenner, George and Carol Meng and other members of the public.

### ADMINISTRATIVE MATTERS

**Call to order and approval of agenda:** The meeting was called to order at 5:02 p.m. There was distributed for the Board’s review and approval, a proposed agenda for the District’s special meeting. Following review, upon motion duly made by Director Mulvany, seconded by Director Daly, and upon vote unanimously carried, the Board approved the agenda, as presented.

**Disclosures of potential conflicts of interest:** The Board discussed the requirements pursuant to the Colorado Revised Statutes to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board of Directors and to the Secretary of State. Mr. Clem requested members of the Board disclose any potential conflicts of interest with regard to any matters scheduled for discussion at this meeting and incorporated for the record those applicable disclosures made by the Board members prior to this meeting in accordance with statute, if any.

**Quorum, location of meeting, and posting of meeting notices:** It was noted that a quorum was present. The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District’s Board meeting. The Board determined that the meeting would be held

## RECORD OF PROCEEDINGS

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in a hybrid manner, with participants attending both in person at the meeting location and by video/telephonic means. It was noted that the notice of the location and manner of the meeting was duly posted, and that no objections to the location and manner of the meeting or any requests that the location and manner of the meeting be changed by taxpaying electors within the District boundaries have been received. The Board further noted that the meeting was being held within the boundaries of the District.

### WORK SESSION

**Various Slope Mitigation Items:** Director Daly provided an update to the Board and members of the public regarding the current status of the various slope stability issues in the community. Discussion ensued with the members of the public.

### ADJOURNMENT

Upon motion duly made by Director Daly, seconded by Director Mulvany, and upon vote unanimously carried, the Board adjourned the meeting at 6:26 p.m.

Respectfully submitted,

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Secretary for the Meeting

# CIMARRON METRO DISTRICT

## Board Meeting Project Status

### July 18, 2023



## Project Work

### General

- Coordination with CDI and Powell for the general repairs and cleanup related to City and State Stormwater Permits including small area stabilization. Small area stabilization was done Fall 2022. All areas will need to be irrigated through the spring and summer to promote germination and growth and is necessary for City and State Stormwater permit closure. An exhibit of these areas was provided to EDI for reference.
- SWAP will continue monthly inspections to comply with permit requirements until the City of Arvada approves permit closure. Permit closure requires tract and open space stabilization. City inspector postponed his inspection until September 2023.
- Foxtail pond and Yucca pond well screen modifications have been approved by the City of Arvada. Modification proposal was approved by the Board in a previous meeting. The ponds need to be drained down for this work. Sandbags used to block the pond outlets for the work were approved from the O&M budget. The pond maintenance contract was renewed to begin spring 2023 with EDI. Snow melt and lack of maintenance has caused the ponds to fill to an approximate depth of 3'. IDES is working with West Construction on the use of sandbags to block the outlet for the grate installations. Grates are currently being fabricated and installation is scheduled for completion before the end of August 2023.
- IDES is monitoring the Tripoint retaining wall redesign and installation to ensure they meet the community standard and are approved by the City of Arvada. Walls are determined to be in areas that will be owned and maintained by the HOA. IDES will monitor the installation of the wall adjacent to the monument tract to ensure any damage to the tract area is adequately repaired. Completion was scheduled for June 10<sup>th</sup>. Construction is delayed due to the weather.
- IDES monitors the erosion control, good housekeeping and drainage at the KB site and is communicating with City staff regularly. An infrastructure acceptance requirement document was sent to CMD legal to identify KB Homes required activities and documents prior to District

acceptance of the tract areas and associated improvements to ensure landscape and drainage issues are addressed prior to the District accepting responsibility of the areas. Improvements have not been completed to date.

- IDES is working on completing a contract with Colorado Custom Rock for the relocation of the mailbox kiosks near the slope failure area. The District tract near the Rocky Flats South Entrance parking lot will be the new location for the mailbox kiosk. Bid closing for the storm sewer and drains is July 18, 2023. A contractor will be chosen after bid closing. Bid opening for the grading, walls and concrete is tentatively scheduled for late July. Completion schedules have not been determined yet.

## **Construction Contracts**

### **District Contract Change Orders**

None

## **Consultant/Vendor Agreements & Task Orders**

### **Consultant/Vendor Agreements, Change Orders & Task Orders**

None

# CIMARRON METRO DISTRICT

## Board Meeting Project Status

### August 15, 2023



## Project Work

### General

- Coordination with Powell for the general repairs and cleanup related to City and State Stormwater Permits including small area stabilization.
- SWAP will continue monthly inspections to comply with permit requirements until the City of Arvada approves permit closure. Permit closure requires tract and open space stabilization. City inspector postponed his inspection until September 2023.
- Foxtail pond and Yucca pond well screen modifications have been approved by the City of Arvada. Modification proposal was approved by the Board in a previous meeting. Foxtail pond grate modification has been completed. Yucca pond draining is necessary prior to the grate modification completion. Grate has been fabricated and installation is scheduled for completion before the end of August 2023.
- IDES is monitoring the Tripoint retaining wall redesign and installation to ensure they meet the community standard and are approved by the City of Arvada. Walls are determined to be in areas that will be owned and maintained by the HOA. IDES will monitor the installation of the wall adjacent to the monument tract to ensure any damage to the tract area is adequately repaired. Completion was scheduled for June 10<sup>th</sup>. Construction has been delayed due to the weather.
- IDES monitors the erosion control, good housekeeping and drainage at the KB site and is communicating with City staff regularly. An infrastructure acceptance requirement document was sent to CMD legal to identify KB Homes required activities and documents prior to District acceptance of the tract areas and associated improvements to ensure landscape and drainage issues are addressed prior to the District accepting responsibility of the areas. Improvements have not been completed to date.
- IDES has completed a contract with Colorado Custom Rock for the relocation of the mailbox kiosks near the slope failure area. The District tract near the Rocky Flats South Entrance parking lot will be the new location for the mailbox kiosk. A contract for the storm sewer and drains has



been completed with CJBs Excavating. Bid opening for the grading, walls and concrete is tentatively scheduled for late August. Completion schedules have not been determined.

## **Construction Contracts**

### **District Contract Change Orders**

Colorado Custom Rock – Filing 1 Mailbox Kiosk Relocation \$25,368.35

CJBs Excavating – Filing 1 Slope Repair Storm Sewer and Drains \$259,003.83

## **Consultant/Vendor Agreements & Task Orders**

### **Consultant/Vendor Agreements, Change Orders & Task Orders**

None

# CIMARRON METRO DISTRICT

## Board Meeting Project Status

### September 19, 2023



## Project Work

### General

- Coordination with Powell for the general repairs and cleanup related to City and State Stormwater Permits including small area stabilization.
- SWAP will continue monthly inspections to comply with permit requirements until the City of Arvada approves permit closure. Permit closure requires tract and open space stabilization. City inspector requested spring overseeding in tract areas. IDES will coordinate.
- Foxtail pond and Yucca pond well screen modifications have been approved by the City of Arvada. Modification proposal was approved by the Board in a previous meeting. Foxtail pond grate modification has been completed. Yucca pond draining is progressing. Grate has been fabricated and installation is scheduled for completion by September 28, 2023.
- IDES is monitoring the Tripoint retaining wall redesign and installation to ensure they meet the community standard and are approved by the City of Arvada. Walls are determined to be in areas that will be owned and maintained by the HOA. IDES will monitor the installation of the wall adjacent to the monument tract to ensure any damage to the tract area is adequately repaired. Completion was scheduled for June 10<sup>th</sup>. Construction has been delayed due to the weather.
- IDES monitors the erosion control, good housekeeping and drainage at the KB site and is communicating with City staff regularly. An infrastructure acceptance requirement document was sent to CMD legal to identify KB Homes required activities and documents prior to District acceptance of the tract areas and associated improvements to ensure landscape and drainage issues are addressed prior to the District accepting responsibility of the areas. Most landscape has been completed but all improvements have not been completed to date.
- IDES has completed a contract with Colorado Custom Rock for the relocation of the mailbox kiosks near the slope failure area. The District tract near the Rocky Flats South Entrance parking lot will be the new location for the mailbox kiosk. The Kiosks have been temporarily moved to the new location while the permanent Kiosk is being constructed. Completion is estimated for

September 26, 2023. Contract for the storm sewer and drains has been completed with CJBs Excavating. A contract with Coggins for Tract A6 slope earth retention tieback anchors has been drafted. Coggins work is tentatively scheduled to begin on September 20<sup>th</sup> and completion two weeks from start. Bid closing for the grading, walls and concrete is scheduled for September 23, 2023. Completion schedule for the drains and storm sewer has not been determined.

- A slope issue was identified in Tract A4. CTL installed monitoring wells the first week of September. Monitoring determined immediate installation of drains. Drain work began the second week of September. A completion date has not yet been determined. CJBs excavating has been contracted for this work.

## **Construction Contracts**

### **District Contract Change Orders**

Change Order - Colorado Custom Rock – Filing 1 Mailbox Kiosk Relocation -\$3,829.50.

CO 1 - CJBs Excavating – Filing 1, Tract A6 Slope Stability Repairs, Kiosk Roof & Concrete \$7,075.00

CO 2 – CJBs Excavating – Filing 1, Tract A6 Slope Stability Repairs, Coggins Bench for tie back equipment access, Bond Reimbursement. \$15,326.00

CO 3 – CJBs Excavating – Filing 1 Tract A4 Slope Stability Repairs \$111,494.00

Contract - Coggins – Filing 1, Tract A6 Slope Stability Repairs, Earth Retention Tieback Anchors \$255,963.00

## **Consultant/Vendor Agreements & Task Orders**

### **Consultant/Vendor Agreements, Change Orders & Task Orders**

Aztec – Tract A4 Slope Stability Survey Services, \$10,000

CTL – Tract A4 Slope Stability Geotechnical Services, \$55,000

Martin Martin – Tract A4 Slope Stability Engineering Services, \$30,000

IDES – Tract A4 District Engineering Services, \$45,000

**CIMARRON METROPOLITAN  
DISTRICT**

**CONTRACT DOCUMENTS FOR  
MAIL KIOSK RELOCATION**

**JURISDICTION: CITY OF ARVADA, COUNTY OF JEFFERSON,  
COLORADO**

**DATE: JULY 2023**

**COPY NO. \_\_\_\_\_**

# **AGREEMENT**

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (this “**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **CIMARRON METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, located in the County of Jefferson, State of Colorado, hereinafter referred to as “**Owner**,” and Colorado Custom Rock., hereinafter referred to as “**Contractor**.”

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, Owner and Contractor agree as follows:

### **PART 1 CONTRACTOR’S AGREEMENT AND SCOPE OF WORK**

A. Contractor agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all Work required for the construction of the Project in strict compliance with the Contract Documents as herein defined.

### **PART 2 CONTRACT DOCUMENTS**

A. The “**Contract Documents**” which comprise the entire agreement and contract between Owner and Contractor and which are attached to this Agreement and are incorporated herein by this reference, consist of:

1. This Agreement and any Amendments thereto;
2. Performance Bond;
3. Labor and Materials Payment Bond;
4. Certificates of Insurance;
5. Notice of Award;
6. Notice to Proceed;
7. Drawings and specifications consisting of:

**Plans entitled:**

(a) Candelas Filing 1 Details, by Martin and Martin Consulting Engineers, dated December 16, 2011, and consisting of 1 sheet.

(b) Candelas Filing 1 Structural Drawings, by Martin/Martin Consulting Engineers, dated April 30, 2012, and consisting of 1 sheet.

(c) Candelas Filing 1 Amendment 1 Final Development Plan, Relocation Exhibit, consisting of 1 sheet.

**Geotechnical reports:**

(a) n/a

8. General Conditions and Supplementary Conditions, if any;
9. Any Modifications, Change Orders, Field Orders or other such revisions properly authorized after execution hereof.
10. Documentation submitted by Contractor with Bid and prior to Notice of Award;
11. Contractor's Bid Form, which is attached hereto and incorporated herein by this reference as **Exhibit A**, (hereafter, "**Contractor's Bid**," the "**Bid**," or the "**Bid Form**").
12. Contractor's Project Schedule, which is attached hereto and incorporated herein by this reference as **Exhibit B**, (hereafter, "**Project Schedule**");
13. Specifications and Standards as follows:
  - (a) See **Exhibit C** – Project Specification
14. Notice of Substantial Completion and Notice of Final Completion and Acceptance; and
15. All documents contained within the Contract Specifications for the Project.

B. There are no Contract Documents other than those listed above in this Part 2. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in the General Conditions).

C. If, and to the extent of any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) any Modifications including, but not limited to Change Orders; (2) this Agreement; (3) the General Conditions; (4) the Supplementary Conditions (if any); (5) any exhibits attached to this Agreement; (6) Addenda, with those of later date having precedence over those of earlier date; (7) the Specifications; and (8) the Drawings.

D. The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

### **PART 3 ENGINEER AND OWNER'S REPRESENTATIVE**

A. The Project has been designed by Martin/Martin (hereinafter called "**Engineer**"), who will assume all duties and responsibilities of Engineer, and who will have the rights and authority assigned to Engineer in the Contract Documents. Engineer will make itself reasonably available to perform the services required of Engineer under the Contract Documents.

B. Independent District Engineering Services (hereinafter called "**Owner's Representative**") will assume all duties and responsibilities of Owner's Representative and will have the rights and authority assigned to Owner's Representative in the Contract Documents. Owner's Representative will make itself reasonably available to perform the services required of Owner's Representative under the Contract Documents. Owner's Representative may, at the direction of Owner, undertake some duties and responsibilities assigned to Engineer.

C. If no person or entity is described in Part 3(b) above, then Owner shall assume all responsibilities for Owner's Representative hereunder.

### **PART 4 AGREEMENT PRICE**

A. For the performance of all Work and completion of the Project as specified in the Contract Documents, Owner shall pay Contractor Twenty-Five Thousand Three Hundred Sixty-Eight Dollars and Thirty-Five Cents, (\$ 25,368.35), in accordance with the Contract Documents. The Agreement Price shall be subject to adjustment for changes in the Drawings and Specifications or for extensions of time to complete performance, if approved by Owner and Contractor as hereinafter provided, and for changes in quantities, if bid on a unit-price basis in the Bid Form, which shall be verified by Engineer. The Agreement Price expressly includes all labor, materials, equipment, and services required by, incidental to, or reasonably inferable from the Work required by this Agreement as necessary to achieve the Owner's intended use for the Project.

### **PART 5 CONTRACT TIME**

A. Contractor shall commence performance on the Project within ten (10) days after receipt of written Notice to Proceed. The Contractor will achieve Substantial Completion (as that term is defined in the General Conditions) of the entire Work within 30 days of receipt of materials.

B. Owner and Contractor recognize that TIME IS OF THE ESSENCE of this Agreement and that Owner will suffer financial loss if Project is not substantially completed within the time specified in Part 5 A., above, plus



any extensions thereof granted by Owner in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if Project is not substantially completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall be liable to Owner for liquidated damages until Substantial Completion of the entire Work has been achieved, at the following rates: \$1,000 per day. Unless otherwise agreed in writing by the Parties, Contractor shall achieve Final Completion of the entire Work within thirty (30) days of the date it achieves Substantial Completion.

C. Nothing herein or otherwise shall limit Owner's rights under the Contract Documents for any matter other than delay, including (but not limited to) Owner's rights in the event of termination, or Owner's right to pursue a claim for damages due to defective or non-conforming Work or for Contractor's breach of contract. For the avoidance of doubt, nothing herein shall impair or limit Owner's rights to indemnity and defense under the Contract Documents.

## **PART 6 PAYMENT PROCEDURES**

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit an Application for Payment for the preceding month, in accordance with the General Conditions. Applications for Payment will be reviewed and processed by Engineer and Owner's Representative as provided in the General Conditions.

B. Subject in all events to the following retainage provisions and the other rights of the Owner to retain amounts, Owner shall make progress payments on the basis of Contractor's Applications for Payment, as recommended by Owner's Representative, by the end of the following month (the "**Due Date**").

1. If, in the opinion of the Owner, the Contractor is satisfactorily performing this Agreement, progress payments shall be in an amount equal to ninety-five percent (95%) of the calculated value of completed Work, less the aggregate payments previously made. If, in the opinion of Owner, satisfactory progress is not being made on the Project, or if a claim is filed under Section 38-26-107, Colorado Revised Statutes, Owner may retain such additional amounts as may be deemed reasonably necessary by Owner to assure completion of the Work or to pay such claims and any engineer's and attorney's fees reasonably incurred or to be incurred by Owner in defending or handling such claims. Subject to the foregoing, the withheld percentage of the Agreement Price may be retained until this Agreement is completed satisfactorily and the Project is finally

accepted by Owner in accordance with the provisions of the Contract Documents. Progress payments shall not constitute final acceptance of the Work.

2. Payments will be made for materials stored on-site in accordance with Part 14.01 B of the General Conditions.

3. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., Owner shall make final payment, including release of any retainage, to Contractor as recommended by Engineer, and in accordance with the Contract Documents and Section 38-26-107, C.R.S., within sixty (60) days.

C. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. ("**Contractor's Bonds and Lien on Funds**"), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. ("**General Mechanics' Liens**"). Nevertheless, to the extent that any portion of the Project, the underlying property, or the improvements thereon, is/are subject to the assertion of a mechanic's lien under the General Mechanic's Liens statute, then Contractor hereby forever waives and releases any and all rights, which may now or heretofore exist or accrue, to record a lien thereon for any work or services performed, materials or equipment furnished, or labor supplied, regardless of whether such services, work, materials, equipment, or labor were required by the Contract Documents, to the maximum extent allowable by law. Contractor further agrees that all debts owed by Contractor to any third party relating to the goods or services covered by this waiver of lien rights have been paid or will be timely paid. Apart from their right to timely and properly assert claims against the Performance Bond or Labor and Materials Payment Bond required hereunder or under C.R.S. § 38-26-106, the sole remedy of Contractor's subcontractors and suppliers, and any other person, as defined in section 2-4-401(8), C.R.S., that has furnished labor, materials, sustenance, or other supplies used or consumed by a contractor or his or her subcontractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor, as against the Owner, the Project, the underlying property, or the improvements thereon, shall be to file a verified statement of claim before the time of final settlement pursuant to C.R.S. § 38-26-107. No Subcontractor, laborer, supplier, nor any other person for whom Contractor is responsible in connection with this Agreement shall have the right to lien the Project or the real property underlying the Project, any such rights being expressly waived.

D. Contractor agrees to require each of its Subcontractors and suppliers (at all tiers) to expressly incorporate Part 6, Subparagraph C of this

Agreement into their respective subcontracts and/or purchase orders, with the word "Contractor" being substituted for the name of such Subcontractor and/or supplier. This obligation shall represent a material term of this Agreement. Upon Owner's written request, Contractor shall provide copies of its subcontracts and/or purchase orders (whether executed or unexecuted) to Owner. Owner reserves the right (but not the obligation) to verify that such subcontracts and/or purchase orders expressly incorporate the acknowledgments, waivers, and releases of Part 6, Subparagraph C of this Agreement.

E. Contractor shall defend, indemnify, and hold harmless the Owner, from and against any and all General Mechanics' Liens recorded by Contractor, or by any Subcontractors engaged by Contractor, directly or indirectly, for any work or services performed, materials or equipment supplied, or labor furnished in relation to or arising out of this Agreement.

## **PART 7      DEFAULT**

**7.01**      If any of the events or circumstances described in Section 7.02 occur, and the Contractor fails within a seven (7) calendar day period after receipt of notice from the Owner to commence and continue correction of such events or circumstances with diligence and promptness, the Owner may, without prejudice to other remedies in the Contract Documents, in equity, or at law, undertake any of the remedies described in Section 7.03.

**7.02**      Without limiting any other right, remedy, or term under the Contract or at law, any one or more of the following shall constitute a default or an event of default by the Contractor:

A.      The Contractor fails or refuses to comply with or perform, in whole or in part, any term, requirement, or condition of the Agreement or the Contract Documents;

B.      The Contractor fails to pay or cause to be paid (as applicable) any of its Subcontractors, other subtiers of any level, supervisory staff, or work force, or for any materials, labor, equipment, or other expenses incurred in the performance of the Work, when such payments are due and in accordance with the respective agreements requiring such payment and/or any and all applicable laws requiring the same, including (without limitation) C.R.S. § 24-91-103(2);

C.      The Contractor becomes insolvent, makes or attempts to make any assignment for the benefit of creditors, commences any proceeding in bankruptcy, or any such proceedings are commenced against it and are not discharged within thirty days of such commencement;

D.      The Contractor abandons any or all of the Work, or reduces its management, supervisory staff, or work force to a level that may not allow

the Contractor to maintain the appropriate progression of the Work according to the Project Schedule and/or the otherwise appropriate provision of services or the Work for the timely and proper completion of the Project, as determined by the Owner (including services during pre-construction as well as during construction), and including without limitation Work being performed prior to Substantial Completion as well as following Substantial Completion and until all Punch List items are complete and the Project achieves Final Completion;

E. The Contractor fails to achieve Final Completion of the Work (including, without limitation, the completion of all Punchlist Items) within thirty (30) calendar days from the date of Substantial Completion;

F. The Contractor fails to perform this Agreement or the Work in accordance with applicable laws, ordinances, codes, statutes, rules and regulations, or the lawful orders of any governmental authorities having jurisdiction over the Project; or

G. Contractor is otherwise in breach of any material term(s) of the Contract Documents.

### **7.03**

If the Contractor is ever in default or an event of default exists the Owner may, without limiting any other right, remedy, or term under the Contract or at law, elect to do any one or more of the following:

A. Issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, provided that the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity;

B. Direct the Contractor to comply with the terms of the Agreement and/or Contract Documents;

C. Direct the Contractor to remove any defective or hazardous material or Work which the Contractor controls, which the Contractor shall do at its sole cost;

D. Accept any non-conforming work or materials, in which event the Owner shall be entitled to a reduction in Agreement Price for the reduced value thereof;

E. Make payments directly to Subcontractors, other subtiers of any level, supervisory staff, or work force, to satisfy the Contractor's obligations for any materials, labor, equipment, or other expenses incurred in the performance of the Work;

- F. Withhold any further payments to the Contractor or to any Subcontractor until the cause for the default or the event of default is cured to the satisfaction of the Owner;
- G. Terminate the Contract pursuant to Section 15.02 of the General Conditions;
- H. Engage separate contractors to perform, repair, or complete the Work required by the Contract Documents, or to perform Contractor's warranty obligations under the Contract Documents; and/or
- I. Exercise any other action or seek any other remedy to which the Owner may be entitled under the Contract Documents, at law, or in equity.

**7.04** The Owner's choice of a remedy under Section 7.03 hereof shall not be construed or interpreted as a waiver of any other rights or remedies provided to the Owner under the Contract Documents, at law, or in equity, against the Contractor, its surety, or any other party. Owner, at its option, may choose more than one remedy or choose one or more particular remedies at different times, without prejudice to any other remedies, and Owner may exercise any remedies in any sequence or combination.

**7.05** The Contractor shall pay, immediately upon demand, all costs, losses, damages, and expenses, including, without limitation, all administrative, management, overhead, and other costs and expenses, as well as all reasonable attorneys' fees, costs, and expenses (collectively, "Default Costs"), incurred by the Owner in connection with any default by the Contractor or exercise of any right or remedy upon the Contractor's default. Payment shall be due immediately upon Contractor's receipt of written demand, and interest shall accrue at a rate of 1.5% per month on any amounts not paid by Contractor within thirty (30) days. If the Contractor does not pay the Default Costs immediately, the Owner may deduct them from any unpaid portion of the Contract Sum and the Agreement Price, including (without limitation) any retainage.

## **PART 8 CONTRACTOR'S REPRESENTATIONS**

- A. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  1. Contractor is familiar with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of Project.
  2. Contractor has carefully studied the Site and has performed all necessary investigations, tests, and subsurface investigations to

define the latent physical conditions of the construction Site affecting cost, progress, or performance of Project.

3. Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data as Contractor deems necessary for the performance of Project at the Agreement Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.

4. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

5. Contractor has given Engineer and Owner's Representative written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

## **PART 9 OWNER'S REPRESENTATIONS**

A. Owner makes the following representations:

1. This Agreement is subject to the provisions of Section 24-91-103.6, C.R.S., as amended. Owner has appropriated money equal to or in excess of the Agreement Price. This Agreement is subject to annual appropriation by Owner.

2. Owner will not issue any Change Order or other form of order or directive by Owner requiring additional compensable work to be performed by Contractor, which work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement Price unless Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. By executing a Change Order which causes an increase in the Agreement Price, Owner represents to Contractor that Contractor is being given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made. Any claim for additional compensation shall be in full compliance with Section 24-91-103.6(4), C.R.S., as amended.

## **PART 10 MISCELLANEOUS**

A. Terms used in this Agreement which are defined in Part 1 of the General Conditions shall have the meanings indicated in the General Conditions.

B. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of Owner, specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

C. The terms of this Agreement, and all covenants, agreements, and obligations contained in the Contract Documents shall inure to and be binding upon the partners, legal representatives, successors, heirs, and permitted assigns of the parties hereto.

D. If any term, section or other provision of the Contract Documents shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of the Contract Documents, and to this end, each term, section and provision of the Contract Documents shall be severable.

E. No waiver by either party of any right, term or condition of the Contract Documents shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of the Contract Documents.

F. None of the remedies provided to either party under the Contract Documents shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable in accordance with Part 21 of the General Conditions. The Contract Documents shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

G. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

H. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and superseded by, the Contract Documents.

I. In the event any provision of this Agreement conflicts with any provision of any other Contract Document, then the provisions of this Agreement shall govern and control such conflicting provisions.

J. Unless otherwise expressly provided, any reference herein to “days” shall mean calendar days. All times stated in the Contract Documents are of the essence.

K. Contractor authorizes the Owner to provide to any person any pertinent information, personal or otherwise, regarding the Contractor’s performance with respect to the Contract Documents and releases all parties from liability for any damage that may result from the Owner’s furnishing such information to others.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

(Signatures appear on following pages)



IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

OWNER:

CIMARRON METROPOLITAN DISTRICT

By: [Signature]

Address: 10914 Remondick Fidgett

Phone: (720) 635-0778

(SEAL)

STATE OF COLORADO )

) ss.

COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of July, 2023, by Brian Daly, as Treasurer of the Cimarron Metropolitan District.

Witness my hand and official seal.

My commission expires:

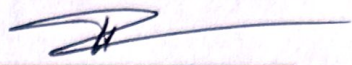
July 09, 2024

[Signature]  
Notary Public

ASHLEY LOPEZ  
NOTARY PUBLIC - STATE OF COLORADO  
Notary ID #20204023786  
My Commission Expires 7/9/2024

**CONTRACTOR:**

Colorado Custom Rock

By: Todd Robertson 

Title: CEO

Address: 4963 Kelso Rd Boulder, O 80301

Phone: 303 520 6344

CONTRACTOR'S LICENSE NO.: \_\_\_\_\_

AGENT FOR SERVICE OF \_\_\_\_\_

PROCESS: \_\_\_\_\_

STATE OF COLORADO )

)

COUNTY OF Boulder

) ss.

)

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 2023, by TODD ROBERTSON, as CEO of COLORADO CUSTOM ROCK CORP.

Witness my hand and official seal.



My commission expires:

March 13, 2024



Notary Public

**END OF SECTION**

## **PERFORMANCE BOND**

## Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and Travelers\*, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and firmly bound unto the Cimarron Metropolitan District, as Obligee, in the sum \_\_\_\_\_, (\$0,000.00), for the payment of which penal sum, well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed an Owner-Contractor Agreement dated \_\_\_\_\_, for the construction of the Candelas Mail Kiosk Relocation (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform said Contract, including a two (2) **year** warranty period described in the Contract Documents, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives any notice of any alteration of the Contract or extension of the Contract Time, as stated in the Contract, as may be agreed upon by the Obligee and the Contractor and embodied in any written Change Order whether or not it increases the total price of the Project.

Whenever the Principal shall be in default under the Contract and is declared so by the Obligee and the Obligee has performed all obligations under the Contract, the Surety may (1) remedy the default, or (2) complete the Contract in accordance with its terms and conditions, or (3) obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest, qualified, responsive and responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest, qualified, responsive and responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) funds sufficient to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this Bond must be instituted before the expiration of **two (2) years** from the date final payment under the Contract is due. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgements, and save harmless the Obligee from all costs and damages



which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default, together with interest thereon at the rate of eight percent (8%) per annum from the date of judgment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

(Signatures appear on following pages)

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26,101 et seq., C.R.S. This bond must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute the Bond.

**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 Attached)

**LABOR AND MATERIALS PAYMENT BOND**



## Labor and Materials Payment Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned, \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and bound firm unto Cimarron Metropolitan District, as Obligee, in the penal sum of \_\_\_\_\_ (\$ 0,000.00), together with interest at the rate of eight percent (8%) per annum on all payments becoming due in accordance with the Contract (defined below) from the time such payments shall become due until such payment shall be made, for the payment of which sum well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed a Contract dated \_\_\_\_\_, for the construction of the Candelas Mail Kiosk Relocation (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for the use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant shall be defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract; labor and material being construed to include, but not be limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant, as herein defined, who has not been paid in full before the expiration of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for sums as may be justly due claimant, together with interest at the rate of eight percent (8%) per annum, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgments, and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default.
3. No suit or action shall be commenced hereunder by any claimant:

- a) Unless the claimant, other than one having a direct contract with the Principal, shall have given written notice to the Obligee and either the Principal or the Surety within six (6) months after such claimant did or performed the last of the work or labor, or furnished the last of the material for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the Project is located, save that such service need not be made by a public officer.
- b) After the expiration of **one (1) year** following the date on which the Principal ceased work on the above-described Project, it being understood, however, that, if any limitation embodied in this Bond is prohibited by any law controlling construction hereof, such limitation shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.
- c) Other than in a state court of competent jurisdiction in and for the county of the state in which the Project, or any part thereof, is situated, and not elsewhere.
- d) In addition, if the Principal or its subcontractor shall fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such Principal or its subcontractor in performance of the Contract or shall fail to duly pay any person who supplies laborers, rental machinery, tools or equipment in the prosecution of the Work, then the Surety shall pay the same in an amount not exceeding the sum specified in this Bond together with interest at a rate of eight percent per annum.
- e) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of statutory claims which may be filed of record for the Project, whether or not the claim or the amount of such claim be presented under and against this Bond.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26-101 et. seq., C.R.S., and must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute Bond.

**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 Attached)

**END OF SECTION**

**CERTIFICATES OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/13/2023

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).

|  |  |                       |               |
|--|--|-----------------------|---------------|
| <b>PRODUCER</b><br>Joseph Magoffin<br>8357 N Rampart Range Rd Ste 203<br>Littleton CO 801259365          | <b>CONTACT NAME:</b> Joseph Magoffin<br><b>PHONE (A/C, No, Ext):</b> 720-639-3950<br><b>E-MAIL ADDRESS:</b> joseph.magoffin.dvc6@statefarm.com | <b>FAX (A/C, No):</b> |               |
|  | <b>INSURER(S) AFFORDING COVERAGE</b>   |                       | <b>NAIC #</b> |
| <b>INSURED</b><br>COLORADO CUSTOM ROCK & ROBERTSON, TODD & MART<br>4963 KELSO RD<br>BOULDER CO 803014324 | <b>INSURER A:</b> State Farm Fire and Casualty Company   |                       | 25143         |
|  | <b>INSURER B:</b> State Farm Mutual Automobile Insurance Company   |                       | 25178         |
|  | <b>INSURER C:</b>  |                       |               |
|  | <b>INSURER D:</b>  |                       |               |
|  | <b>INSURER E:</b>  |                       |               |

**COVERAGES****CERTIFICATE NUMBER:****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  | ADD INSD | SUB WVD | POLICY NUMBER   | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|----------|--|----------|---------|-----------------|-------------------------|-------------------------|--|
| A        | <input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b><br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: | Y        | Y       | 96-EV-Q391-1    | 03/01/2023              | 03/01/2024              | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000<br>\$ |
| B        | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY   | Y        | Y       | 484 5490-C03-06 | 03/03/2023              | 09/03/2023              | COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$ 1,000,000<br>BODILY INJURY (Per accident) \$ 1,000,000<br>PROPERTY DAMAGE (Per accident) \$ 1,000,000<br>\$  |
| A        | <input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br><input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000   | N/A      |         | 96-CH-J585-1    | 05/16/2023              | 05/16/2024              | EACH OCCURRENCE \$ 5,000,000<br>AGGREGATE \$ 5,000,000<br>\$   |
| A        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N<br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below   | N/A      | Y       | 96-EV-Q788-4    | 03/01/2023              | 03/01/2024              | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER \$<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                                   |

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

Cimarron Metropolitan District  
 Candelas Filing 1  
 Mail Kiosk Relocation

**CERTIFICATE HOLDER****CANCELLATION**

|   |  |
|---|--|
| Cimarron Metropolitan District<br>c/o McGeady Becher P.C.<br>450 E. 17th Avenue, Suite 400<br>Denver CO 80203 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br><b>AUTHORIZED REPRESENTATIVE</b><br><br>This form was system-generated on 07/13/2023 |
|---|--|

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**NOTICE OF AWARD**

**NOTICE OF AWARD**

**Cimarron Metropolitan District  
370 Interlocken Blvd Suite 500  
Broomfield, CO 80021**

**June 23, 2023**

**TO: Colorado Custom Rock  
7501 York St  
Denver, CO 80229**

The Owner, having duly considered the Bid Form submitted on June 16, 2023 for the Work covered by the Bid and Contract Documents titled Candelas Mail Kiosk Relocation, for the amount of Thirty Five Thousand, Eight Hundred Fifty Five Dollars and Ninety Five Cents (\$35,855.95), and it appearing that the price and other information in your Bid Form is fair, equitable and to the best interest of the Owner, the offer in your Bid Form is hereby accepted.

In accordance with the terms of the Contract Documents, you are required to execute the Agreement within ten (10) consecutive days from receipt of the Agreement.

In addition, you are required to furnish at said time your Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies evidencing compliance with the requirements for insurance as stated in the Contract Documents.

The Bid Security submitted with your Proposal will be returned upon execution of the Agreement, furnishing of the required Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies within the time limit specified. In the event that you should fail to execute the Agreement and provide the executed Performance Bond and Labor and Materials Payment Bond within the time limit specified, said security will be retained by the Owner as liquidated damages and not as a penalty for the delay and extra work caused thereby.

You are required to return an acknowledged copy of this Notice of Award to Owner.

\_\_\_\_\_  
Cimarron Metropolitan District

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF AWARD:**

Receipt of the above Notice of Award is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Colorado Custom Rock

By: \_\_\_\_\_

Title: \_\_\_\_\_



**NOTICE TO PROCEED**

---

**NOTICE TO PROCEED**

**Cimarron Metropolitan District  
370 Interlocken Blvd Suite 500  
Broomfield, CO 80021**

**TO: Colorado Custom Rock  
7501 York St  
Denver, CO 80229**

You are hereby authorized to proceed on June 23, 2023 with the Candelas Mail Kiosk Relocation Project as set forth in the Contract Documents.

\_\_\_\_\_  
Cimarron Metropolitan District

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE TO PROCEED:**

Receipt of the above Notice to Proceed is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Colorado Custom Rock

By: \_\_\_\_\_

Title: \_\_\_\_\_

---

## **DRAWINGS, PLANS, AND/OR REPORTS**

## **CIMARRON METROPOLITAN DISTRICT CANDELAS MAILBOX KIOSK RELOCATION**

### **General Description and Scope of Work:**

The Work generally consists of furnishing all labor, materials, equipment, and any and all other items necessary to complete the Candelas Mailbox Kiosk Relocation Project, in accordance with Contract Documents including the plans and specifications.

A description of the Work to be performed includes but is not limited to the mail kiosk, base concrete, foundation, masonry work, column and steel roof, electrical lighting, pedestal and coordination and any and all other work necessary to complete the project in accordance with Contract Documents including the plans and specifications.

### **Plans:**

#### **Plans entitled:**

- (a) Candelas Filing 1 Details, by Martin/Martin Consulting Engineers, dated December 16, 2011, and consisting of 1 sheet.
- (b) Candelas Filing 1 Structural Drawings, by Martin/Martin Consulting Engineers, dated April 30, 2012, and consisting of 1 sheet.
- (c) Candelas Filing 1 Amendment 1 Final Development Plan, Relocation Exhibit, consisting of 1 sheet.

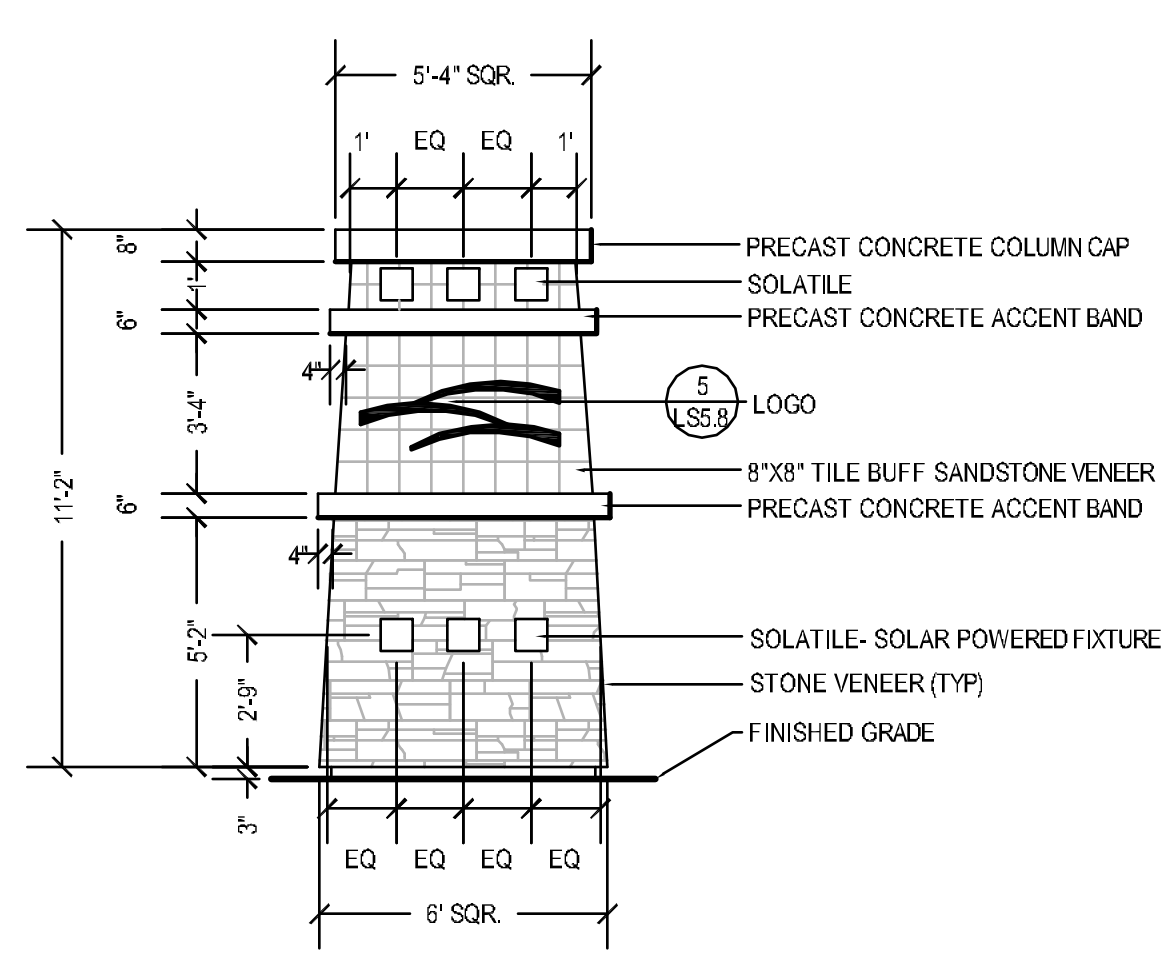
#### **Geotechnical reports:**

- (a) N/A

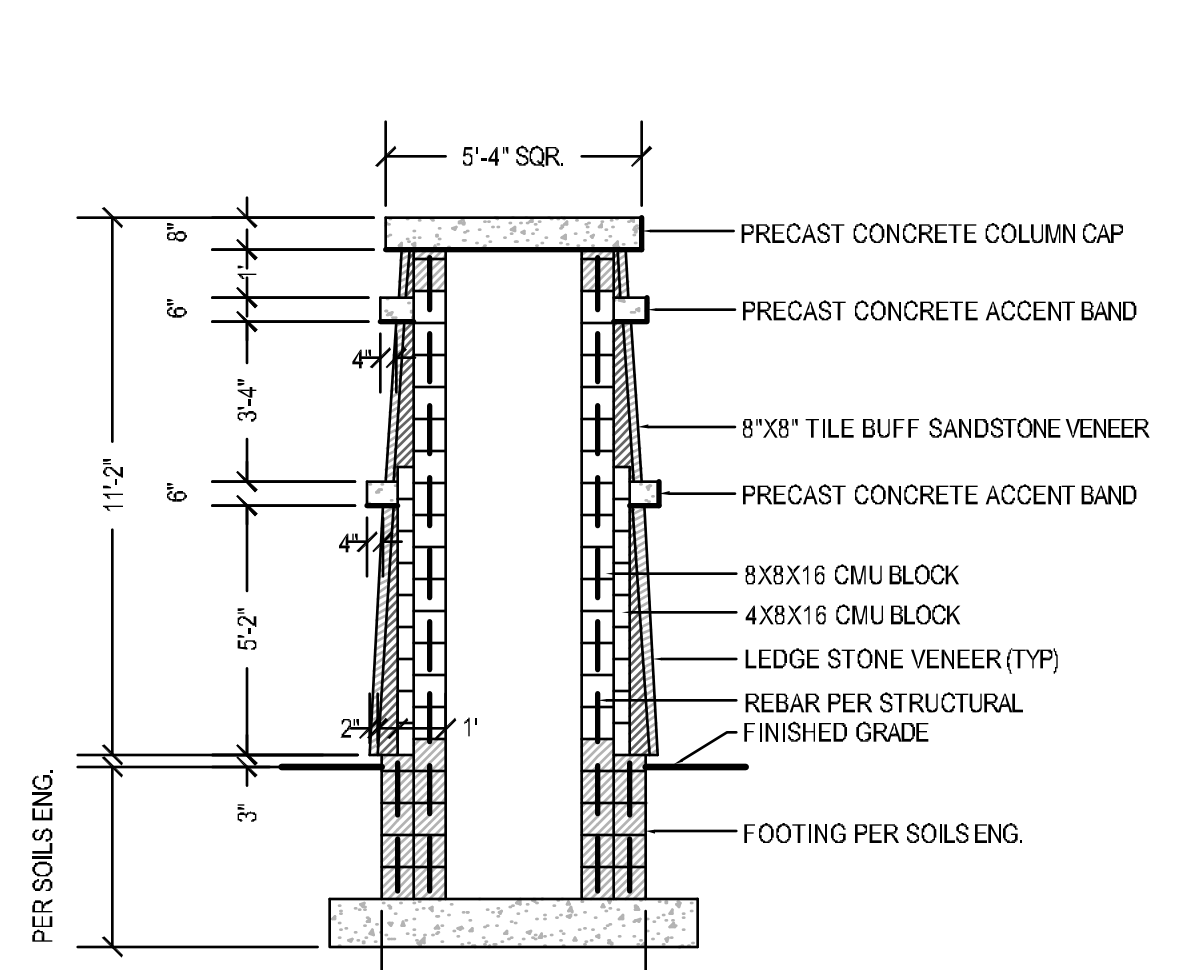




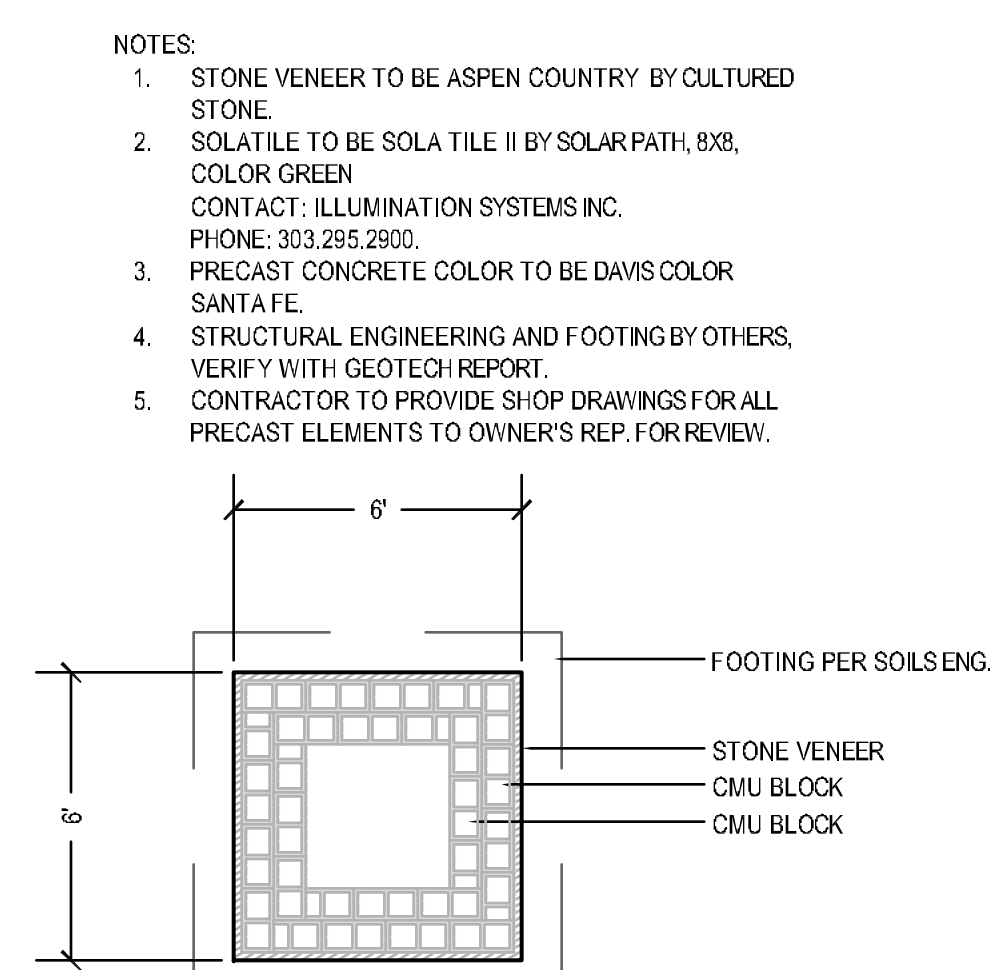




ELEVATION

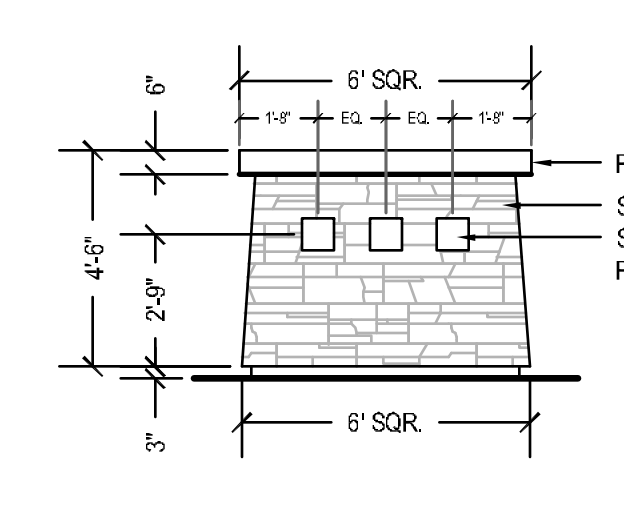


SECTION

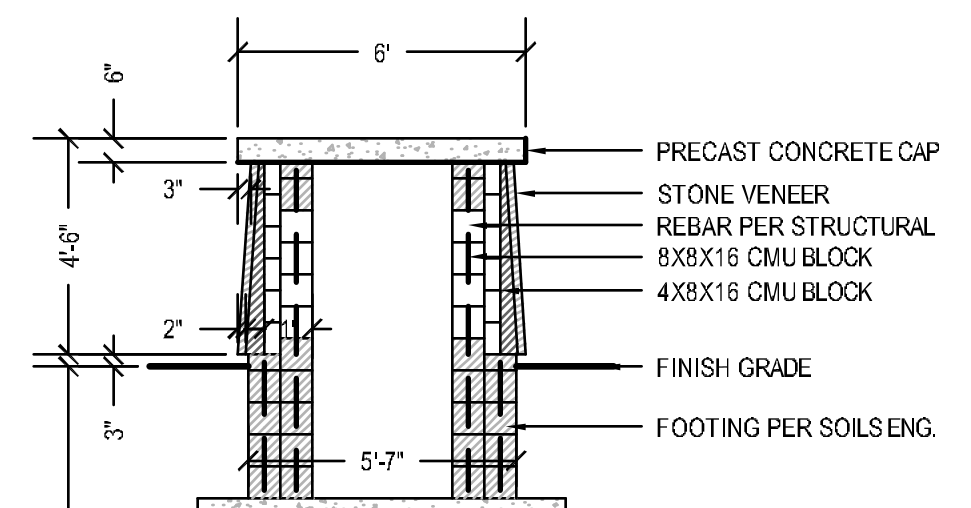


PLAN VIEW

- NOTES:
- STONE VENEER TO BE ASPEN COUNTRY BY CULTURED STONE.
  - SOLATILE TO BE SOLA TILE II BY SOLARPATH, 8X8, COLOR GREEN. CONTACT: ILLUMINATION SYSTEMS INC. PHONE: 303.295.2900.
  - PRECAST CONCRETE COLOR TO BE DAVIS COLOR SANTA FE.
  - STRUCTURAL ENGINEERING AND FOOTING BY OTHERS. VERIFY WITH GEOTECH REPORT.
  - CONTRACTOR TO PROVIDE SHOP DRAWINGS FOR ALL PRECAST ELEMENTS TO OWNER'S REP. FOR REVIEW.



ELEVATION

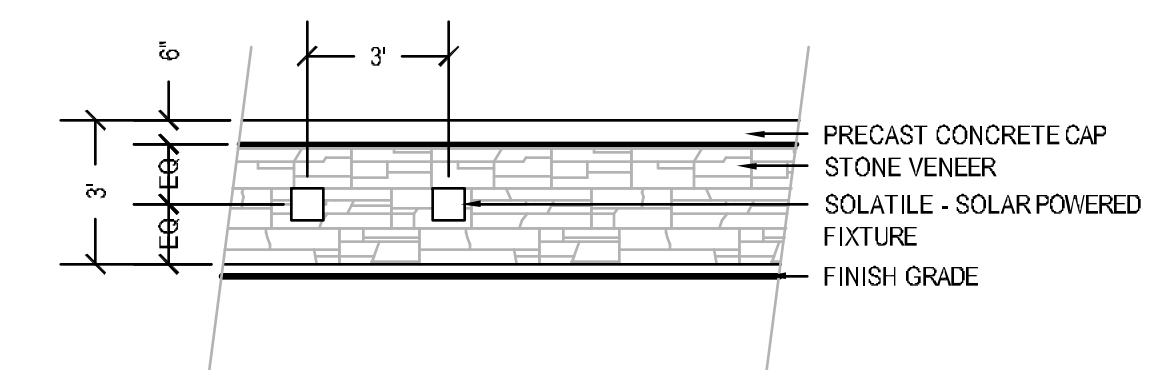


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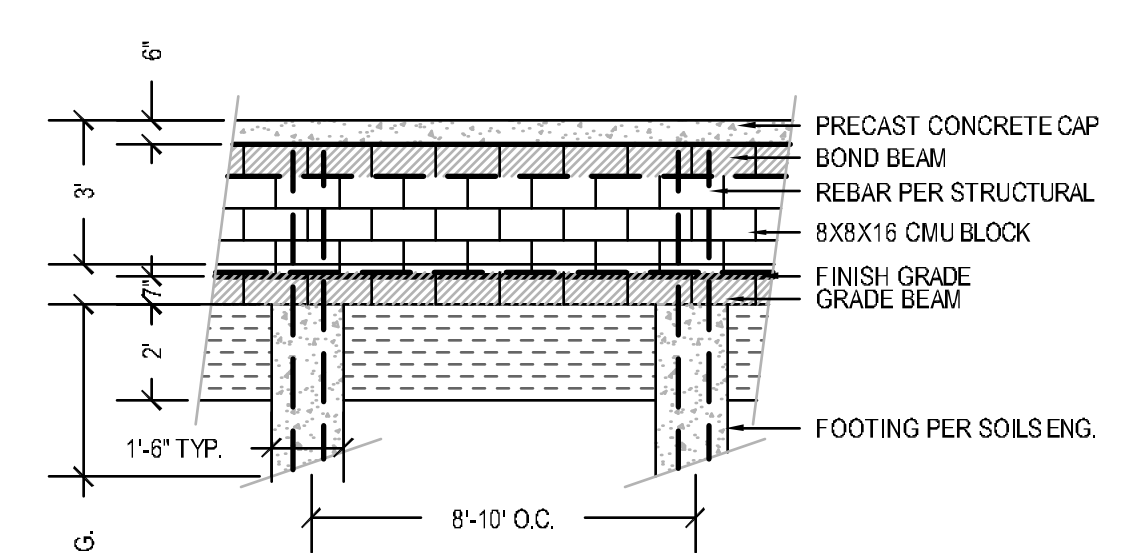
- NOTES:
- STONE VENEER TO BE ASPEN COUNTRY BY CULTURED STONE.
  - SOLATILE TO BE SOLA TILE II BY SOLARPATH, 8X8, COLOR GREEN. CONTACT: ILLUMINATION SYSTEMS INC. PHONE: 303.295.2900.
  - PRECAST CONCRETE COLOR TO BE DAVIS COLOR SANTA FE.
  - STRUCTURAL ENGINEERING AND FOOTING BY OTHERS. VERIFY WITH GEOTECH REPORT.
  - CONTRACTOR TO PROVIDE SHOP DRAWINGS FOR ALL PRECAST ELEMENTS TO OWNER'S REP. FOR REVIEW.

**1 11'-2" COLUMN**  
Scale: 1/4"=1'-0"

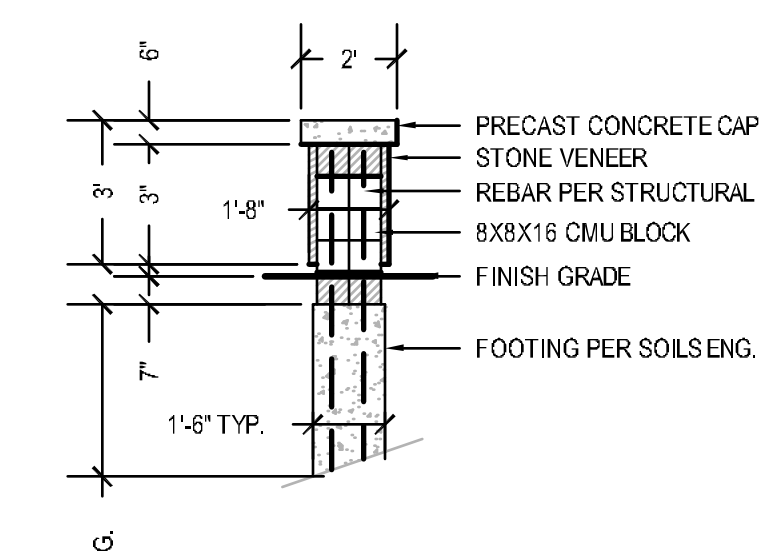
**2 4'-6" COLUMN**  
Scale: 1/4"=1'-0"



ELEVATION

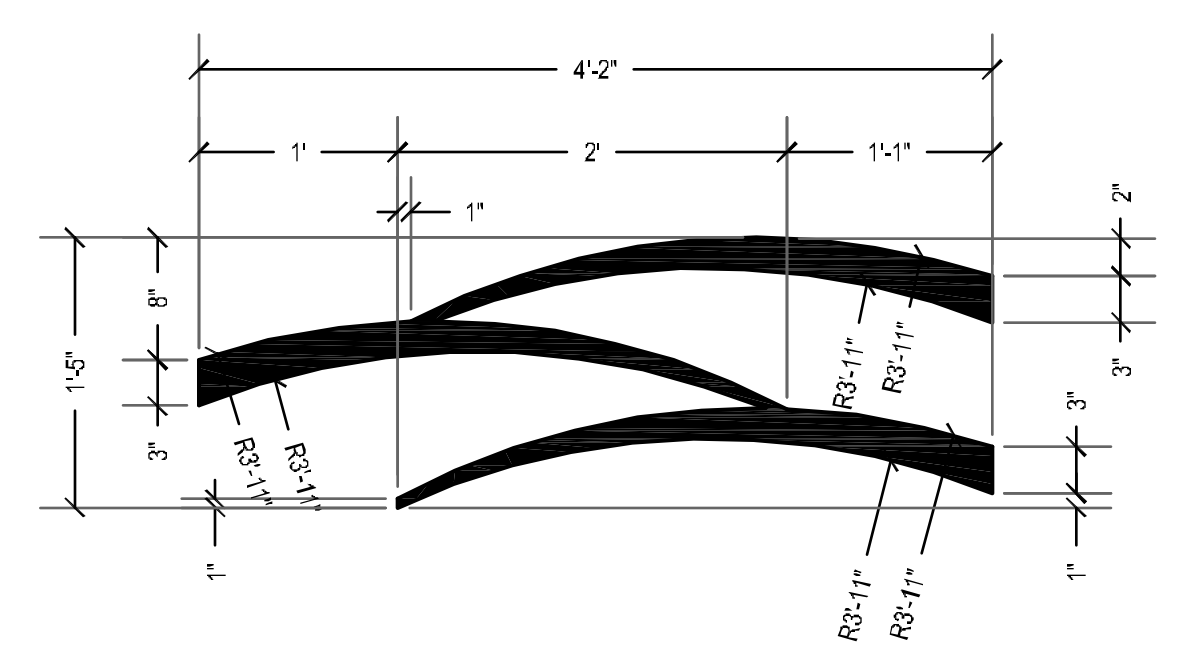


SECTION ELEVATION



SECTION

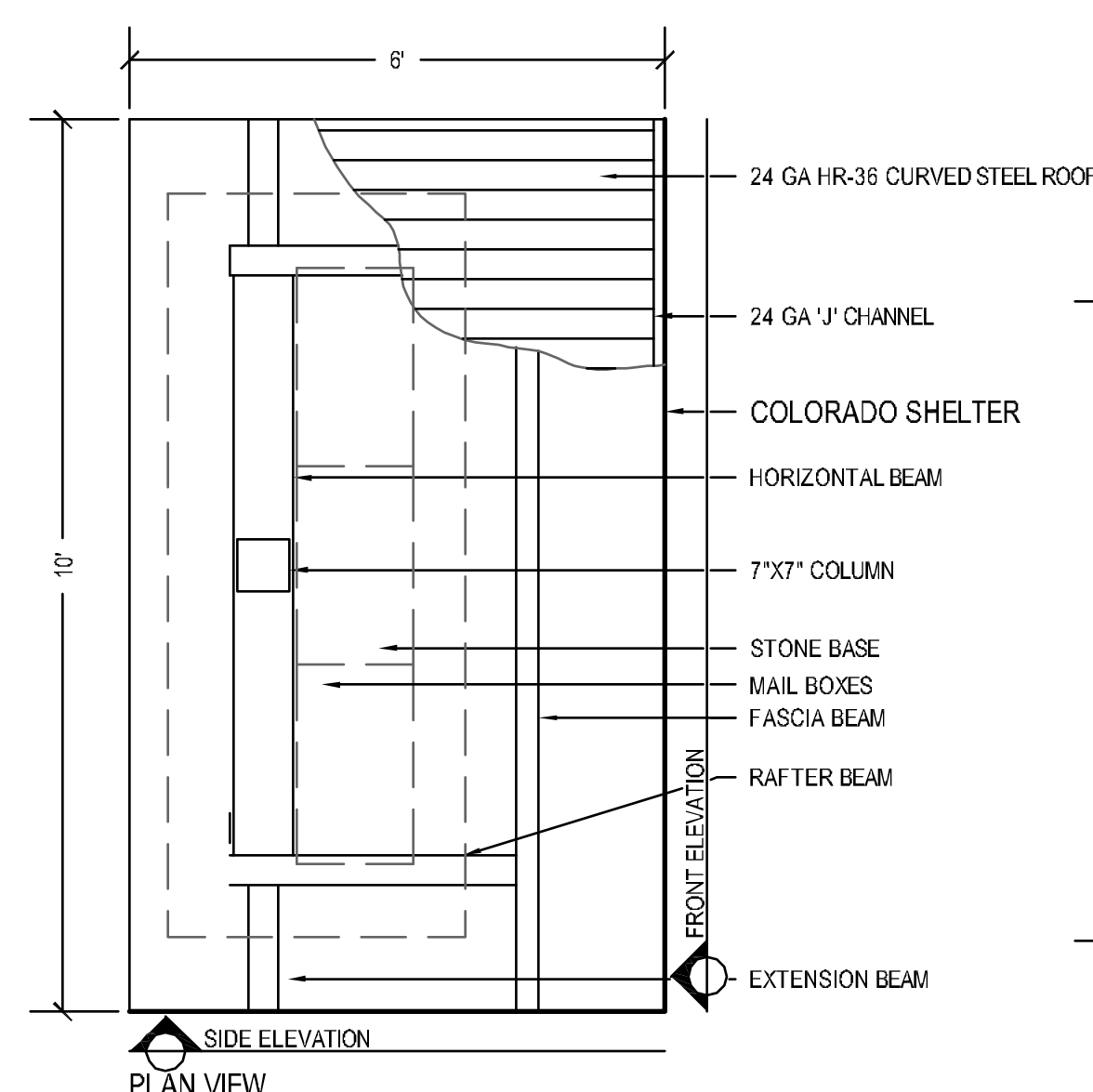
- NOTES:
- STONE VENEER TO BE ASPEN COUNTRY BY CULTURED STONE.
  - SOLATILE TO BE SOLA TILE II BY SOLARPATH, 8X8, COLOR GREEN. CONTACT: ILLUMINATION SYSTEMS INC. PHONE: 303.295.2900.
  - PRECAST CONCRETE COLOR TO BE DAVIS COLOR SANTA FE.
  - STRUCTURAL ENGINEERING AND FOOTING BY OTHERS. VERIFY WITH GEOTECH REPORT.
  - CONTRACTOR TO PROVIDE SHOP DRAWINGS FOR ALL PRECAST ELEMENTS TO OWNER'S REP. FOR REVIEW.



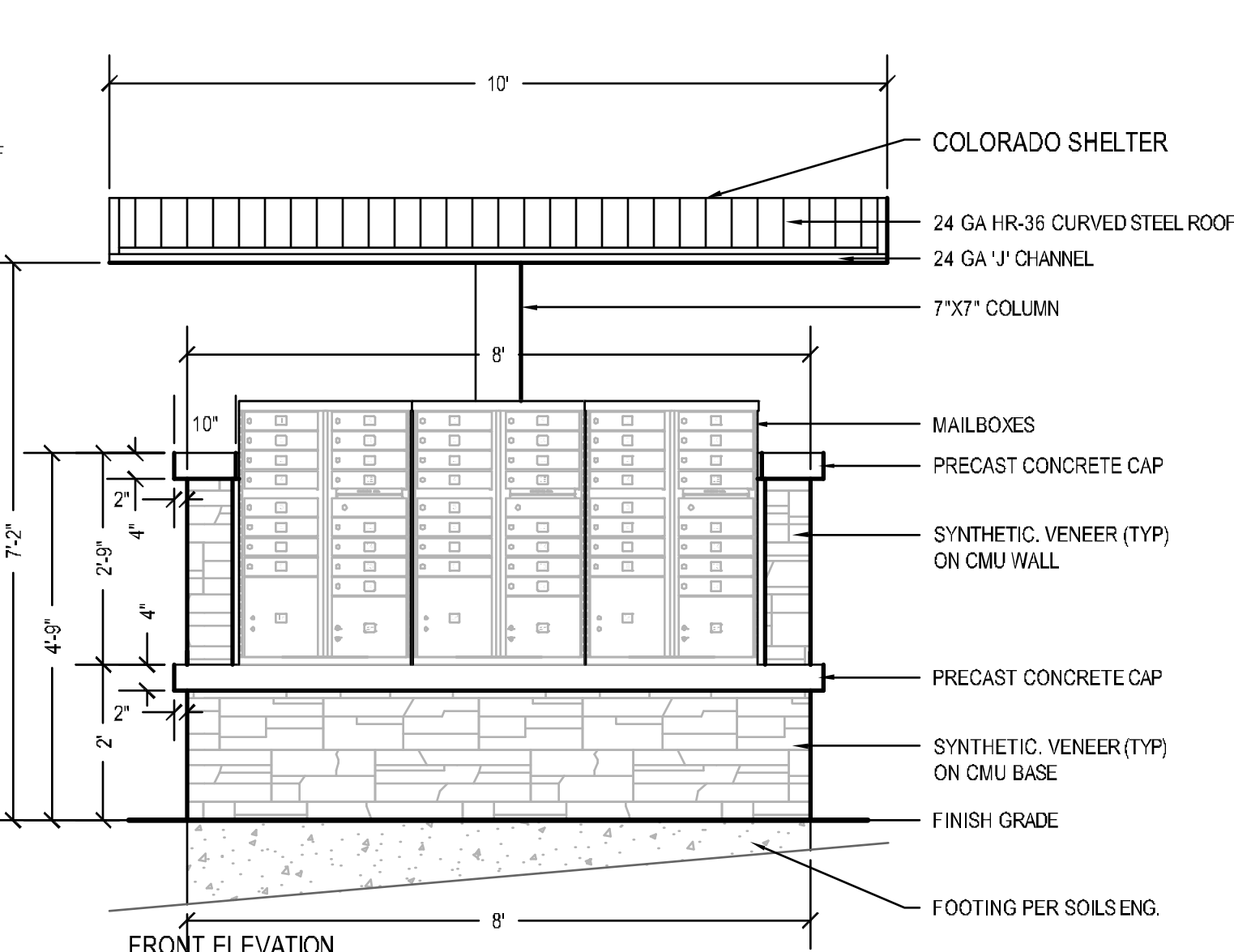
- NOTES:
- INTERNALLY LIGHTED REVERSE FAN CHANNEL LOGO.
  - POWDER COAT SILVER METALLIC.

**3 3 FOOT WALL**  
Scale: 1/4"=1'-0"

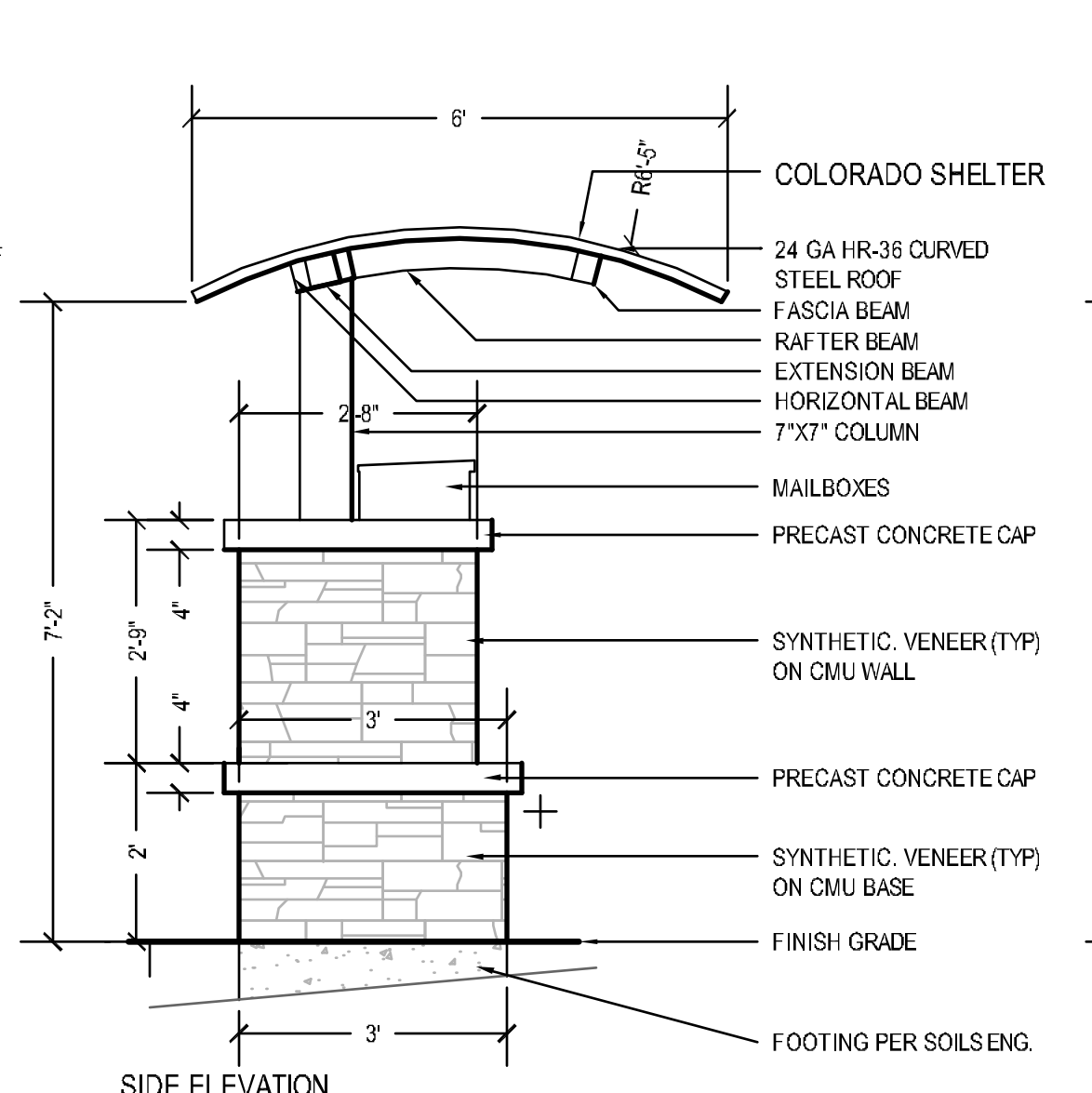
**5 LOGO**  
Scale: 1"=1'-0"



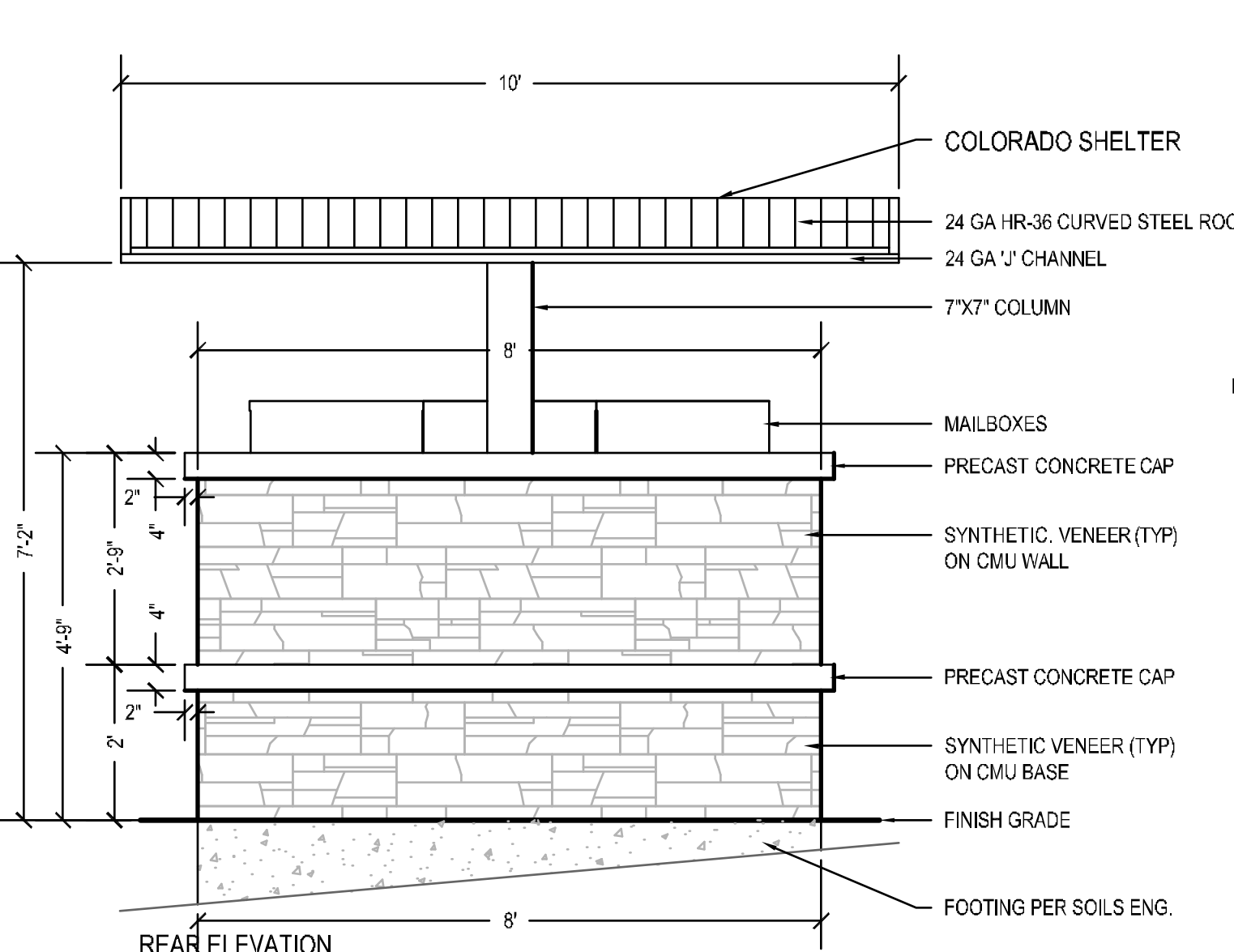
PLAN VIEW



FRONT ELEVATION



SIDE ELEVATION



REAR ELEVATION

- NOTES:
- COLORADO SHELTER MODEL: COLORADO 6X10 HR-36 1 POST COLOR: RUST CONTACT: GR MAROLT AND ASSOCIATES PHONE: 303.762.1090
  - MAILBOX MODEL: N102787 COLOR: SANDSTONE CONTACT: POSTAL PRODUCTS UNLIMITED PHONE: 800.229.4500
  - STONE VENEER TO BE ASPEN COUNTRY BY CULTURED STONE.
  - PRECAST CONCRETE COLOR TO BE DAVIS COLOR SANTA FE.
  - STRUCTURAL ENGINEERING AND FOOTING BY OTHERS. VERIFY WITH GEOTECH REPORT.
  - CONTRACTOR TO PROVIDE SHOP DRAWINGS FOR ALL PRECAST ELEMENTS TO OWNER'S REP. FOR REVIEW.

**4 MAIL KIOSK**  
Scale: 1/2"=1'-0"

Drawing: P:\Candelas\Candelas FDP #1 - 092006\AutoCAD\Curent\Landscapes\Title\City\_CD\LS5 DETAIL SHEETS.dwg  
Dec 15, 2011 1:10:23am  
Copyright © 2011 Stanley Consultants, Inc.

| Date     | Description of Revisions |
|----------|--------------------------|
| 09.02.11 | Phasing Updates          |
| 12.16.11 | Amendment No.1 Updates   |

| No. | Date     | Description of Revisions |
|-----|----------|--------------------------|
| 1   | 09.02.11 | Phasing Updates          |
| 2   | 12.16.11 | Amendment No.1 Updates   |

|                      |                    |                    |                  |                     |
|----------------------|--------------------|--------------------|------------------|---------------------|
| Date: August 5, 2011 | Job Number: 092006 | Design By: MSK/JFR | Drawn By: JC/KLM | Checked By: MSK/JFR |
|----------------------|--------------------|--------------------|------------------|---------------------|

Sheet Number:  
**LS5.8**



McGlamery  
Structural Group, Inc.  
3734 Osage Street  
Denver, CO 80211  
JOB 06-000  
ph 303-455-8988  
fx 303-455-8446

Arvada  
Residential  
Partners,  
LLC.

CANDELAS  
LIVE FORWARD  
MARTIN / MARTIN  
CONSULTING ENGINEERS  
18480 WEST COLFAX AVE.  
P.O. BOX 151500  
LAKENWOOD, CO 80112  
303-931-6100  
FAX 303-931-4088

Stanley Consultants

8000 S. Chester Street  
Suite 500  
Englewood, Colorado 80112  
phone 303.799.6806  
fax 303.799.8107  
www.stanleygroup.com

CANDELAS  
FILING NO. 1  
CONSTRUCTION  
DOCUMENTS

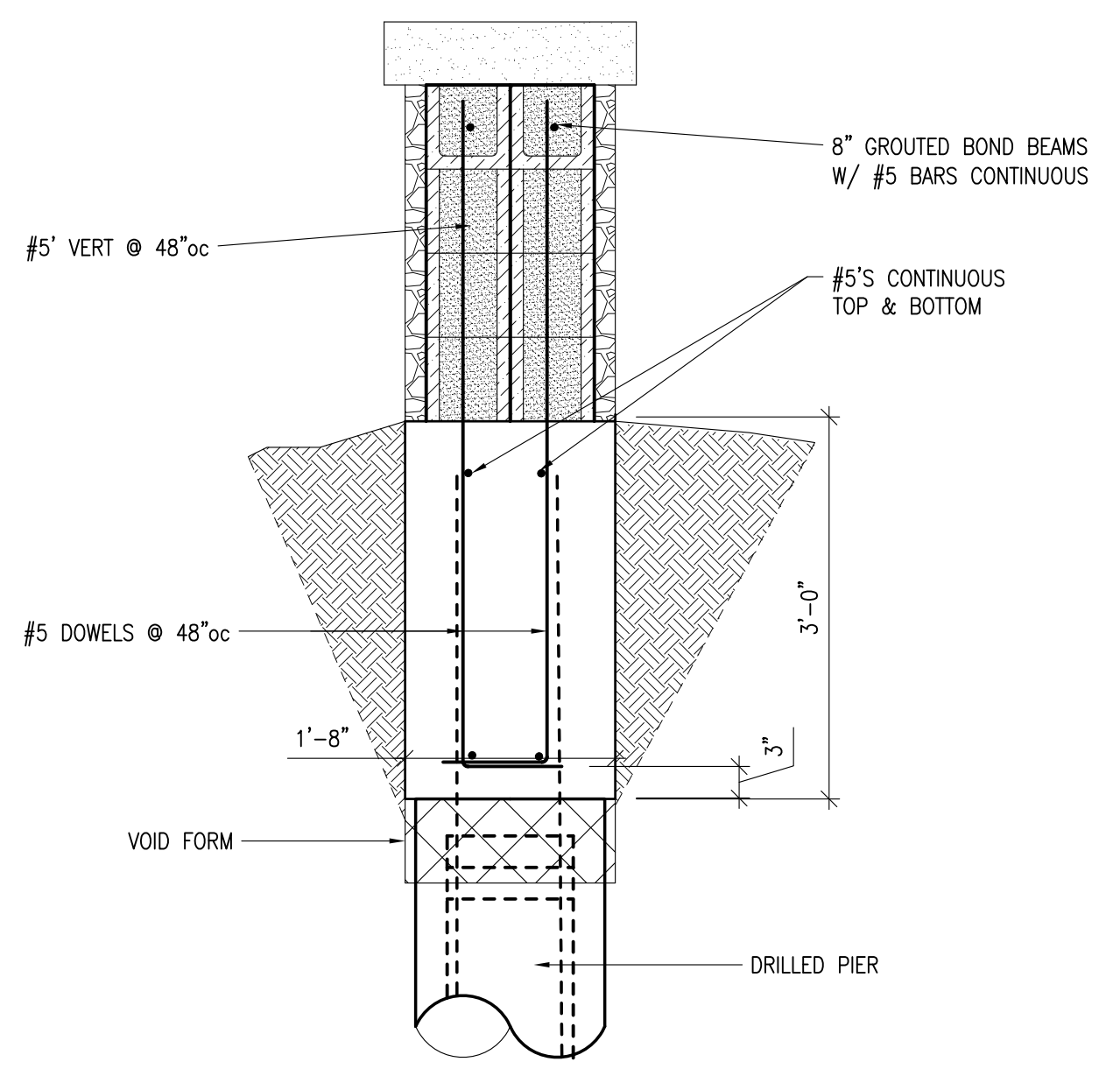
| Date     | Description of Revisions |
|----------|--------------------------|
| 03.16.12 | For Bidding              |
| 04.30.12 | V-E REVISIONS            |

Stamp

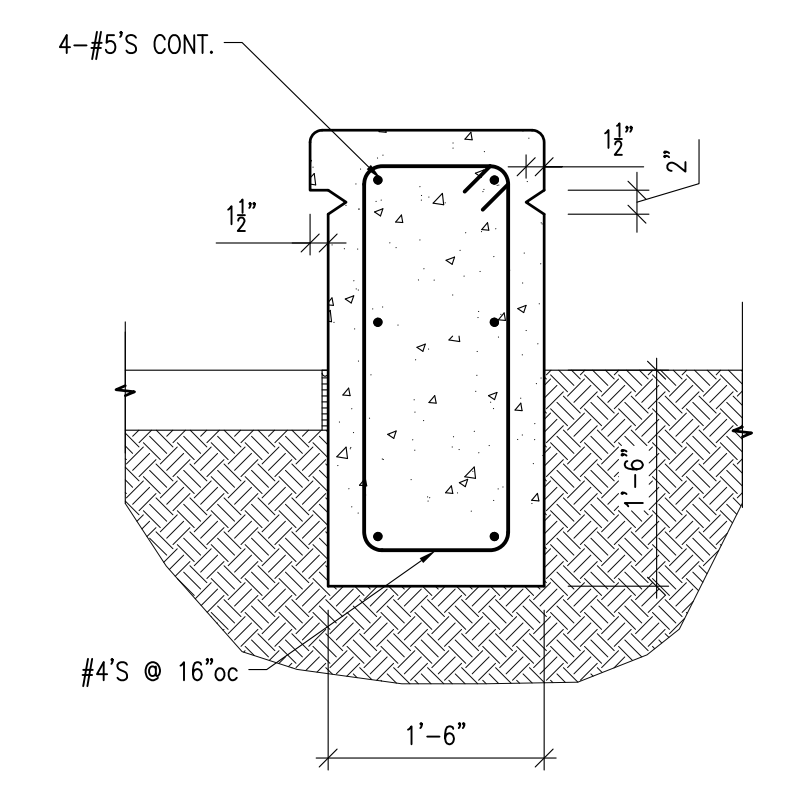
Date: March 16, 2012  
Job Number: 12-032  
Design By: ERM  
Drawn By: MSG  
Checked By: STM

Sheet Number:

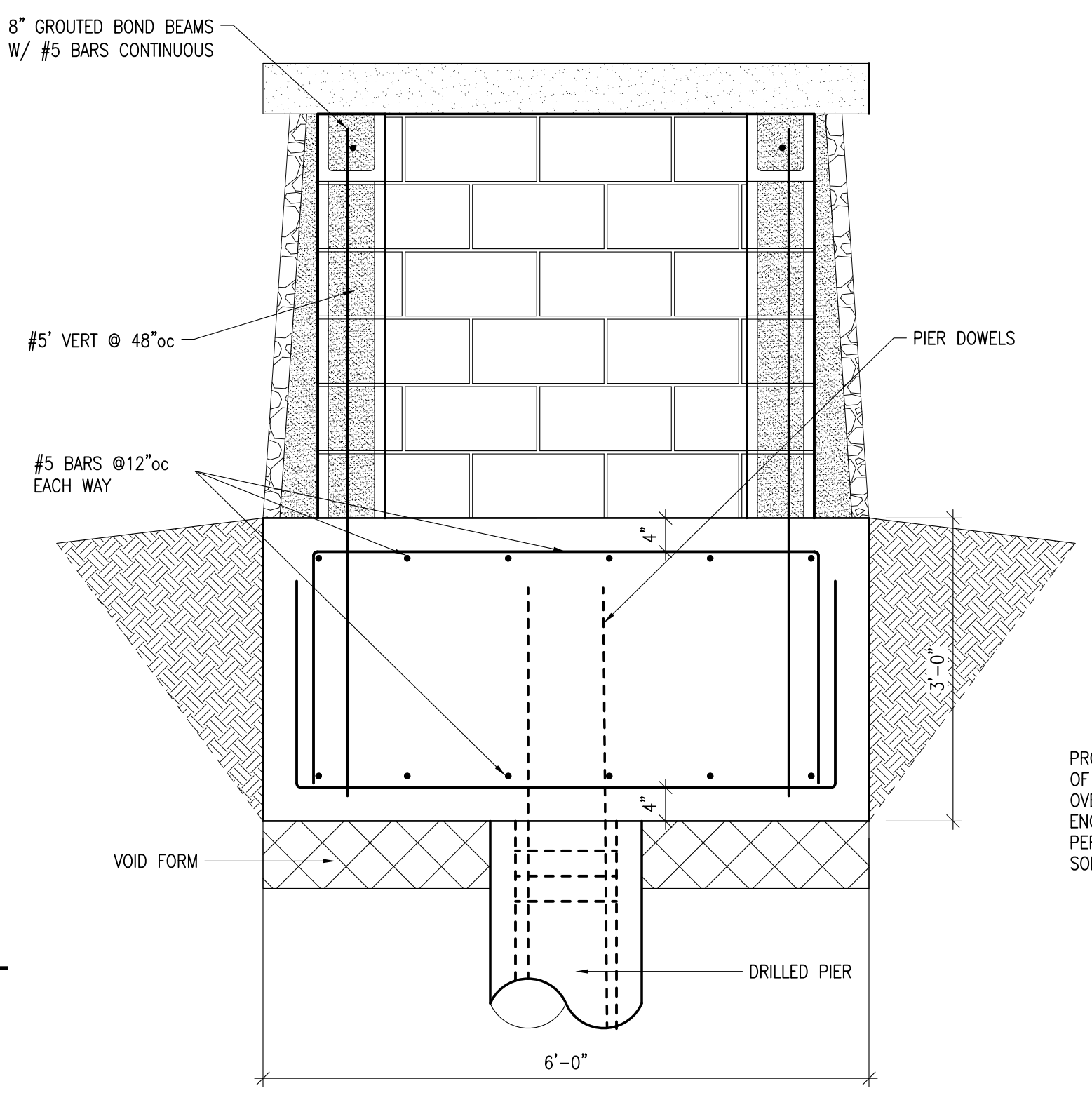
S1.2



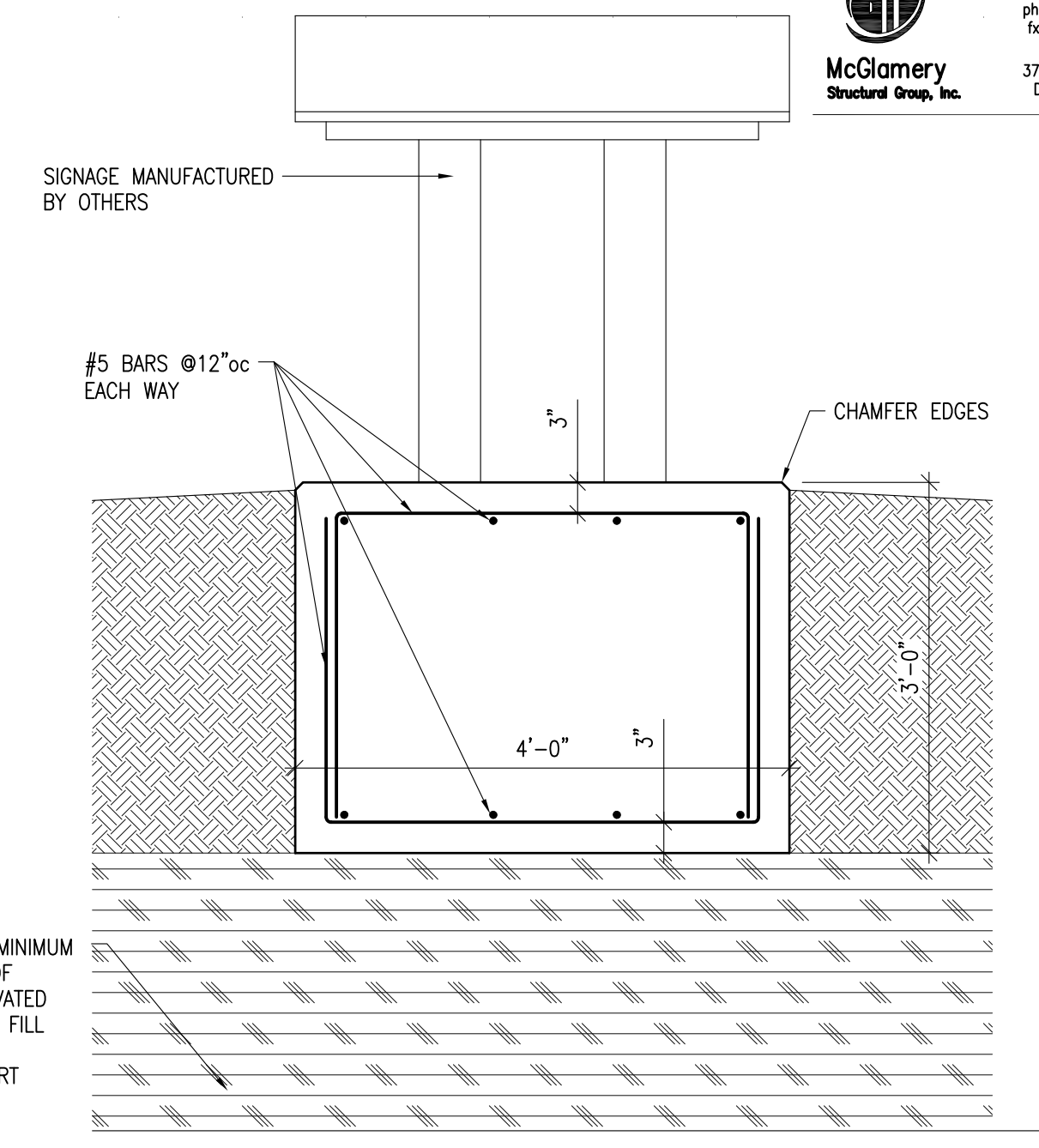
110 3FT WALL  
3/4" = 1'-0"



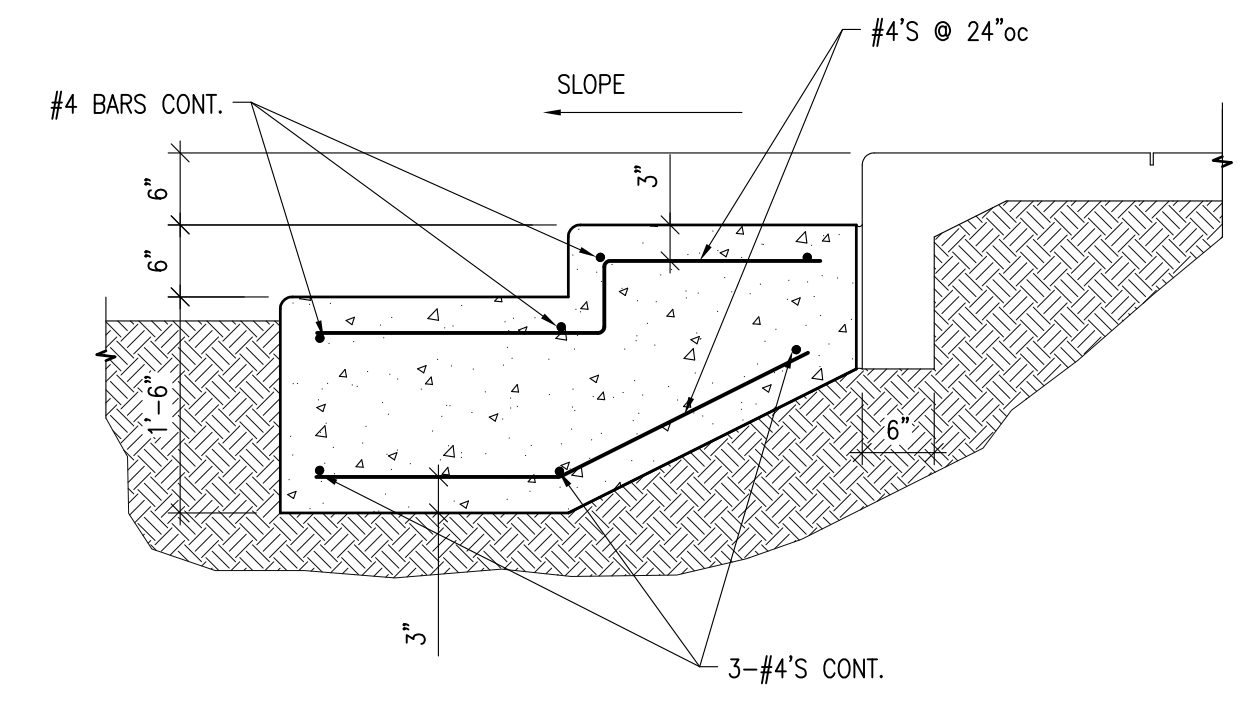
111 SEAT WALL  
3/4" = 1'-0"



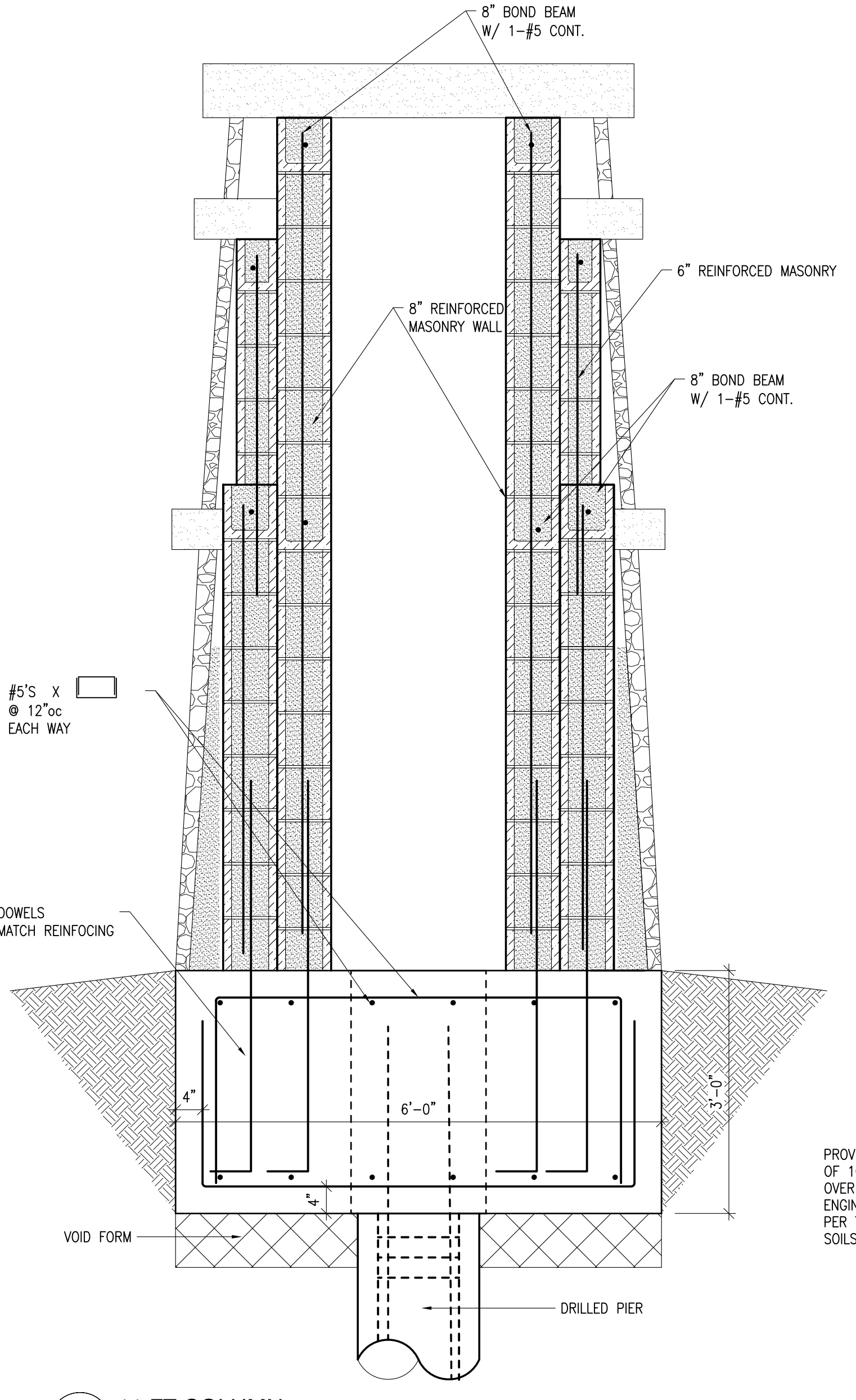
112 4-6" COLUMN  
3/4" = 1'-0"



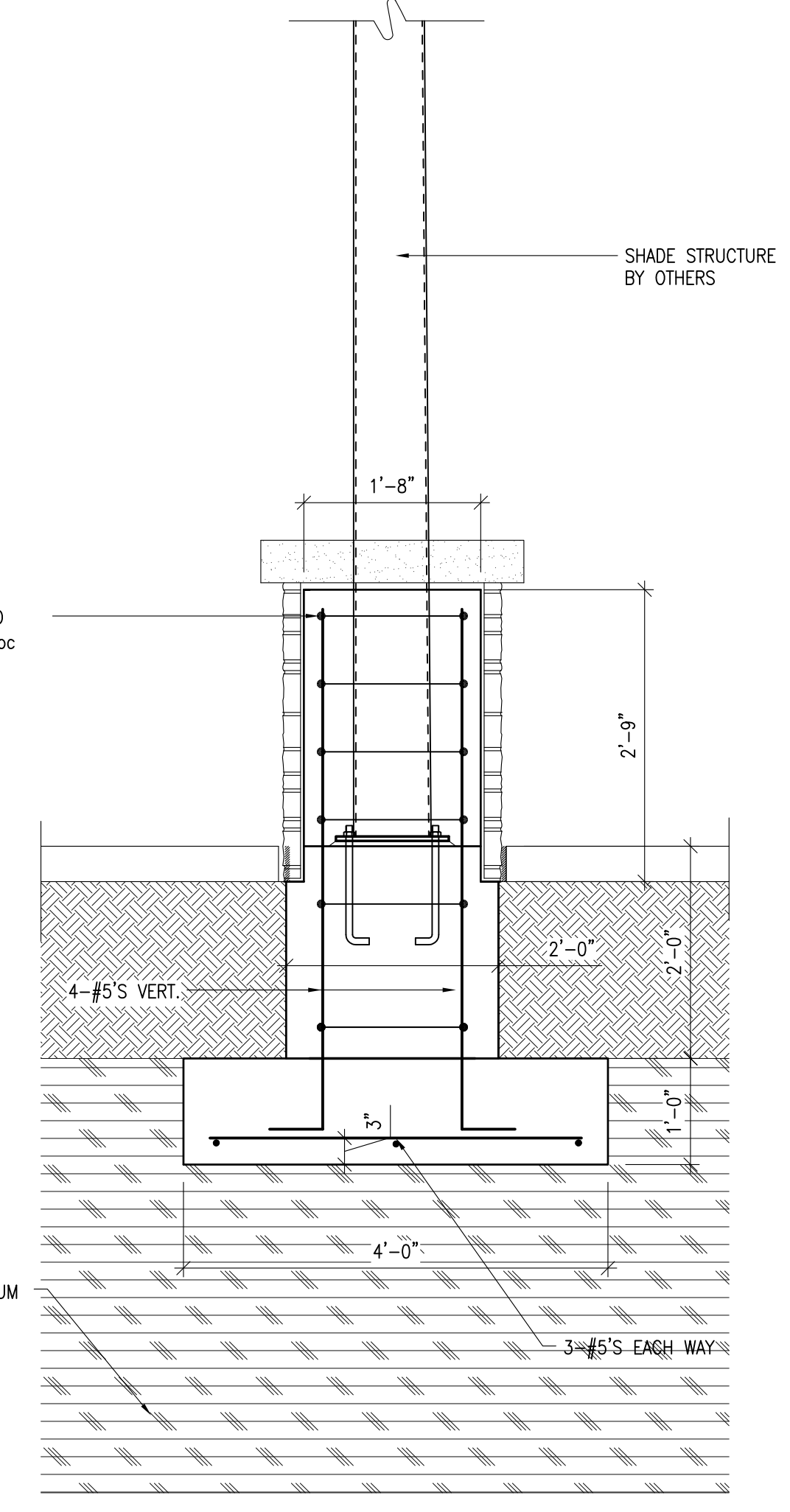
113 INTERPRETIVE SIGN  
3/4" = 1'-0"



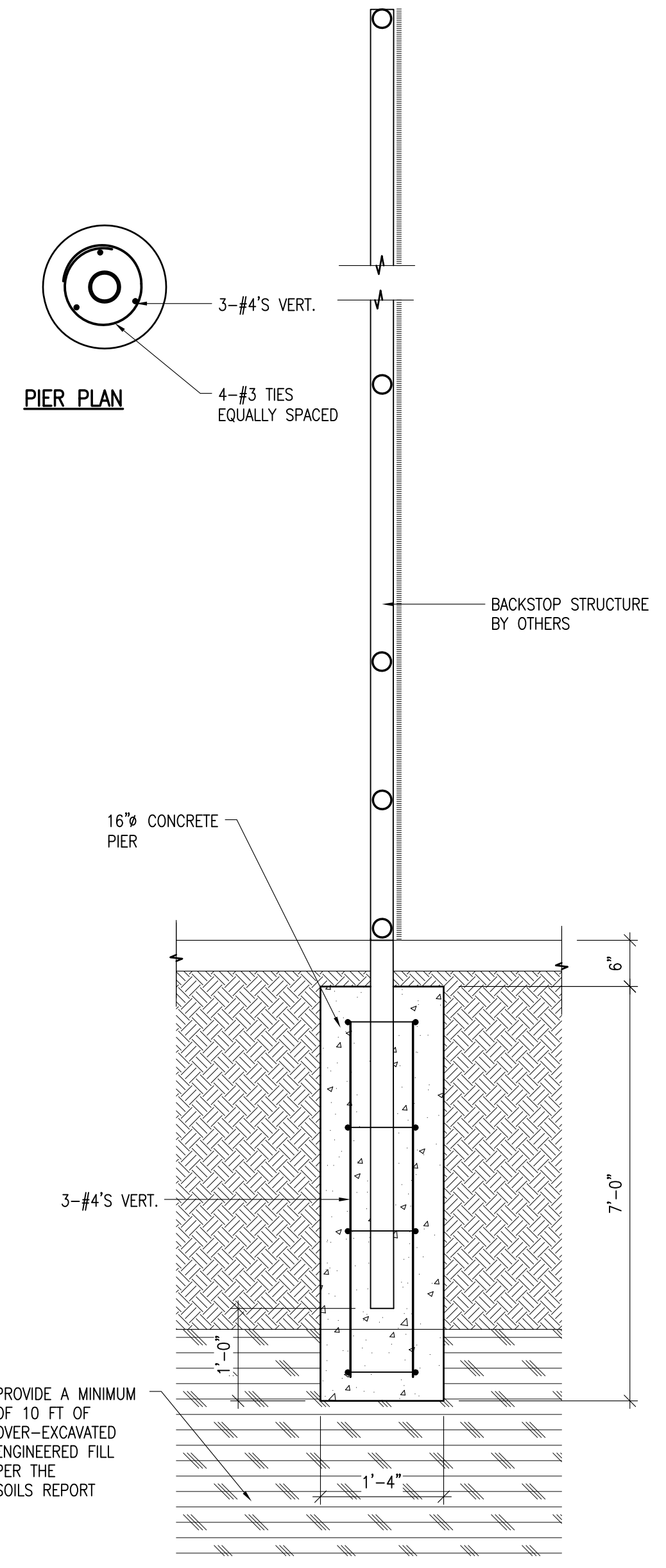
114 CONCRETE SEAT  
3/4" = 1'-0"



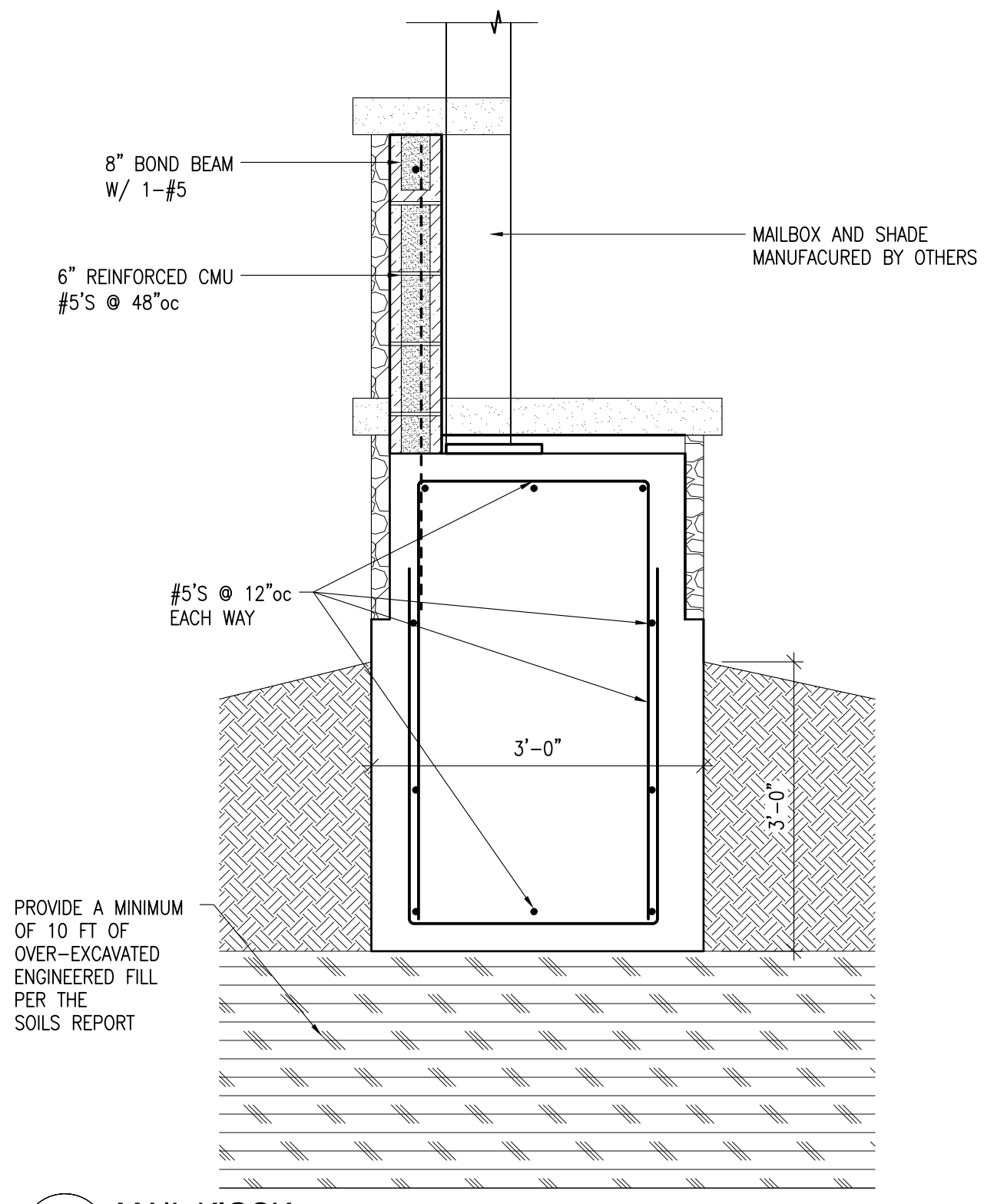
119 11 FT COLUMN  
3/4" = 1'-0"



120 SHELTER FOUNDATION  
3/4" = 1'-0"



121 BACKSTOP FOUNDATION  
3/4" = 1'-0"



118 MAIL KIOSK  
3/4" = 1'-0"

## **ADDENDA**



**ADDENDUM NO. 1****CIMARRON METROPOLITAN DISTRICT  
MAILBOX KIOSK RELOCATION**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Mailbox Kiosk Relocation** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and no (0) attachments.

**PRE BID MEETING DATE**

**The optional pre bid meeting will be held via Microsoft Teams May 18, 2023 at 2:00 P.M.**

---

## Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 274 108 313 515

Passcode: VnJtaF

[Download Teams](#) | [Join on the web](#)

**Or call in (audio only)**

[+1 970-462-9413,,611177956#](#) United States, Grand Junction

Phone Conference ID: 611 177 956#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

---

END OF ADDENDUM

Brandon Collins, PE

\_\_\_\_\_  
IDES, LLC – Cimarron Metropolitan District  
Engineer

5/11/2023

\_\_\_\_\_  
Date Issued

**ADDENDUM NO. 2****CIMARRON METROPOLITAN DISTRICT  
MAILBOX KIOSK RELOCATION**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Mailbox Kiosk Relocation** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and one (1) attachment.

**Attachment A – 20230515 Candelas Filing 1 Mailbox Kiosk Relocation Bid Tab**

**BID & CONTRACT DOCUMENTS**

END OF ADDENDUM

Brandon Collins, PE  
\_\_\_\_\_  
IDES, LLC – Cimarron Metropolitan District  
Engineer

5/15/2023  
\_\_\_\_\_  
Date Issued

**Cimarron Metropolitan District  
Candelas Filing 1  
Mailbox Kiosk Relocation  
Bid Schedule**

Contractor: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Owner: Cimarron Metropolitan District**  
 \_\_\_\_\_  
 c/o McGeady Becher  
 \_\_\_\_\_  
 450 E. 17th Avenue, Suite 400  
 \_\_\_\_\_  
 Denver, CO 80203  
 \_\_\_\_\_

| Item Code            | Item Description                          | Unit | Qty | Unit Price | Extension     |
|----------------------|---|------|-----|------------|---------------|
| <b>General Items</b> |   |      |     |            |               |
| 1                    | Mobilization & Insurance                  | LS   | 1   |            | \$0.00        |
| 2                    | Bonds                                     | LS   | 1   |            | \$0.00        |
|                      | <b>Subtotal General Items</b>             |      |     |            | <b>\$0.00</b> |
| <b>Mailbox Kiosk</b> |   |      |     |            |               |
| 3                    | Demo Non Resuable Portions of Kiosk       | EA   | 1   |            | \$0.00        |
| 4                    | Reuse and Relocate CMU Base               | EA   | 1   |            | \$0.00        |
| 5                    | Resue and Relocate Precast Concrete Caps  | EA   | 1   |            | \$0.00        |
| 6                    | Reuse and Relocate Column and Steel Roof  | EA   | 1   |            | \$0.00        |
| 7                    | Install all other Components not Reusable | EA   | 1   |            | \$0.00        |
| 8                    | Relocate and Install Mailboxes            | EA   | 1   |            | \$0.00        |
|                      | <b>Subtotal Mailbox Kiosk</b>             |      |     |            | <b>\$0.00</b> |
| <b>Total</b>         |   |      |     |            | <b>\$0.00</b> |
| <b>Alternate</b>     |   |      |     |            |               |
| 9                    | Demo Existing Kiosk                       | EA   | 1   |            | \$0.00        |
| 10                   | Install at New Location                   | EA   | 1   |            | \$0.00        |
| 11                   | Temporary Solar Lighting                  | EA   | 1   |            | \$0.00        |
| 12                   | Permanent Solar Lighting                  | EA   | 1   |            | \$0.00        |
|                      | <b>Subtotal Alternate</b>                 |      |     |            | <b>\$0.00</b> |

Contractor  
 Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM NO. 3****CIMARRON METROPOLITAN DISTRICT  
MAILBOX KIOSK RELOCATION**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Mailbox Kiosk Relocation** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and no (0) attachments.

**BID CLOSING DATE**

**The Bid Closing Date has been moved to June 8, 2023 at 1:00 P.M.**

END OF ADDENDUM

Brandon Collins, PE  
\_\_\_\_\_  
IDES, LLC – Cimarron Metropolitan District  
Engineer

5/31/2023  
\_\_\_\_\_  
Date Issued

**ADDENDUM NO. 4****CIMARRON METROPOLITAN DISTRICT  
MAILBOX KIOSK RELOCATION**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Mailbox Kiosk Relocation** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and one (1) attachment.

**Attachment A: 20230612 Candelas Filing 1 Mailbox Kiosk Relocate Tab**

**BID CLOSING DATE**

**The Bid Closing Date has been moved to June 16, 2023 at 1:00 P.M.**

**BIDDING AND CONTRACT DOCS**

**See the most up to date Bid Tab attached.**

END OF ADDENDUM

Brandon Collins, PE  
IDES, LLC – Cimarron Metropolitan District  
Engineer

6/13/2023  
Date Issued

**Cimarron Metropolitan District  
Candelas Filing 1  
Mailbox Kiosk Relocation  
Bid Schedule**

Contractor: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Owner: Cimarron Metropolitan District**  
 c/o McGeady Becher  
 450 E. 17th Avenue, Suite 400  
 Denver, CO 80203

| Item Code                     | Item Description                          | Unit | Qty | Unit Price | Extension     |
|-------------------------------|---|------|-----|------------|---------------|
| <b>General Items</b>          |   |      |     |            |               |
| 1                             | Mobilization & Insurance                  | LS   | 1   |            | \$0.00        |
| 2                             | Bonds                                     | LS   | 1   |            | \$0.00        |
| <b>Subtotal General Items</b> |   |      |     |            | <b>\$0.00</b> |
| <b>Mailbox Kiosk</b>          |   |      |     |            |               |
| 3                             | Demo Non Resuable Portions of Kiosk       | EA   | 1   |            | \$0.00        |
| 4                             | Reuse and Relocate CMU Base               | EA   | 1   |            | \$0.00        |
| 5                             | Resue and Relocate Precast Concrete Caps  | EA   | 1   |            | \$0.00        |
| 6                             | Reuse and Relocate Column and Steel Roof  | EA   | 1   |            | \$0.00        |
| 7                             | Install all other Components not Reusable | EA   | 1   |            | \$0.00        |
| 8                             | Relocate and Install Mailboxes            | EA   | 1   |            | \$0.00        |
| <b>Subtotal Mailbox Kiosk</b> |   |      |     |            | <b>\$0.00</b> |
| <b>Total</b>                  |   |      |     |            | <b>\$0.00</b> |
| <b>Alternate</b>              |   |      |     |            |               |
| 9                             | Demo Existing Kiosk                       | EA   | 1   |            | \$0.00        |
| 10                            | Install at New Location                   | EA   | 1   |            | \$0.00        |
| 11                            | Temporary Solar Lighting                  | EA   | 1   |            | \$0.00        |
| 12                            | Permanent Solar Lighting                  | EA   | 1   |            | \$0.00        |
| 13                            | Temporary Mailbox Relocation              | EA   | 1   |            | \$0.00        |
| <b>Subtotal Alternate</b>     |   |      |     |            | <b>\$0.00</b> |

Contractor Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM NO. 5****CIMARRON METROPOLITAN DISTRICT  
MAILBOX KIOSK RELOCATION**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Mailbox Kiosk Relocation** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and one (1) attachment.

**Attachment A: 20230614 Candelas Filing 1 Mailbox Kiosk Relocate Tab**

**BIDDING AND CONTRACT DOCS**

See the most up to date Bid Tab attached.

**CONTRACTOR QUESTIONS:**

- Question 5.1. There is an existing gas line running along the proposed location for the Mail Kiosk. Should there be a new proposed location?**
- a. Yes, the contractor should relocate the proposed mail kiosk further from the back of sidewalk to avoid any conflict with the existing gas line.

END OF ADDENDUM

Brandon Collins, PE  
\_\_\_\_\_  
IDES, LLC – Cimarron Metropolitan District  
Engineer

6/15/2023  
\_\_\_\_\_  
Date Issued

**Cimarron Metropolitan District  
Candelas Filing 1  
Mailbox Kiosk Relocation  
Bid Schedule**

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Owner: Cimarron Metropolitan District**  
\_\_\_\_\_  
c/o McGeady Becher  
\_\_\_\_\_  
450 E. 17th Avenue, Suite 400  
\_\_\_\_\_  
Denver, CO 80203  
\_\_\_\_\_

| Item Code                     | Item Description                          | Unit | Qty | Unit Price | Extension     |
|-------------------------------|---|------|-----|------------|---------------|
| <b>General Items</b>          |   |      |     |            |               |
| 1                             | Mobilization & Insurance                  | LS   | 1   |            | \$0.00        |
| 2                             | Bonds                                     | LS   | 1   |            | \$0.00        |
| <b>Subtotal General Items</b> |   |      |     |            | <b>\$0.00</b> |
| <b>Mailbox Kiosk</b>          |   |      |     |            |               |
| 3                             | Demo Non Resuable Portions of Kiosk       | EA   | 1   |            | \$0.00        |
| 4                             | Reuse and Relocate CMU Base               | EA   | 1   |            | \$0.00        |
| 5                             | Resue and Relocate Precast Concrete Caps  | EA   | 1   |            | \$0.00        |
| 6                             | Reuse and Relocate Column and Steel Roof  | EA   | 1   |            | \$0.00        |
| 7                             | Install all other Components not Reusable | EA   | 1   |            | \$0.00        |
| 8                             | Relocate and Install Mailboxes            | EA   | 1   |            | \$0.00        |
| <b>Subtotal Mailbox Kiosk</b> |   |      |     |            | <b>\$0.00</b> |
| <b>Total</b>                  |   |      |     |            | <b>\$0.00</b> |
| <b>Alternate</b>              |   |      |     |            |               |
| 9                             | Demo Existing Kiosk                       | EA   | 1   |            | \$0.00        |
| 10                            | Install at New Location                   | EA   | 1   |            | \$0.00        |
| 11                            | Temporary Solar Lighting                  | EA   | 1   |            | \$0.00        |
| 12                            | Permanent Solar Lighting                  | EA   | 1   |            | \$0.00        |
| 13                            | Temporary Mailbox Relocation              | EA   | 1   |            | \$0.00        |
| 14                            | Concrete pad from Mailbox to Sidewalk     | EA   | 1   |            | \$0.00        |
| <b>Subtotal Alternate</b>     |   |      |     |            | <b>\$0.00</b> |

Contractor \_\_\_\_\_  
Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## **GENERAL CONDITIONS**

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## PART 1 DEFINITIONS

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

**Addendum** – Written or graphic instrument which clarifies, corrects or changes the bidding documents or the Contract Documents.

**Agreement** – The written agreement between Owner and Contractor covering the Work to be performed.

**Agreement Price** – The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement for the Work or discrete portions thereof.

**Application for Payment** – The form designated by Engineer which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

**Bid Form** – The offer or proposal of the Bidder attached to the Agreement as **Exhibit A**.

**Change Order** – A written order to Contractor signed by Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Agreement Price or the Contract Time issued after the effective date of the Agreement.

**Contract Documents** – As defined in the Agreement.

**Contract Time** – The number of days stated in the Agreement for the Completion of the Work.

**Contractor** – The person or entity with whom Owner has entered into the Agreement to perform field construction.

**Day** – A calendar day of twenty-four hours measured from midnight to the next midnight.

**Defective** – An adjective which when modifying the word “**Work**” refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer’s recommendation for final payment.

**Drawings** – The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.

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

**Engineer** – The person or entity named as “**Engineer**” in the Agreement.

**Field Order** – A written order issued by Engineer which orders minor changes in the Work in accordance with Paragraph 10.01.B but which does not involve a change in the Agreement Price or the Contract Time.

**Modification** – (a) a written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A modification may only be issued after the effective date of the Agreement.

**Notice of Award** – The written notice by Owner to the apparent Successful Bidder stating that upon compliance by the apparent Successful Bidder with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.

**Notice to Proceed** – A written notice given by the Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform its obligations under the Contract Documents.

**Owner** – Cimarron Center Metropolitan District, with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

**Project** – The total construction required under the Contract Documents, of which the Work to be provided under the Contract Documents may be the whole or part.

**Part** – Section(s) of these General Conditions.

**Plans** – The official plans, working drawings, or supplemental drawings or exact reproductions thereof, prepared by or approved in concept by the Engineer which show the location, character, dimensions, and details of the Work to be done and which are to be considered as part of the Contract Documents, supplemental to these Specifications.

**Shop Drawings** – All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work.

**Site** – Any area or areas where Work is to be performed on the Project.

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

**Subcontractor** – A person or entity, including a supplier, having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

**Substantial Completion** – The date when Work has progressed to the point where, in the opinion of Engineer as evidenced by its definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended and it is ready for punch listing.

**Supplementary Conditions** – The specific clauses setting forth conditions or requirements peculiar to the Project, covering work or materials involved in the Bid which are not thoroughly or satisfactorily stipulated in the General Conditions or Specifications.

**Work** – The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. The term “**Work**” shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the Project in accordance with the design intent conveyed in the Contractor Documents, and the carrying out of all duties and obligations imposed by the Contract Documents to achieve the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

## **PART 2      PRELIMINARY MATTERS**

### **2.01            DELIVERY OF BONDS AND CERTIFICATE OF INSURANCE**

A.      When Contractor delivers the executed Agreement to Owner’s Representative, Contractor shall also deliver to Owner’s Representative the Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies.

### **2.02            EXECUTION AND TRANSMISSION OF DOCUMENTS**

A.      At least four (4) copies of the Contract Documents will be prepared by Owner’s Representative. All copies will be submitted to Contractor and Contractor shall execute the Agreement, insert all Certificates of Insurance on ACORD Form 27 and copies of all applicable insurance policies, and submit all copies to Owner’s Representative within ten days of Notice of Award. The date on the Agreement shall be left blank for completion by Owner. The date on the Bonds and the certification date on the Power of Attorney must not be prior to the date of the Agreement.

B.      Owner will execute all copies, insert the date on the Agreement and Bond forms and the Certification Date on the Power of Attorney, and transmit all copies to Owner’s Representative within ten (10) days for review and distribution. Distribution of signed copies will be one copy each to Owner, Contractor, and Engineer. Contractor shall be responsible for distribution of copies to the Surety.

### **2.03            COPIES OF DOCUMENTS**



A. Owner shall furnish to Contractor three (3) complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction.

## **2.04 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED**

A. The Contract Time shall commence to run on the day indicated in the Notice to Proceed.

## **2.05 STARTING THE PROJECT**

A. Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the Site prior to the date on which the Contract Time commences to run.

## **2.06 BEFORE STARTING CONSTRUCTION**

A. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements.

Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

B. If not delivered previously, before any Work under this Agreement is started, Contractor shall deliver to Owner's Representative, with a copy to Engineer, certificates of insurance on ACORD Form 27 and copies of the applicable insurance policies (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Part 5.

## **2.07 PRECONSTRUCTION CONFERENCE**

A. Within ten (10) days after the effective date of the Agreement, but before Contractor starts the Work at the Site, a conference will be held for review and acceptance of the schedules referred to in Paragraph 6.13 to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

# **PART 3 CONTRACT DOCUMENTS: INTENT AND REUSE**

## **3.01 INTENT**

A. The Contract Documents comprise the entire Agreement between Owner and Contractor concerning the Work. They may be altered only by a Modification.

B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall report it to Engineer as a request for information in writing at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Specifications or Drawings unless Contractor had actual knowledge thereof or should reasonably have known thereof.

C. It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of Bids (or, on the effective date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided for in Paragraph 9.03.A.

D. The Contract Documents have been made, executed, and delivered in the State of Colorado and shall be governed and construed for all purposes under and in accordance with the laws of the State of Colorado.

E. The Project Manual consists of Bid Form, Agreement, Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplementary Conditions, if any, and Specifications. Should any construction or conditions which are not thoroughly or satisfactorily stipulated or set forth by the Specifications be anticipated on any proposed project, Supplementary Conditions for such Work may be prepared and attached to the Bid Proposal Form and Agreement, and shall be considered as part of the Specifications, the same as though contained fully therein.

Should any Supplementary Condition conflict with the General Conditions, the Supplementary Condition will govern.

### **3.02 REUSE OF DOCUMENTS**

A. Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer; and they shall not reuse any of them on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adoption by Engineer.

## **PART 4 AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

### **4.01 AVAILABILITY OF LANDS**

A. Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. In acquiring easements or rights-of-way, the Owner shall proceed as expeditiously as possible, but in the event all easements or rights-of-way are not acquired prior to the beginning of construction, the Contractor shall begin Work on such easements and rights-of-way that have been acquired. In the event a delay in the acquisition of rights-of-way causes unavoidable delay in Contractor's prosecution of the Work, then Contractor may make a claim for an extension of Contract Time, as provided in Part 12.

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

### **4.02 PHYSICAL CONDITIONS – INVESTIGATIONS AND REPORTS**

A. Owner shall identify and make available to Contractor, upon request by Contractor, copies of those reports of investigations and tests of subsurface and latent physical conditions at the Site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness.

### **4.03 UNFORESEEN PHYSICAL CONDITIONS**

A. Contractor shall promptly notify Owner and Engineer in writing of any latent physical conditions at the Site or in an existing structure differing materially from those indicated or referred to in the Contract Documents which could not have been discovered upon a reasonable inspection of the Site, or conditions of an unusual nature which differ materially from those ordinarily found to exist and recognized in an area such as the Site. Engineer will promptly review those conditions and advise Owner in writing if further investigation or tests are necessary. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Engineer and Contractor. If Engineer finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

B. In addition to the exceptions set forth in the above paragraph, rock encountered during excavation, and dewatering of soils, shall not constitute unforeseen physical conditions pursuant to Paragraph 4.03.A. Contractor shall not be entitled to a Change Order for expense and delay resulting from greater than anticipated rock excavation or dewatering.

#### **4.04 REFERENCE POINTS**

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

### **PART 5 BONDS AND INSURANCE**

#### **5.01 PERFORMANCE AND OTHER BONDS**

A. Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond in an amount at least equal to the Agreement Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Bond shall meet all requirements of C.R.S. 38-26-101, et. seq. The Bond shall remain in effect at least until **one (1) year** after the date when final payment becomes due, or until the **two-year** correction period in Paragraph 13.07 is over, except as otherwise provided by law or regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required herein by the Supplementary Conditions. All Bonds shall be on the forms prescribed by

the Contract Documents and be executed by such Sureties authorized to do business in the State of Colorado as are named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each Bond shall be accompanied by a “Power of Attorney” authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond.

B. If the Surety on any bond furnished by Contractor is declared as bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.A Contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to Owner.

C. The Performance Bond and Labor and Materials Payment Bond shall be in an amount equal to one hundred percent (100%) of the Agreement Price, as indicated by Change Orders and all Modifications, as security for payment of all wages and bills contracted for materials, supplies, and equipment used in the performance of the contract.

## 5.02

### CONTRACTOR’S INSURANCE REQUIREMENTS

A. Contractor shall purchase and maintain during the entire term of this Agreement, including any extensions of the Contract Time through Change Orders, and as provided in Paragraph 5.02.B., such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor’s performance of the Work and Contractor’s other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers’ or workmen’s compensation, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor’s employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (i) by any person directly or indirectly resulting from the employment of such person by Contractor, or (ii) by any person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and

7. Claims involving contractual liability insurance applicable to the Contractor's obligations.

B. The insurance required of Contractor shall include the specific coverages and corresponding limits of liability provided in Paragraph 5.02.C., or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least "A:XIII" by A.M. Best Company. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to Owner. All such insurance shall contain a provision that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to Owner and Engineer. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Paragraph 13.07.A. In addition, Contractor shall maintain the Products/Completed Operations insurance as shown in Paragraph 5.02.C for at least **two (2) years** after final payment and furnish Owner with evidence of continuation of such insurance at final payment and **one (1) year** thereafter.

C. Contractor shall obtain and maintain insurance coverage as provided herein, including the following:

1. Worker's Compensation and Employers' Liability

(a) State: Statutory

(b) Employers' Liability

\$500,000 Each Accident

\$500,000 Disease, Policy Limit

\$500,000 Disease, Each Employee

(c) A Waiver of Subrogation in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

2. General Liability (Occurrence Form):

- (a) Combined Bodily Injury and Property Damage:
- \$1,000,000 each occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$1,000,000 Products/Completed Operations Aggregate
- (b) The following coverages must be included:
- (i) Premises Operations
  - (ii) Independent Contractor's Protective
  - (iii) Explosion, Collapse
  - (iv) Underground
  - (v) Contractual (including the contract obligations specified in Paragraphs 5.05, 6.05, 6.07, 6.11B, 6.11D, 13.01A, 13.06A, 13.07A, and 14.03A)
  - (vi) Broad Form Property Damage
  - (vii) Personal/Advertising Injury
  - (viii) General Aggregate Limit (applies to each project)
  - (ix) Products and Completed Operations Insurance shall be maintained by the Contractor for a minimum of **2 years** after final payment, and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.
  - (x) Subcontractors shall comply with all provisions of this Part.
  - (xi) A waiver of subrogation endorsement in favor or the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

3. Automobile Liability:

Combined Bodily Injury and Property Damage:

\$1,000,000 per person

\$1,000,000 each Accident

The following coverages must be included:

Owned automobiles

Non-owned and hired automobiles

4. Umbrella Excess Liability

\$5,000,000 each Occurrence/\$5,000,000 Aggregate

5. Builders' "All-Risk" Insurance

D. Builder's Risk Insurance.

1. Builder's Risk Insurance will not be required to be provided by the Contractor and will be supplied by the Owner.

**NOTE: (THE SPECIFIED LIMITS FOR THE LIABILITY POLICIES CAN BE SATISFIED THROUGH THE COMBINATION OF PRIMARY POLICIES AND EXCESS OR UMBRELLA LIABILITY POLICIES.)**

E. To the extent that Contractor's work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

F. Insured losses under policies of insurance which include Owner's interests shall be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause, and any direction by arbitrators. Owner as trustee shall have the right to adjust and settle losses with the insurers unless one of the parties in interest shall object in writing within 5 days after the occurrence of loss to Owner's exercise of this power and, if such objection be made, arbitrators shall be chosen as provided in the General Conditions. Owner as trustee shall, in that case, make settlement with the insurers in accordance with the direction of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Owner waives all rights against Contractor and Engineer for damage caused by fire or other perils but only to the extent that such damage is covered by insurance and only to the extent that such damage does not fall within the indemnification given by Contractor in Paragraph 5.05. Owner shall have no liability for damages caused by fire or other perils.



### 5.03 INSURANCE CERTIFICATES/POLICY

A. Prior to the commencement of any Work under these Contract Documents, the Contractor shall furnish to the Owner's Representative certificates of insurance on ACORD Form 27, copies of the applicable insurance policies and policy endorsements to prove that all required insurance is in force. Insurance obtained by the Contractor shall be subject to approval by the Owner for adequacy of protection. Neither approval by the Owner of any insurance supplied by Contractor, nor failure to disapprove such insurance shall relieve the Contractor of its obligation to maintain in full force during the life of the Contract Documents all required insurance as set forth herein.

### 5.04 ADDITIONAL REQUIREMENTS

A. No insurance coverages required to be obtained by Contractor pursuant to this Part 5 shall have a deductible greater than \$1,000 or as reasonably approved by Owner. The Contractor is solely responsible for the payment of any deductible(s).

B. If any policy required under this Part 5 is a claims made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than **one year**. The Contractor agrees to purchase such an extended reporting period. The Contractor's failure to purchase such an extended reporting period as required by this Paragraph 5.04 shall not relieve it of any liability under this Agreement. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Contractor purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the Parties hereto.

C. The Owner and its directors, officers, agents and employees and the Owner's Representative shall be designated as additional insureds on the Contractor's commercial general liability insurance and the automobile liability insurance and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with the requirements of this Part 5.

D. For any claims related to the provision of services by the Contractor, Contractor's insurance shall be primary insurance with respect to the Owner, and its directors, officers, employees and agents. Any insurance maintained by the Owner (or its directors, officers, employees and agents) shall be excess of Contractor's insurance and shall not contribute with it.

E. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

F. Each commercial general liability policy and, though not a general liability policy, any worker's compensation policy, shall waive any right of subrogation against the Owner and its directors, officers, employees and agents through a separate policy endorsement.

G. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the Owner and its directors, officers, employees and agents. If the Contractor fails to obtain or maintain the required coverage, the Owner may obtain such coverage. The Contractor shall be liable to the Owner for any costs associated in procuring and maintaining in force any such insurance coverage.

## 5.05

### INDEMNIFICATION

A. To the maximum amount allowed by Colorado law, Contractor shall indemnify and hold harmless the Owner, the Owner's Representative, the Engineer, and all of their respective consultants, board members, directors, officers, agents and employees (hereinafter the "Indemnified Parties"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees) caused by either: (i) the Contractor's breach of this Agreement; or (ii) the negligent, criminal, or tortious act or omission of the Contractor or any of its employees, agents, Subcontractors (at any tier) or any person for whom Contractor is legally responsible, in connection with the Project, this Agreement, or the scope of services hereunder, whether any such negligence or any criminal or tortious act or omission is within or beyond the scope of its duties or authority. Contractor agrees that the existence and policy limits of the coverage which the Contractor is required to maintain pursuant to the Contract Documents, including property damage insurance and excess coverages, shall not negate or limit in any way the Contractor's obligation to indemnify the Indemnified Parties.

B. In any and all claims against the Indemnified Parties by any employee of Contractor, any Subcontractor, anyone directly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.05.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

C. In the event that any Subcontractor, laborer, supplier, or any other person for whom Contractor is responsible in connection with this Agreement records a mechanic's lien against the Project or the real property underlying the Project, any such lien rights being expressly waived pursuant to Part 6, Subparagraph C of this Agreement, then Contractor shall indemnify, save harmless, and defend the Owner and all of its consultants, directors, officers, agents and employees from and against any and all claims, demands, losses, liens, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees), to the extent arising directly or indirectly in any manner whatsoever out of such lien. In addition, the Owner may withhold from payment to Contractor a sum that the Owner, in its sole discretion, considers sufficient to defend, discharge, satisfy, or bond over any such liens pursuant to C.R.S. § 38-22-131, as Owner may decide in its sole discretion, plus the reasonable fees and costs (including attorney's fees) incurred by the Owner in the course of defending, discharging, satisfying, or bonding over such lien or lawsuit. The provisions of this Section 5.05(C) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **PART 6 CONTRACTOR'S RESPONSIBILITIES**

### **6.01 SUPERVISION AND SUPERINTENDENT**

A. The Contractor is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Contractor or any of its employees, agents, Subcontractors or suppliers as employees of the Owner. The Work to be performed by the Contractor shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Owner, except the payments to be made by the Owner to the Contractor for the Work performed as provided herein. Neither Owner, Engineer, nor Owner's Representative shall be responsible for Contractor's means, methods, techniques, sequences or procedures of construction nor for safety precautions and programs incident thereto. **The Contractor is not entitled to worker's compensation benefits and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Contract.**

B. Contractor shall supervise and direct the Work competently and efficiently giving the Work the constant attention necessary to facilitate its progress and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

C. Contractor shall employ at all times during its work progress a competent resident superintendent, who shall not be replaced without written notice to Owner or Owner's Representative except under extraordinary circumstances. Such superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions, suggestions and communications from the Engineer, or its authorized representative. The superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and to promptly supply materials, tools, plant equipment and labor as may be required to perform such Work. Such superintendent shall be furnished irrespective of the amount of Work sublet. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

D. The Contractor shall employ such superintendent and foremen, as are careful and competent, and the Owner or Owner's Representative may request the dismissal of any person or persons employed by the Contractor in, about, or upon the Work who is incompetent or negligent in the proper performance of its or their duties, or neglects or refuses to comply with the Contract Documents given or whose conduct is inappropriate and such person or persons shall not be employed again thereon without the written consent of the Owner.. Should the Contractor continue to employ, or again employ, such person or persons, the Engineer may withhold all pay estimates which are or may become due, or the Engineer may suspend the Work until such orders are complied with.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. The Contractor shall notify the Owner's Representative at least forty-eight (48) hours in advance of the time it intends to start Work on the Site. The Contractor shall operate at such points as the Owner through the Owner's Representative may direct. The Contractor shall conduct the Work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time limit set forth in the Agreement. Should the prosecution of Work for any reason be discontinued by the Contractor, it shall notify the Owner's Representative at least forty-eight (48) hours in advance of resuming operations.

## **6.02 LABOR, MATERIALS, AND EQUIPMENT**

A. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline

and order at the Site. Except in connection with the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without Owner's written consent given after prior written notice to Owner's Representative.

B. Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no damage to the Work, roadways, adjacent property, or other objects will result from its use. The Agreement may be terminated if the Contractor fails to provide adequate equipment for the Work.

C. The source of supply of each of the materials required shall be reviewed and accepted by the Engineer before delivery is started. Representative preliminary samples of the character and quality specified may be submitted by the Contractor or producer for examination and testing. The results obtained from testing such samples may be used for preliminary review but will not be used as a final acceptance of the materials. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after testing, it is found that sources of supply which have been reviewed and accepted do not furnish a uniform product, or of the product from any source proves unacceptable at any time, the Contractor shall furnish acceptable material from other sources acceptable to Engineer.

Samples of all materials for testing upon which is to be based the acceptance or rejection, shall be taken by the Engineer or its authorized representative at the discretion of the Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed. The Contractor shall provide such facilities as the Engineer or its representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the Work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials conforming to the requirements of these specifications and which

have been accepted by the Engineer or its authorized agents shall be used in the Work. Any material which, after acceptance, has for any reason become unfit for use shall not be incorporated into the Work. Additionally, Contractor and Engineer shall be subject to the procedures and responsibilities set forth in Paragraph 6.13 as it pertains to samples.

Except as otherwise provided herein, sampling and testing of all materials, and the laboratory methods and testing equipment required under these Specifications, shall be in accordance with the most current edition of the standards set forth in Technical Specifications. The testing of all samples shall be done at the expense of the Contractor at an independent laboratory accepted by the Engineer. Laboratory sieves shall have square openings of the sizes specified. The Contractor shall furnish the required samples without charge. All samples shall have been checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended. The Contractor shall give sufficient notification to the Engineer of the placing of orders for materials to permit testing.

D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. Materials shall be stored so as to insure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover or otherwise protected when requested by the Engineer. Stored materials shall be located so as to facilitate prompt inspection. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the Site, and for protection of the Project and shall hold Owner and Owner's authorized representative harmless for any damages or loss incurred thereto.

F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Site by Contractor without the prior written approval of Owner's Representative.

G. All materials not conforming to the requirements of these Specifications shall be considered defective. Whether in place or not, such material shall be removed immediately from the Site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure of the Contractor to comply promptly with any order of the Engineer or Owner's Representative made under the provisions of this article, the Engineer or Owner's Representative shall have authority

to remove defective materials and to deduct the cost of removal and replacement with specified materials from any moneys due or to become due the Contractor.

### **6.03 EQUIVALENT MATERIALS AND EQUIPMENT**

A. Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that a substitution is not permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent to that named. The procedure for review by Engineer will be as set forth in Paragraphs 6.03.A.1 and 6.03.A.2 below as supplemented in the other Contract Documents.

1. Requests for review of substitute items of material and equipment will not be accepted by Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment Contractor shall make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application shall state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Engineer in evaluating the proposed substitute. Engineer will be the sole judge of acceptability, and no substitute will be ordered or installed without Engineer's prior written acceptance. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other Surety with respect to any substitute.

2. Engineer will record time required by Engineer and Engineer's consultants in evaluating substitutions proposed by Contractor and in making changes in the Drawings or Specifications occasioned thereby. Whether or not Engineer accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Engineer and Engineer's consultants for evaluating any proposed substitute.

3. In case of a difference in price, the Owner shall receive all benefit of the difference for any substitutions, and the Agreement Price shall be altered by Change Order to credit the Owner with any savings so obtained.

#### **6.04 CONCERNING SUBCONTRACTORS**

A. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner and Engineer by Contractor prior to the Notice of Award and not objected to in writing by Owner or Engineer prior to the Notice of Award will be deemed acceptable to Owner and Engineer. Acceptance of any Subcontractor, other person or organization by Owner or Engineer shall not constitute a waiver of any right of Owner or Engineer to reject defective Work. If Owner or Engineer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the Agreement Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contact with Contractor, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.



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

D. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer and contains waiver provisions as required by the Contract Documents. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to the Contract Documents.

E. Contractor shall fully cooperate with Owner and such other contractors or Subcontractors as may be performing work or supplying materials in connection with the Project and shall carefully fit its work in with that of all such other persons or entities. Contractor shall neither commit nor permit any act which will interfere with the performance of the Project by any such person or entity.

F. Contractor shall promptly pay in full for any and all damages caused to the Site or the Project by Contractor or by any Subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions the Contractor is responsible hereunder.

## **6.05 PATENT FEES AND ROYALTIES**

A. If the Contractor is required or desires to use any design, device, invention, product, materials, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and assume all costs incident to said use in performance of the Work or incorporation of the Work. The Contractor and the surety shall indemnify and hold harmless the Owner and Engineer from any and all claims for infringement by reason of the use of any such patented design, device, invention, product, material, or process or any trademark or copyright in connection with the Work agreed to be performed under this contract, and shall indemnify the Owner and Engineer for any costs, expense, and damages, including attorney's fees, which they may be obliged to pay for reason of any such infringement at any time during the prosecution, or after the completion of the Work. The provisions of this Section 6.05(A) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **6.06 PERMITS**

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Owner and Engineer shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all charges of utility service companies for connections to the Work, and Owner shall pay all charges of such companies for capital costs related thereto. A copy of all permits and licenses procured by Contractor shall be supplied to Engineer within a reasonable period of time. With respect to permits obtained by Contractor as necessary for the performance of the Work, Contractor shall be reimbursed for the face value of the permits.

## **6.07 LAWS AND REGULATIONS**

A. Contractor shall be familiar with all federal, state and local laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or on the Site, or in any way affect the conduct of the Work, including rules and regulations that Owner may promulgate at any time for the safe, orderly and efficient conduct of all Work on the Project (the “applicable regulations”). If Contractor observes that the Specifications or Drawings are at variance therewith, Contractor shall give Engineer or Owner’s Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. The Contractor, at all times, shall observe and comply with all applicable regulations and the Contract Documents and its surety shall indemnify and hold harmless the Owner, the Engineer and their consultants, agents and employees, against any claim or liability arising from or based on the violation of any applicable regulations, by anyone for whom Contractor is responsible.

B. Contractor shall comply with all applicable codes, laws, and ordinances pertaining to Small Business Enterprise (SBE), Small Business Enterprise Concession (SBEC), Disadvantaged Business Enterprise (DBE), Airport Concessionaire Disadvantaged Business Enterprise (ACDBE), Women Business Enterprise (WBE), Minority Business Enterprise (MBE), or Emerging Business Enterprise (EBE) in the location where the Work is being performed. Without limiting the foregoing, to the extent the Work is performed in the City and County of Denver, the Contractor shall comply with: (i) the MBE and WBE participation requirements set forth in Division 1 and Division 3 of Article III, Title 28, of the Denver Revised Municipal Code, as the same may be amended or recodified from time to time (the “DRMC”); (ii) SBE participation requirements set forth in Article VII, Title 28 of the DRMC; and (iii) any other ordinances that are currently, or may be subsequently, adopted by the City and County of Denver with respect to construction work or construction services.

C. Contractor shall comply with all applicable all applicable codes, laws, and ordinances pertaining to payment of prevailing wages in the location where the Work is being performed.

## **6.08 TAXES**

A. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it.

B. Owner is exempt from Colorado State sales and use taxes. Accordingly, taxes from which Owner is exempt shall not be included in the Agreement Price. Owner shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and Subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to Subsection 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and Subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

## **6.09 USE OF PREMISES**

A. Contractor shall confine construction, equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and the requirements of the Contract Documents.

B. During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, temporary structures, stumps or portions of trees and surplus materials, and shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. Materials cleared from the Site and deposited on adjacent property will not be considered as having been disposed of satisfactorily.

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

D. All structures or obstructions found on the Site and shown on the Contract Drawings which are not to remain in place or which are not to be used in the new construction shall be removed to the satisfaction of the Engineer. Unless specified in the Bid Proposal, this Work will not be paid for separately but will be included in the price bid for that portion of the Work requiring the removal of the obstruction. All material found on the Site or

removed therefrom shall remain the property of the Owner unless otherwise indicated.

E. The Contractor, with the consent of the Engineer, may use in the proposed construction any stone, sand, or gravel found on the Site. The Contractor will not be paid for such excavation unless specifically stated in the Bid Proposal, and it shall replace with other suitable material, without compensation, all of that portion of the material so removed and used. If it was intended by the Engineer and indicated in the Specifications that any or all of the material so excavated and used was to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate outside of the proposed slope and grade lines as indicated on the Drawings, without prior consent by the Engineer.

F. Contractor shall protect all existing erosion control measures installed by others and shall promptly replace all items disturbed during his work.

#### **6.10 AS-BUILT DOCUMENTS**

A. Contractor shall keep one set of as-built records of all Plans, Specifications, drawings, Addenda, Modifications, Shop Drawings and samples at the Site, in good order and annotated and updated weekly to show all changes made during the construction process. These shall not be used for construction purposes, shall be available to Engineer or Owner's Representative at all times for examination and shall be delivered to Engineer or Owner's Representative for Owner upon completion of the Work. All changes or drawings from the original drawings shall be neatly marked thereon in brightly contrasting color.

#### **6.11 SAFETY AND PROTECTION**

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

1. All employees on the Work or other persons who may be affected thereby.
2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall be required to assume sole and complete responsibility for Site conditions during the course of construction of the project, including the safety of all persons who may enter on the Site for any reason and the security of all property located on the Site. This requirement shall apply at all times during the course of the contract and not only to normal work hours.

B. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Paragraphs 6.11.A.2 or 6.11.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable solely to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable). Contractor's duties and responsibilities for the safety and protection of the Work shall continue such time as all the Work is completed and final payment has been made.

C. Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

D. Contractor has the affirmative duty of ensuring compliance with all Occupational Safety and Health Administration (OSHA) regulations, of designating a representative who is a competent person for purposes of identifying existing or predictable hazards at the Site, of providing required safety instruction for Contractor's Subcontractors and employees, and of immediately taking precautionary measures when necessary and remedying all identified OSHA violations. Daily, and other, inspections of the Site, including of excavations, adjacent areas and protective systems, shall be the sole responsibility of Contractor. Contractor's obligation to indemnify Owner pursuant to Paragraph 5.05 shall include failure of Contractor to effect full compliance with OSHA regulations.

E. The Contractor shall at all times conduct the Work in such manner as will incur the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service except after permission has been granted by the Engineer or Owner's Representative. Each item of Work shall be prosecuted to completion without delay and in no instance will the

Contractor be permitted to transfer its forces from uncompleted Work to new Work without prior written notification of the Contractor to the Engineer or Owner's Representative. Except as otherwise required by Owner or Engineer, the Contractor shall not open up Work to the prejudice of Work already started.

Unless the Contract Documents specifically provide for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highway. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Work to be done under this Contract, and of constructing and maintaining such approaches, crossing, intersections and any necessary features without direct compensation, except as otherwise provided.

The Contractor shall not close any road to the public except by express permission of the appropriate engineering authority. When the road under construction is being used by the traveling public, special attention shall be paid to keeping the subgrade and surfacing in such condition that the public can travel over same in comfort and safety. The Contractor shall cooperate with the appropriate officials in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights to protect the Work and the safety of the public. Contractor shall comply with the provisions of any and all applicable Traffic Safety Manuals which may be published by a governmental entity having jurisdiction over the project area. All barricades, signs and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept burning from sunset to sunrise. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence of such damage is found prior to acceptance, the Engineer or Owner's Representative may order the damaged portion immediately removed and replaced by the Contractor without cost to the Owner if, in its opinion, such action is justified. The Contractor's responsibility for necessary barricades, signs and lights shall not cease until the Project shall have been accepted.

F. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other authorities having jurisdiction thereover.

G. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed, the number and size of the charges shall be reduced. The Contractor shall notify the proper representative of any public service corporation, any company, or any individual, at least 8 hours in advance of any blasting which may damage its or their property, on, along, or adjacent to the Site. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "DANGEROUS EXPLOSIVES," and shall be in care of competent watchmen at all times.

## 6.12 EMERGENCIES

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

## 6.13 PLANS AND SHOP DRAWINGS

A. The approved Plans will show details of all structures; lines and grade of roadways and utility systems, typical cross-sections of roadways; character of foundation; location and designation of all structures; and the general arrangement of circuits and outlets, location of switches, panels and other Work.

B. Drawings and Specifications are complementary each to the other, and what is called for by one shall be as binding as if called for by both. Data presented on Drawings are as accurate as planning can determine, but accuracy is not guaranteed. As such, Contractor shall not rely upon such data. Instead, Contractor shall perform field verification of all dimensions, locations, levels, etc., to suit field conditions. The Contractor shall review all structural and mechanical plans and adjust all Work to conform to all conditions shown therein. The mechanical Drawings shall take precedence over all other Drawings.

C. Discrepancies between different Plans, or between Plans and Specifications, or regulations and codes governing the installation shall be brought to the attention of the Engineer in writing as soon as said discrepancies are noticed. In the event such discrepancies exist and the Engineer is not so notified, the Engineer shall reserve the right to exercise sole authority in making final decisions in resolution of such a conflict. It is mutually agreed that all authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the Engineer. When at any time reference is made to the "**Plans**", the interpretation shall be the Plans as affected by all authorized alterations

then in effect. Plans will be supplemented by such Shop Drawings to be prepared by Contractor as are necessary to adequately control the Work.

D. After checking and verifying all field measurements and approving of Shop Drawings, Contractor shall submit to Engineer for review, in accordance with the accepted schedule of Shop Drawing submissions, six copies (unless otherwise specified in the Supplementary Conditions) of all Shop Drawings, which shall have been checked by and stamped with the approval of Contractor and identified as Engineer may require. The date shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Engineer to review the information as required.

E. At the time of each submission, Contractor shall in writing call Engineer's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

F. Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to satisfy precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make any corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for Engineer's review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved in writing by the Engineer.

H. Engineer's review of Shop Drawings or samples shall not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings.



I. The cost of furnishing all Shop Drawings shall be borne by the Contractor.

J. Finished surfaces in all cases shall conform with lines, grade, cross-sections and dimensions shown on the Plans. Any deviations from the Plans and working Drawings, as may be required by the demands of construction, will in all cases be determined by the Engineer and authorized in writing.

K. The Plan and Specifications, and all supplementary plans and documents, are essential parts of the Contract, and a requirement occurring in one is just as binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. The Contractor shall not take advantage of any apparent error or omission in the Plans or Specifications. In the event the Contractor discovers any apparent conflict, error or discrepancy, it shall immediately submit a written request for information to the Engineer for its interpretation and the Engineer's decision shall be final. Any apparent error or discrepancy must be resolved before Contractor proceeds with the Work affected thereby.

#### **6.14 CONSTRUCTION STAKES**

A. Unless otherwise directed in the Supplementary Conditions, the Owner will furnish and set construction stakes establishing all lines, grades, and measurements necessary for the proper execution of the Work contracted for under these Specifications. The Contractor shall request that Engineer provide engineering surveys and placement of construction stakes no less than 48 hours prior to the time such service is needed. The Contractor shall satisfy itself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors which may have been made in laying out the Work. The Contractor shall be held responsible for the proper preservation of all marks and stakes. Stakes provided by the Owner, which must be reset after initial placement, will be replaced at Contractor's expense at the current billable rate for a three-person survey crew unless the stakes were removed or destroyed by causes beyond the Contractor's control. Said cost may be deducted from any funds due the Contractor.

B. The Engineer and Owner's Representative shall be authorized to inspect Work done and material furnished. Such observation may extend to any part of the Work and to preparation, fabrication, or manufacture of the materials to be used. The Engineer and Owner's Representative is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. The Engineer and Owner's Representative shall have the authority to reject materials or suspend the Work not conforming to Contract Documents until any questions at issue can be referred to and decided between the Engineer

and the Owner. If the Contractor refuses to suspend operations on verbal order, the Engineer or Owner's Representative may issue a written order giving the reason for shutting down the Work. Work done during such a suspension will not be accepted nor paid for. A subsequent written order from the Owner or Owner's Representative is necessary to release a written suspension order. The Engineer and Owner's Representative shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the Contractor. Any advice which the Engineer or Owner's Representative may give the Contractor shall in no way be construed as releasing the Contractor from fulfilling all of the terms of the Contract, nor as modifying the requirements of the Contract Documents.

## **6.15 PRIVATE PROPERTY AND EXCAVATION**

A. The Contractor shall not enter upon private property for any purpose without first obtaining permission, and it shall be responsible for the preservation of all public and private property, trees, fences, monuments, underground structures, etc., on and adjacent to the Site and shall use every precaution necessary to prevent damage or injury thereto. It shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. It shall be responsible for all damage or injury to property or any character resulting from any act, omission, neglect or misconduct in its or any Subcontractor's manner, or method of executing said Work, or due to its or any Subcontractor's non-execution of said Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the Work has been completed and accepted. The Contractor's attention is directed to the importance of protecting all public utilities encountered on all projects. These may include telephone, telegraph and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities. Before any excavation is begun in the vicinity of water lines, railroad tracks or structures, sewer lines, gas lines, or telephone conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility company concerned is on the ground and has designated the location of their facilities. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor or Subcontractor, Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed, or it shall make good

such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or to have started action to make good such damage or injury, the Engineer or Owner's Representative may, upon forty-eight (48) hours' notice, proceed to direct the repair, rebuilding of or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted for any moneys due or which may become due the Contractor under the Contract. The cost of damages due to Contractor's operation or cost of protecting utilities where required to permit construction under these Contract Documents shall be included in the original Agreement Prices for the Project.

## **PART 7 COORDINATION OF WORK**

### **7.01 OWNER'S RIGHT TO PERFORM**

A. Owner may perform additional Work related to the Project by itself, or have additional Work performed by utility service companies, or let other direct contracts therefor which shall contain general conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or Owner, if Owner is performing the additional Work with Owner's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs, and shall conduct its operations as to minimize the interference with theirs, as directed by Engineer.

### **7.02 CONTRACTOR TO COORDINATE**

A. If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility service company (or Owner), Contractor shall inspect and promptly report to Engineer in writing any patent or apparent defects or deficiencies in such work that renders it unsuitable for such proper execution and results. Contractor's failure so to report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work. Such acceptance by Contractor shall render him responsible for subsequent correction of any such work.

B. Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected.

C. If the performance of additional work by other contractors or utility service companies or Owner was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work. If the performance of such additional work not noted in the Contract Documents causes unavoidable additional expense to Contractor or causes unavoidable delay in Contractor's prosecution of the Work, Contractor may make a claim therefore as provided in Parts 11 and 12 respectively.

## **PART 8 OWNER'S RESPONSIBILITIES**

### **8.01 COMMUNICATIONS**

A. Except as otherwise provided expressly herein, Owner shall issue all communications to Contractor through Engineer or the Owner's Representative.

B. Nothing herein or otherwise shall prevent Owner from communicating directly with Contractor's subcontractors (at any tier) concerning issues affecting the Work or payment for the Work.

## **PART 9 STATUS OF ENGINEER DURING CONSTRUCTION**

### **9.01 DUTIES OF ENGINEER**

A. The duties and responsibilities and the limitations of authority of Engineer during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

### **9.02 VISITS TO SITE**

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

### **9.03 CLARIFICATIONS AND INTERPRETATIONS**

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall

be consistent with or reasonably inferable from the overall intent of the Contract Documents.

#### **9.04 REJECTING DEFECTIVE WORK**

A. Engineer will have authority to disapprove or reject Work, which is defective, and will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04.B, whether or not the Work is fabricated, installed or completed.

#### **9.05 DECISIONS ON DISAGREEMENTS**

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render in writing within a reasonable time. Written Notice of each such claim, dispute and other matter shall be delivered by the claimant to Engineer and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within forty-five (45) days of such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In its capacity as interpreter and judge Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith and in accord with professional standards in such capacity.

B. Notwithstanding Paragraph E of Part 10 of the Owner-Contractor Agreement, the rendering of a decision by Engineer pursuant to Paragraph 9.06.A with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 14.11.A) or the determination by Engineer that it shall not render a decision with respect thereto, will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under Part 21 hereof.

#### **9.06 LIMITATIONS ON ENGINEER'S AND OWNER'S RESPONSIBILITIES**

A. Neither Engineer's nor Owner's authority to act under this Part 9 or elsewhere in the Contract Documents nor any decision made by Engineer or Owner in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer or Owner to Contractor, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or

any of their agents or employees or any other person performing any of the Work.

B. Whenever in the Contract Documents the terms “as ordered,” “as directed,” “as required,” “as allowed” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper” or “satisfactory” or adjectives of like effect or import are used, to describe requirements, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that Engineer shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Paragraphs 9.07.C or 9.07.D.

C. Engineer will not be responsible for Contractor’s means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

D. Neither Engineer, nor Owner, nor Owner’s Representative will be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor or Subcontractor, or of any other persons at the Site or otherwise performing any of the Work.

## **PART 10 CHANGES IN THE WORK**

### **10.01 OWNER MAY ORDER CHANGES**

A. Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Orders or Change Orders. Upon receipt of a Field Order or Change Order, Contractor shall promptly proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Agreement Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Part 11 or Part 12. Only changes authorized by a Change Order or Field Order shall be binding on the Owner.

B. The Engineer, by Field Order only, may authorize minor changes in the Work which do not require an adjustment in the Agreement Price or the Contract Time and which are consistent with the overall intent of the Contract Documents. The Contractor shall perform changes authorized by a Field Order in a timely fashion and as specified in the Field Order.

C. Additional Work performed without authorization of a Change Order will not entitle Contractor to an increase in the Agreement Price or an extension of the Contract Time, except in the case of an emergency, as provided in Paragraph 6.12.A.

D. If Notice of any change affecting the general scope of the Work or change in the Agreement Price is required by the provisions of any Bond to be given to the Surety, it will be Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to Owner.

E. If Owner and Contractor are unable to agree to an adjustment in the Agreement Price or Contract Time of a Change Order, as provided in Parts 11 and 12 herein, the Owner may issue the Change Order without an adjustment and the Parties may proceed to Dispute Resolution pursuant to Part 21. The Contractor shall promptly perform any such Change Order. Alternatively, the Owner reserves the right to perform the Work described in the Change Order directly or to hire other contractor(s) to perform said Work. In this case, the Contractor shall not be entitled to any increase in the Agreement Price, nor to any additional cost or fees, nor to any extension of the Contract Time, and the Contractor shall permit free access to the Site by the Owner or any other contractor engaged by Owner to perform said Work.

## **PART 11 AGREEMENT PRICE AND CHANGES**

### **11.01 AGREEMENT PRICE CHANGED ONLY BY CHANGE ORDER**

A. The Agreement Price constitutes the total compensation (subject to authorized adjustments by Change Order) payable to Contractor for performing the Work and is based on unit prices. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Agreement Price.

B. The Agreement Price may only be changed by a Change Order signed and approved by Contractor and Owner. When Contractor and Owner agree upon a price for extra or changed Work by way of a Change Order, Contractor and Owner agree that the price set forth in the Change Order shall be based on unit prices set forth in the Agreement, unless the parties otherwise agree.

C. The Owner, through the Engineer or Owner's Representative, may request changes to the Agreement for additional Work or a reduction in the Work or in response to claims by Contractor not quantifiable by unit prices set forth in the Agreement. In such case, Change Order pricing and time extension analysis shall be in accordance with the following:

1. The Engineer or Owner's Representative shall submit to the Contractor a "**Request for Proposal**" outlining the scope of Work contemplated for said construction changes.
2. The Contractor shall submit within fourteen (14) days of receipt of a "**Request for Proposal**" (or within such shorter period of time as may be reasonably designated by the Owner) a complete cost and fee and time extension analysis for the proposed change which shall include detailed supporting documentation to the satisfaction of the Owner and Engineer.

D. If the Contractor believes extra compensation is due for Work or materials not clearly covered in the Agreement, or not ordered in writing by the Owner or Engineer, it must, prior to beginning the Work on which it bases the claim, submit in writing to the Engineer and the Owner its intention to make a claim for such extra compensation and must afford the Engineer every facility for keeping track of the actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by Contractor and the keeping account of costs by the Engineer shall not in any way be construed to prove the validity of the claim. When such Work has been completed, the Contractor shall within fifteen days file its claim for extra compensation with the Engineer, including an itemization of all items for which extra compensation is requested and documentation reasonably satisfactory to Owner. Engineer shall present the claim to Owner with Engineer's recommendations.

E. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price shall be determined in one of the following ways:

1. On a unit price basis stated in the Contract Documents and subsequently agreed upon;
2. On the basis of the estimated Cost of the Work (determined as provided in Paragraph 11.02) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraph 11.03.B);
3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or
4. In any other manner agreed upon by the parties.

F. Notwithstanding anything in the Contract Documents to the contrary, 29 (representing overhead and profits) on any Work covered by a Change



Order or of any claim for an increase or decrease in the Agreement Price, shall be limited in the following ways:

1. For Work performed by subcontractors and/or suppliers (of any tier), such subcontractors and/or suppliers may apply markup of not more than 7% of the Cost of the Work covered by a Change Order or claim;
2. For Work performed by subcontractors and/or suppliers (of any tier), Contractor may apply markup of not more than 7% of the Cost of the Work covered by a Change Order or claim;
3. For self-performed Work, Contractor may apply markup of not more than 5% of the Cost of the Work covered by a Change Order or claim; and
4. Except as specifically permitted by Sections 1 thru 3 of this Part 11.01 (F), there shall be no other markup, profit, or fee of any kind on Work covered by a Change Order or any claim for an increase or decrease in the Agreement Price. Contractor and its subcontractors and/or suppliers shall provide reasonable documentation (including receipts or other supporting documentation) of the Cost of the Work covered by a Change Order or claim to ensure that markup has been applied appropriately in accordance with the Contract Documents.

## 11.02 COST OF THE WORK

A. The term “**Cost of the Work**” means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.02.B. Whenever the cost of any Work is to be determined pursuant to Paragraphs 11.02.A and 11.02.B, Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Payroll cost for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but shall not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers’ or workmen’s compensation.

Such employees shall include superintendents and foremen at the Site. The expenses of performing Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

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

3. Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

5. Supplementary costs include the following:

(a) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.

(b) Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – all in accordance with terms of said rental agreements. The rental of any such equipment,

machinery or parts shall cease when the use thereof is no longer necessary for the Work.

(c) Any sales, use or similar taxes related to the Work, if applicable, and for which Contractor is liable, imposed by any governmental authority.

(d) Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.

(e) Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor or in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated in Paragraph 11.03.A.

(f) Cost of premiums for additional Bonds and insurance required because of changes in the Work.

(g) The proportion of necessary, transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

(h) The cost of utilities, fuel and sanitary facilities at the Site.

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

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Site or in its principal or a branch office

for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in subparagraph 11.02.A.1—all of which are to be considered administrative costs covered by the Contractor's Fee as defined in Paragraph 11.03.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).
5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.02.A.

### **11.03 CONTRACTOR'S FEE**

A. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:
  - (a) For costs incurred under Paragraphs 11.02.A.1 and 11.02.A.2, the Contractor's Fee shall be 3%; and
  - (b) For costs incurred under Paragraph 11.02.A.3, the Contractor's Fee shall be 3%; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be 1% as set forth in Paragraph 11.03.A.1.a; and
  - (c) No fee shall be payable on the basis of costs itemized under Paragraphs 11.02.A.4, 11.02.A.5, and 11.02.B.

B. The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined fee shall be figured on the basis of the next increase if any.

## **PART 12 CONTRACT TIME AND CHANGES**

### **12.01 DETERMINATION AND EXTENSION OF CONTRACT TIME**

A. The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work contracted, within the number of calendar days stipulated in the Agreement. Time will be assessed against the Contractor in accordance with the Notice to Proceed. If the Contractor does not begin the Work within the limit designated in the Notice to Proceed, the calendar days shall start on the first calendar day after the last permissible starting date as set forth in the Notice to Proceed. If the satisfactory execution and completion of the Work shall require Work or materials in greater amounts or quantities than those set forth in the Contract Documents, then the Contract Time may be increased as negotiated between Contractor and Engineer or Owner's Representative and accepted by Owner as set forth in a Change Order. In general, extensions to the completion period for the Contract Documents will not be approved, regardless of cause for claim.

No allowances will be made for delays or suspensions of the prosecution of the Work due to the fault of the Contractor.

### **12.02 CONTRACT TIME CHANGED ONLY BY CHANGE ORDER**

A. The Contract Time may only be changed by a Change Order. If Contractor desires to make any claim for an extension in the Contract Time, as a result of any alleged delays, it shall give immediate verbal notification to Engineer followed by written notice delivered to Owner's Representative and Engineer within five days of the occurrence of the event giving rise to the Claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days of such occurrence unless Engineer or Owner's Representative allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by Engineer if Owner and Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

B. Where, due to delays beyond the control of Contractor, such as acts or omissions of the Owner or others performing work as contemplated by Part 7 or to fires, floods, labor disputes, epidemics, acts of God, or to abnormally inclement weather conditions, which allegedly cause

unavoidable delay to the Contractor's prosecution of the Work and the Contractor is prevented from completing any part of the Work within the Contract Time or within scheduled milestones, Contractor may be entitled to request an extension of time equal to the time unavoidably lost and/or an increase in the Agreement Price equal to the general conditions costs unavoidably incurred by Contractor; provided, however, that Contractor shall not be entitled to an increase in the Agreement Price to the extent that any of the delays described by this Part 12.02 (B) occur concurrently with any delays caused (in whole or in part) due to the fault of the Contractor or those for whom Contractor is responsible. Weather conditions shall only be considered abnormally inclement if there was greater than normal inclement weather considering the term of the contract and the ten-year average of accumulated record mean values from data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale of the Work.

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

**PART 13     WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS;  
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**13.01       WARRANTY AND GUARANTEE**

A. Contractor warrants and guarantees to Owner and Engineer that, without exception, all Work will be in accordance with the Contract Documents and will not be defective. Four copies of all manufacturer's guaranties or certificates that are required by the Contract Documents shall be submitted to Owner through Engineer prior to acceptance of the Work. No exceptions to Contract Documents and guarantee or warranty requirements are permitted. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Part 13.

**13.02       ACCESS TO WORK**

A. Engineer and Engineer's representatives, other representatives of Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

**13.03       TESTS AND INSPECTION**

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.

B. If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) specifically to be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with Owner's or Engineer's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by Owner (unless otherwise specified), except that the cost of re-testing of materials and equipment as a direct result of a failure to pass a specified test shall be paid by Contractor.

C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to Owner and Contractor (or by Engineer, if so specified).

D. If any Work that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.

E. Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

F. Any Work outside the normal five (5) day, forty (40) hour week may require that the Engineer be on the job. All inspection so required shall be done at the Engineer's expense at the Engineer's current billable rates and the cost thereof shall be deducted from any funds due Contractor. The Contractor shall notify the Engineer at least 24 hours in advance of starting any such overtime Work.

#### **13.04 UNCOVERING WORK**

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

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Engineer shall issue a Field Order so directing and Contractor shall thereupon uncover, expose

or otherwise make available for observation, inspection or testing, as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing, and all expenses for satisfactory correction or reconstruction of the defective Work, including, for all of the foregoing tasks, compensation for additional professional services required. Contractor shall not request payment for, nor shall Contractor be entitled to compensation for such expenses. If the Work is found not to be defective, Contractor shall be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, for any expense or delay directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, provided that Contractor submits a verified claim as provided in Parts 11 and 12 within 20 days of performing any such tasks.

### 13.05 OWNER MAY STOP THE WORK

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

### 13.06 CORRECTION OR REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

A. If required by Engineer, Contractor shall promptly, without cost to Owner and as specified by Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the Site and replace it with non-defective Work. Work done without lines and grades having been given, Work done beyond the lines and grades shown on the Plans, or as given, except as herein provided, Work done without proper inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to prices, will be done at the Contractor's risk and will be considered unauthorized and, at the option of the Engineer, may not be measured and paid for and may be ordered removed and replaced at the Contractor's expense.

### 13.07 TWO YEAR CORRECTION PERIOD

A. If within **two (2) years** after the date of final acceptance by Owner or another entity as might be appropriate, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the



Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions within seven (7) days after Owner's issuance of written instructions, correct the defective Work at Contractor's cost. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. Contractor shall also pay for any damage done to other Work, other property or persons which occurred as a result of the defective Work within the correction period.

### **13.08 ACCEPTANCE OF DEFECTIVE WORK**

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. In such case, if acceptance occurs prior to Engineer's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Agreement Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to Owner.

### **13.09 OWNER MAY CORRECT DEFECTIVE WORK**

A. If Contractor fails within a reasonable time after written notice to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer or Owner's Representative in accordance with Paragraph 13.06.A, or in accordance with Paragraph 13.07.A, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), Owner may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph Owner shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees such access to the Site as may be necessary to enable Owner to exercise its rights under this paragraph. All direct and indirect costs of Owner in exercising such rights shall be charged against Contractor in an amount verified by Engineer, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Agreement Price. Such direct and indirect costs shall

include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights hereunder.

B. If it becomes necessary for Owner to take over the completion of the Work, all of the amounts owing to Contractor, including the withheld retainage, shall be applied: (i) first, toward the cost of completion of the Work; (ii) second, toward performance of Owner's withholding requirement set forth in section 38-26-107, C.R.S.; (iii) third, to the surety furnishing bonds for the contract work, to the extent such surety has incurred liability or expense in completing the contract work or made payments pursuant to section 38-26-106, C.R.S.; then, (iv) to Contractor. Such retained amounts as may be due Contractor shall be due and payable at the expiration of thirty days from the date of final acceptance by Owner of the Work.

## **PART 14 CONSTRUCTION SCHEDULE, PAYMENTS TO CONTRACTORS AND COMPLETION**

### **14.01 SCHEDULES**

A. Within ten (10) days after issuance of the Notice to Proceed and at least ten days prior to submitting the first application for a progress payment, the Contractor shall prepare and submit to Owner the progress schedule listing all Work tasks required, duration of tasks, sequence of Work, significant milestone events; and a schedule for Shop Drawing submission. These schedules shall be satisfactory in form and substance to the Owner and the Engineer and shall employ the CPM or PERT method if so directed in the Supplementary Conditions. The progress schedule shall be an accurate reflection of the Work to be performed by Contractor. The progress schedule shall be subject to the review and concurrence of Owner, but Owner's concurrence shall not constitute any guarantee or warranty by Owner that the Work can be performed as scheduled. Notwithstanding Owner's review and concurrence of the progress schedule, Contractor shall be paid only according to its completion of the items contained in the Bid Form and not according to the progress schedule. The Contractor shall provide updated written progress reports to Owner on a weekly basis.

B. The schedules contained in the Bid Form shall be incorporated into the form for Application for Payment. The Contractor shall revise the schedule contained in the Bid Form if requested by Owner. The Contractor may include on its Application for Payment, payment for materials stored at the Site, provided that title to such materials will pass to the Owner at the time of payment free and clear of all claims, security interests and encumbrances, are insured and properly stored and protected.

## 14.02 APPLICATION FOR PROGRESS PAYMENTS

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit to Engineer and Owner's Representative for review an Application for Payment for the previous month, completed and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as Owner's Representative may reasonably require. Each subsequent Application for Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor's obligations reflected in prior Applications for Payment. A waiver of claim for partial payments also will be required to be executed by Contractor prior to payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. The determination of quantities of Work acceptable completed under the terms of the Contract Documents, will be made by the Engineer and based on measurements taken by Engineer or its assistants and/or observations in the field. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on plans or specified. Structures shall be measured as shown on the plans. When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly marked on said vehicle and the capacity or marking shall not be changed without permission of the Engineer. The Engineer may require all vehicles to have uniform capacity.

C. No progress payment except final payment will be made for a sum of less than \$1,000.00. The estimates will be approximate only, and all partial or monthly estimates and payments shall be subject to correction in

the estimate rendered following discovery of an error in any previous estimates. Should any defective Work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the Work completed previous to the final payment, there will be deducted from the first estimate rendered after the discovery of such Work an amount equal in value to the defective or questioned Work, and this Work will not be included in a subsequent estimate until the defects have been remedied or the causes for doubt removed.

#### 14.03 CONTRACTOR'S WARRANTY OF TITLE

A. Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner at the time of payment free and clear of all claims, security interests and encumbrances (hereafter in these General Conditions referred to as "**Claims**").

#### 14.04 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

A. Owner's Representative will, within ten (10) days after receipt of each Application for Payment either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Owner's Representative reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

B. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative to Owner, based on Owner's Representative's on-site observations of the Work in progress as an experienced and qualified design professional, and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; and that, to the best of Owner's Representative's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation.) However, by recommending any such payment, Owner's Representative will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to Contractor on account of the Agreement Price, or that title to any Work, materials or equipment has passed to Owner free and clear of any Claims.

C. Owner's Representative may refuse to recommend, and Owner may refuse to pay, the whole or any part of any payment if, in their opinion, it would be incorrect to make such payment. They may also refuse to recommend to make any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Engineer's or Owner's opinion to protect Owner from loss because:

1. The Work is defective, or completed Work has been damaged requiring correction or replacement,
2. Written claims have been made against Owner or claims have been filed in connection with the Work,
3. The Agreement Price has been reduced because of modifications,
4. Owner has been required to correct defective Work or complete the Work in accordance with Paragraph 13.09.A.,
5. Of Contractor's unsatisfactory prosecution of the Work in accordance with the Contract Documents, or
6. Of Contractor's failure to make payment to Subcontractors for labor, materials, or equipment.

#### **14.05 SUBSTANTIAL COMPLETION**

A. When Contractor considers the entire Work ready for its intended use, Contractor shall, in writing to Owner and Engineer, certify that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving its reasons therefor. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Owner a tentative certificate of Substantial Completion. There shall be attached to the certificate a punch list of items to be completed or corrected before Project completion and final payment.

#### **14.06 PARTIAL UTILIZATION**

A. Use by Owner of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. Owner at any time may request Contractor in writing to permit Owner to use any part of the Work which Owner believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If Contractor agrees, Contractor will certify to Owner and Engineer that said part of the Work is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of that part of the Work to determine its status of completion. Prior to Owner's use, Engineer will deliver to Owner and Contractor a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance and correction periods for that part of the Work which is binding upon Owner and Contractor as to that part of the Work, unless Owner and Contractor shall have otherwise agreed in writing or shall object to the Engineer in writing within (15) days of receiving Engineer's recommendations. Owner shall have the right to exclude Contractor from any part of the Work which Owner uses, but Owner shall allow Contractor reasonable access to complete or correct items on the punchlist.

2. In lieu of the provisions of Paragraph 14.06.A.1., Owner may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately useable; provided that prior to any such takeover, Owner and Contractor have agreed as to the division of responsibilities between Owner and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

3. No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to acknowledgment from the insurers providing the property insurance on the Work that notice of such occupancy has been received and that said insurers, in writing have effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

## **14.07 FINAL INSPECTION**

A. Upon written notice from Contractor to the Engineer that the Work is complete and that all items on the punch list have been completed, Engineer will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals

that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

#### **14.08 FINAL APPLICATION FOR PAYMENT**

A. After Contractor has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents—all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions of Paragraph 14.11.A), Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as Engineer may reasonably require, together with complete and legally effective releases or waivers (satisfactory to Owner) of all claims arising out of or filed in connection with the Work. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. In lieu thereof and as approved by Owner, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any claim.

#### **14.09 FINAL PAYMENT AND ACCEPTANCE**

A. If, on the basis of Engineer's observation of the Work, during construction and final inspection, and Owner's Representative's review of the final Application of Payment and accompanying documentation—all as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, Owner's Representative will, within ten (10) days after receipt of the final Application for Payment, indicate in writing its recommendation of payment and present the Application to Owner for payment. Thereupon, Engineer will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.10.A. Otherwise, Engineer will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, and acceptable to Owner, Owner shall, within thirty (30) days after receipt thereof, cause publication to commence of Notice of Final Settlement in accordance with statutory requirements applicable to Owner. In the event no claims are made against Contractor in response to said publication, Owner shall pay Contractor the amount of final payment recommended by the engineer in accordance with the Notice of Final Settlement. In the event any claim(s) is made against Contractor, Owner shall withhold from all payments to such contractor sufficient funds to insure the payment of said claims until the same have been paid or withdrawn, such payment to be evidenced by filing with the Owner a receipt in full or an order for withdrawal in writing from claimant.

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

#### **14.10 CONTRACTOR'S CONTINUING OBLIGATION**

A. The Contract Documents will be considered complete when all Work has been finished, the final inspection made and the Work finally accepted by the Engineer, all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled by the



Contractor or its Surety and final payment has been made by Owner. The Surety Bond executed from performance of the Contract Documents shall be in full effect for a period equal to the warranty correction period following the date of initial acceptance by Owner or another public entity as might be appropriate.

B. Notwithstanding the provisions of Paragraph 14.10.A., Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor the issuance of a Notice of Acceptability by Engineer pursuant to Paragraph 14.09.A., nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

## **PART 15      SUSPENSION OF WORK AND TERMINATION**

### **15.01      ENGINEER OR OWNER MAY SUSPEND WORK**

A. The Engineer, in consultation with Owner when time permits, shall have the authority to suspend the Work wholly or in part because of unfavorable weather or other essential conditions, or because of the failure on the part of the Contractor to properly prosecute the Work in accordance with the Contract, to carry out orders or to remove defective material or Work. The Contractor shall not suspend the Work without written authority from Owner or Engineer. Prior to resuming Work, Contractor shall give the Engineer adequate notice to afford opportunity to re-establish observation and inspection of Work being performed.

B. In the event the Contractor is ordered by the Engineer, in writing, to suspend Work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of suspension. No allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in the written order for Work to cease until the date of the order for Work to resume. Claims for such reimbursement shall be filed with the Engineer within ten (10) days after date of the order to resume Work or such claims will not be considered. The Contractor shall submit with its claims, substantiating papers covering the entire amount shown on the claim. After receiving relevant information from the Engineer, the Owner shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim

and such decision shall be final. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the Specifications.

C. Owner may at any time suspend the Work or any portion thereof without cause for a period of not more than ninety (90) days by notice in writing to the Contractor and Engineer which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, directly attributable to such suspension if it makes a claim therefor as provided in Parts 11 and 12.

## **15.02 OWNER MAY TERMINATE**

A. Upon the occurrence of any one or more the following events, Owner may terminate the Agreement:

1. If Contractor is adjudged a bankrupt or insolvent,
2. If Contractor makes a general assignment for the benefit of creditors,
3. If a trustee or receiver is appointed for Contractor or for any of Contractor's property,
4. If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
5. If Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
6. If Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials or equipment,
7. If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,
8. If Contractor disregards the authority of Engineer,
9. If Contractor fails to commence Work as prescribed in the Notice to Proceed,
10. If Owner secures substantial evidence that progress of the Work by the Contractor is insufficient to complete the Work within the Contract Time,

11. If Contractor repeatedly fails to observe any requirement of these Specifications,
12. If Contractor fails to promptly make good any defects in materials or Work or any defects of any other nature, the correction of which has been directed in writing by the Engineer,
13. If Contractor fails to promptly disburse payment or retainage to subcontractors upon its receipt of such payment from Owner;
14. If Contractor fails to remedy any default under the Contract Documents within seven (7) days of receipt of Notice of such default from Owner, or
15. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents.

B. Before the Agreement is terminated, the Contractor and its Surety will first be notified in writing by the Engineer of the conditions which make termination of the Agreement imminent. Seven (7) days after this notice is given, if efforts satisfactory to the Owner have not been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Agreement terminated and notify the Contractor and its Surety accordingly. Upon receipt of notice from the Owner that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The Owner may then proceed with the Work in any lawful manner that it may elect until the Work is finally completed. Owner may exclude Contractor from the Site and take possession of the Work and all Contractor's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Agreement Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, including but not limited to fees and charges of engineers and attorneys and any court or arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Engineer and incorporated in a Change Order, but in finishing the Work, Owner shall not be required to obtain the lowest figure for the Work performed.

C. Where Contractor's services have been so terminated by Owner, the termination shall not affect any rights of Owner against Contractor then

existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

### **15.03 CONTRACTOR MAY STOP WORK OR TERMINATE**

A. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or Owner fails for forty-five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to Owner and Engineer, terminate the Agreement and recover from Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if Engineer has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven (7) days' notice to Owner and Engineer stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of its obligations under Paragraph 21.01.B. to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with Owner.

### **15.04 OWNER MAY TERMINATE FOR CONVENIENCE**

A. The Owner may terminate the performance of Work under the Contract Documents in accordance with this section without cause and in the Owner's sole and absolute discretion. Such termination may be in whole, or from time to time, in part. Any such termination shall be effected by delivery of a written notice of termination to the Contractor specifying the extent to which performance of Work under the Contract Documents is terminated and the date upon which termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the Contract Documents on the date and to the extent specified in the notice of termination.
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract Documents which is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
4. Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of

the Contractor under the orders and subcontracts so terminated. The Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent it may require. Its approval or ratification shall be final for all purposes of this clause.

6. Transfer to the Owner and deliver in the manner, at the times, and to the extent, if any directed by the Owner:

(a) The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

(b) The completed or partially completed plans, drawings, information, and other property which, if the Project had been completed would have been required to be furnished to the Owner.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the Owner directs or authorizes, any property of the types referred to in Paragraph 15.04.B.6., but the Contractor:

(a) shall not be required to extend credit to any purchaser; and

(b) may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract Documents or shall otherwise be credited to the Agreement Price or cost of the Work covered by the Contract Documents or paid in such other manner as the Owner may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.

9. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Project which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

C. After receipt of a notice of termination, the Contractor shall submit to the Owner its termination claim (calculated in accordance with the provisions of paragraph 15.04.E.), in the form and with the certification the Owner prescribes. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such sixty (60) day period or authorized extension. However, if the Owner determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such sixty (60) day period or extension. If the Contractor fails to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to Owner, the amount, if any, due to Contractor because of the termination. The Owner shall then pay to the Contractor the amount so determined.

D. Subject to the provisions of this paragraph, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of Work under this subsection. The amount or amounts may include a reasonable allowance for profit on Work done if acceptable to Owner. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of the portion of the Work not terminated. The Contract Documents shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in this paragraph prescribing the amount to be paid to the Contractor in the event of the failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor because of termination of Work under this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. If the Contractor and the Owner fail to agree on the whole amount to be paid to the Contractor because of the termination of Work under this section, the Owner shall determine, on the basis of information available to Owner, the amount, if any, due to the Contractor by reason of the termination and shall pay the Contractor the amounts determined as follows:

1. For all Contract Work performed before the effective date of the notice of termination the total (without duplication of any items) of:

- (a) The reasonable costs actually incurred by Contractor for work performed prior to termination. Reasonable costs shall not include any overhead expenses, including but not limited to, rent, insurance, supervision, superintendents,

timekeepers, clerks, expeditors, watchmen, small tools, incidental job burdens and general office expenses.

(b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as Paragraph 15.04.B.3. above provides. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made.

2. The total sum to be paid to the Contractor shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Owner, of property to the extent that it is undeliverable to the Owner, or to a buyer under Paragraph 15.04.B.7. of this Part 15. **If the parties do not reach agreement under Paragraph 15.04.D. and the Owner utilizes this Paragraph 15.04.E., no allowance for profit shall be included in the calculation of the sum to be paid to Contractor.**

F. The Contractor shall have the right to dispute under the Disputes provision hereof any determination the Owner makes under this Part 15. But, if the Contractor has failed to calculate and submit its claim according to the provisions provided in Paragraph 15.04.C. and has failed to request an extension of time, it shall have no such right of appeal. In any case, where the Owner has determined the amount due, the Owner shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been made, the amounts so determined by the Owner; or
2. If a dispute proceeding is initiated, the amount finally determined in such dispute proceeding.

G. In arriving at the amount due to the Contractor under this clause there shall be deducted:

1. All unliquidated advance or other payments on account therefor made to the Contractor, applicable to the terminated portion of the Work.
2. Any claim which the Owner may have against the Contractor in connection with the Contract Documents.

3. The agreed price for, or the proceeds of the sale of, any materials, supplies or other things kept by the Contractor or sold, under the provisions of this section, and not otherwise recovered by or credited to the Owner.

H. If the termination hereunder is partial, before the settlement of the terminated portion of the Contract Documents, the Contractor may file with the Owner or request in writing for an equitable adjustment of the price or prices specified in the Contract Documents relating to the continuing portion of the Work (the portion not terminated by the Notice of Termination). Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Work when the Contract Documents do not contain an established price for the continued portion.

## **PART 16 MISCELLANEOUS**

### **16.01 GIVING NOTICE**

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

Notice may also be given by facsimile, providing the notice is also immediately sent by first class mail, except in those cases which require an original to confirm the validity of a signature or other element of the document.

### **16.02 COMPUTATION OF TIME**

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

### **16.03 CORRECTION PERIOD**

A. Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time period relates only to the specific obligations under the Contract Documents which may be sought to be enforced, not to the time within



which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work.

#### **16.04 GENERAL**

A. Should Owner or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is responsible, the injured party shall notify the other party within a reasonable time of the first observance of such injury or damage.

B. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by Paragraphs 5.05, 6.05, 6.07, 6.11.B, 6.11D, 13.01.A, 13.06.A, 13.07.A, and 14.03.A and all of the rights and remedies available to Owner and Engineer under the Contract Documents, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any of or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

C. Should Owner determine that Contractor is performing in such a fashion that Contractor will not complete the Project timely, Owner shall give Contractor notice of Owner's determination and Contractor shall have fifteen (15) days from the issuance of Owner's notice within which to correct its performance and to furnish evidence satisfactory to Owner that the Project will be completed timely. In the event that Contractor does not within said fifteen (15) days correct its performance and furnish evidence satisfactory to Owner that the Project will be completed timely, Owner shall have the right to remove the Contractor and retain a replacement contractor to complete the Project. Owner may thereupon withhold all payments to Contractor until the replacement contractor has completed the Project and then determine what amounts, if any, are due Contractor.

### **PART 17 ADDRESSES**

#### **17.01 OWNER**

A. Owner is the quasi-municipal corporation and political subdivision of the State of Colorado named in the Agreement acting through its duly authorized agents. All notices, letters and communications directed to

Owner shall be addressed and delivered to Owner, with one (1) copy to Engineer, at the addresses listed below:

Owner Address: Cimarron Center Metropolitan District  
370 Interlocken Blvd Suite 500  
Broomfield, CO 80021  
Phone: (303) 439-6029  
Email: l.johnson@claconnect.com  
Attn: Lisa Johnson

with a copy to: McGeady Becher P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203  
Phone: 303-592-4380  
Email: mbecher@specialdistrictlaw.com  
Attn: Megan Becher

## **17.02 ENGINEER**

A. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by the Engineer named in the Agreement and its duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to Engineer at the address set forth in Paragraph 17.01.D. in the Agreement.

## **17.03 CONTRACTOR/SURETY**

A. The business addresses of Contractor given in the Bid Form and Contractor's office at the Site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered. The business address of the Sureties as stated on the Bid Bond, the Performance Bond, and the Labor and Materials Payment Bond are hereby designated as the places to which all notices, letters, and other communications to such Sureties will be delivered.

## **17.04 CHANGE OF ADDRESS**

A. Either Owner, Contractor, Engineer, or Surety may change its address at any time by an instrument in writing delivered to the other parties.

## **PART 18 LIQUIDATED DAMAGES**

A. Time is an essential condition of the Contract. In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Contract Documents within the specified time limits set forth in Part 5 of the Agreement for such performance and

completion or within such further time as, in accordance with the provisions of this Contract, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the Owner for each and every day of the additional time in excess of the specified time limits and any granted extension thereof, the sum set forth in Part 5 of the Agreement as liquidated damages and not as a penalty. The parties agree that Owner will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The Owner shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due to the Contractor, or in manner set forth in Paragraph 21.01 or by either or both of these methods. Should the entire completion and final acceptance of the Work herein embraced, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that aside from any other penalty or damage, all costs of the engineering, observation and inspection on behalf of the Owner which are incurred after the specified time limits have elapsed may be charged to the Contractor and be deducted from any estimate or payment otherwise due and payable to him.

B. In case of joint responsibility for delay in the final completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one contractor for the delay shall be determined by, and in the judgment of, Engineer.

## **PART 19 EXISTING UNDERGROUND INSTALLATIONS**

A. Existing underground installations such as water lines, gas lines, sewers, telephone lines, power lines, or similar concealed structures in the vicinity of the Work are indicated on the Drawings only to the extent such information was made available to or discovered by Engineer in preparing the Drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. The Contractor acknowledges the inherent risk associated with the location of such installations, and it shall not seek to hold the Owner or Engineer responsible for any damages or delays in the event of any discrepancies associated with such installations. Generally, service connections are not indicated on the Drawings.

B. Contractor shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the Owners thereof and prospecting. Contractor shall use its own information and shall not rely upon any information indicated on the Drawings concerning existing underground

installations. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity.

C. The General Conditions provisions regarding Unforeseen Physical Conditions do not apply to the existing underground installations indicated in the preceding paragraphs. Any delay, additional Work, or extra cost to Contractor caused by underground existing installations shall not constitute a claim for extra Work, additional payment, or damages.

## **PART 20 STREAMLINED SPECIFICATIONS**

A. These Specifications are written in the streamlined or declarative style, utilizing incomplete sentences. Omissions of such words and phrases “The Contractor shall,” “in conformity therewith,” “shall be,” “as shown on the Drawings,” “a,” “an,” “the,” and “all” are intentional in streamlined sections. Omitted words shall be supplied by inference in the same manner as when a note appears on the Drawings. The omission of such words shall not relieve the Contractor from providing all items and work described herein or indicated on the Drawings.

## **PART 21 HANDLING OF DISPUTES**

### **21.01 DISPUTES**

A. Unless otherwise mutually agreed in writing by Owner and the Contractor, all claims, disputes and controversies arising out of or relating to this Owner-Contractor Agreement or the breach thereof (collectively “**Dispute**”) shall be resolved as follows:

Owner and Contractor shall, upon either party’s written request sent certified mail, attempt to resolve the Dispute by non-binding mediation which will be conducted in accordance with the then effective Construction Industry Mediation Rules of the American Arbitration Association (“**AAA**”) subject to modifications set forth herein. The parties shall jointly appoint a mutually acceptable mediator, but if they have not so appointed a mediator within ten (10) days after the written request for mediation is received by the recipient party, the AAA shall, upon written request of either party, appoint the mediator. The parties shall share equally in the costs of the mediator’s fees and expenses and the AAA’s fees and expenses.

In the event the Dispute is not resolved by such mediation within thirty (30) days after the date the written request for mediation is received by the recipient party, the Dispute shall be decided by arbitration in accordance within the then effective Construction Industry Arbitration Rules of the AAA, subject to the modifications set forth herein. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable

statutes of limitation. Any arbitration arising out of or relating to this Owner-Contractor Agreement, the Project, the Work, the Contract Documents, or the breach thereof may include by consolidation, joinder or in any other manner, at the Owner's option, any other entities or persons whom the Owner believes to be substantially involved in a common question of fact or law. In addition to any other damages or relief due, the arbitrator shall award to the prevailing party its reasonable attorney's fees, costs, and expenses payable by and from the non-prevailing party.

All mediation and arbitration proceedings shall be held in Jefferson County, Colorado, or such other place as the Owner may designate, and shall be conducted, and final dispositions shall be made, in accord with the laws of the State of Colorado.

B. The Contractor shall continue to perform the Work and adhere to the Contractor's construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

C. Engineer shall not be deemed or considered a third party beneficiary of the Agreement or Contract Documents, nor a party thereto.

## **PART 22 DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE AUTHORITY OF THE OWNER'S REPRESENTATIVE**

### **22.01 DESCRIPTION**

A. The Owner's Representative is the Owner's agent only for those purposes expressly authorized under the Contract Documents, and shall act as directed by and under the supervision of Owner. It shall confer with Owner regarding its actions. Its dealings in matters pertaining to the on-site work will in general be only with Engineer and Contractor. Its dealings with Subcontractors will only be through Contractor or its superintendent.

B. Owner shall provide Contractor with written notice of any change in the Owner's Representative.

### **22.02 DUTIES AND RESPONSIBILITIES**

#### **A. CONFERENCES:**

1. Attend Preconstruction Conferences and regular project meetings. Arrange a schedule of progress meetings and other job conferences as required and notify in advance those expected to attend. Conduct meetings and maintain and circulate copies of minutes thereof.

**B. LIAISON:**

1. Serve as Owner's liaison with Contractor and Engineer, working to help expedite the project to assure the scheduling requirements are met.

**C. MODIFICATIONS:**

1. Consider Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.

**D. REPORTS:**

1. Furnish Owner with periodic reports of progress of work and of Contractor's compliance with the approved progress schedule, schedule of Shop Drawing submissions, and other schedules.
2. Consult with Owner in advance of scheduled major tests, inspections, or start of important phases of work.

**E. PAYMENT REQUISITIONS:**

1. In cooperation with Engineer, review Application for Payment with the Contractor for compliance with the established procedure for its submission and forward it with recommendation to the Owner for payment.

**22.03 LIMITATIONS OF AUTHORITY**

A. Owner's Representative shall be limited in authority except upon written instructions of Owner as follows:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment, modifications or Change Orders.
2. Shall not undertake any of the responsibilities of Contractor, Subcontractor or Contractor's superintendent.
3. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.

**PART 23 SECTION 01200 SUSPENSION AND DEBARMENT PROCEDURE****23.01 PURPOSE AND APPLICABILITY**

A. The purpose of this Section is to set forth standards and procedures to be followed by the Owner for debaring or suspending persons or entities who are or may become a Bidder, Successful Bidder, or Contractor.

B. It shall be the responsibility of the Owner to administer the rules.

C. The rules shall govern the debarment or suspension of persons from performing any work for, submitting bids for, or otherwise in any manner participating in public projects under contract with the Owner.

## **23.02 CAUSES FOR SUSPENSION**

A. When the Owner has reasonable grounds to believe that the public health, safety, and welfare imperatively requires such action, the Owner may immediately suspend a Bidder, Successful Bidder, or Contractor prior to debarment proceedings from performing work or otherwise participating in public projects not already under contract and from submitting bids on public projects upon adequate evidence that a cause for debarment under Section 01200 may exist. Indictment on criminal charges shall constitute *per se* adequate evidence for purposes of suspension actions.

## **23.03 CAUSES FOR DEBARMENT**

A. Debarment may be imposed by the Owner for:

1. Conviction of or civil judgment for:

(a) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public project;

(b) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft;

(c) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging or any other violation of federal or state antitrust laws that relates to the submission of bid or proposals; or

(d) Commission of any other offense indicating a lack of business integrity or honesty.

2. A serious violation of the terms of a contract on a public project, such as:

- (a) A willful or material failure to perform in accordance with the terms of a contract on a public project;
  - (b) A history of substantial noncompliance with the terms of contracts on public projects; or
  - (c) A willful and material violation of a statutory or regulatory provision or requirement applicable to a contract on a public project.
3. Any of the following causes:
- (a) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for in Section 01200;
  - (b) Knowingly employing or doing business with a debarred, suspended or otherwise ineligible person, in connection with a public project;
  - (c) Conduct indicating a lack of business integrity or honesty in bidding or performing public projects;
  - (d) Submission of false or deceptive information or statements in connection with prequalification, bidding or performance of a public project;
  - (e) Failure to pay a substantial debt (including disallowed costs and overpayments) owed to any federal or state agency or instrumentality, but not including amounts owed under the Internal Revenue Code, provided the debt is uncontested by the debtor or, if contested, that the debtor's legal and administrative remedies have been exhausted;
  - (f) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action; or
  - (g) Any other cause so serious in nature that Owner has reasonable grounds to believe that the public health, welfare, or safety imperatively requires debarment.

## **23.04** PROCEDURES FOR SUSPENSION AND DEBARMENT

A. Anyone may contact the Owner, Owner's Representative, or Engineer concerning the existence of a cause for Debarment. If the Owner, Owner's Representative, or Engineer becomes aware of information warranting Suspension or Debarment, as set forth in this



Section 01200, then Suspension or Debarment or both may be initiated by the Owner sending a Notice of intent to suspend or debar to the affected Bidder, Successful Bidder, or Contractor (upon such Notice, referred to as the "Respondent"). A Notice of intent to suspend or debar, or both, shall be sent to the Respondent by certified mail, return receipt requested. The Notice shall include a written statement of reasons for and the effect of the Suspension or proposed Debarment and inform the Respondent of the right of appeal to the Owner.

B. The Respondent may appeal the Notice of intent to suspend or debar, or both. Any such appeal must be written and must be received by the Owner within fourteen calendar days of the date the Respondent received the Notice. If no appeal is received as provided herein, the Respondent shall be suspended and/or debarred in accordance with the Notice.

C. A hearing before the Owner shall be commenced within thirty calendar days of receipt of an appeal. At the hearing the Respondent shall present any information it feels is sufficient to prevent Suspension or Debarment. The Owner shall consider this information and render a decision within ten (10) calendar days after the hearing, and such decision shall be final. The appeal procedures described in this Section are the exclusive procedures for determining the outcome and remedy of an appeal. The Administrative Procedure Act (Title 24, Article 4, C.R.S.) shall not apply to this Section 01200, including any protests, appeals, or hearings conducted thereunder.

### **23.05** DECISION ON DEBARMENT

A. Following reasonable inquiry to determine whether a Respondent has engaged in activities which are cause for debarment, the Owner may debar the Respondent. A Respondent may be suspended or debarred for a period of time commensurate with the seriousness of the offense, subject to the limitations set forth under Sub-Section VII of Section 01200.

### **23.06** SETTLEMENT AND VOLUNTARY EXCLUSION

A. A Respondent and the Owner may enter into a settlement of a Debarment action, pursuant to which Respondent may agree not to participate in public projects with the Owner for a stipulated period of time.

### **23.07** LENGTH OF DEBARMENT

A. Debarment may be for a term of up to three (3) calendar years. Credit may be given for any periods of suspension. The following criteria may be considered in making any decision as to length of debarment:

1. Degree of culpability;

2. Seriousness of the offense or conduct;
3. Restitution of damages to the Owner;
4. Cooperation in the investigation of other bidding or performance violations;
5. Disassociation with those involved in bidding or performance violations;
6. Whether a lengthy debarment is required for the protection of the Owner.

B. If the Respondent submits no appeal, the debarment shall automatically be for three years.

### **23.08 SCOPE OF DEBARMENT AND SUSPENSION**

A. Suspension or debarment of a person constitutes suspension or debarment of all their divisions and other organizational elements from bidding or performing work on all public projects with the Owner unless the suspension or debarment decision is limited by its terms to one or more specifically identified individuals, organizational elements, or to specific types of public projects. The suspension or debarment may include any affiliate of the Respondent that is (1) specifically named, and (2) given Notice of the proposed debarment and an opportunity to respond.

B. For purposes of determining the scope of suspension or debarment, conduct may be imputed as follows:

1. Conduct imputed to a Respondent. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other Individual associated with a Respondent may be imputed to the Respondent when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Respondent, or with the Respondent's knowledge, approval, or acquiescence. The Respondent's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

2. Conduct imputed to individuals associated with the Respondent. The fraudulent, criminal, or other seriously improper conduct of a Respondent maybe imputed to any officer, director, shareholder, partner, employee, or other Individual associated with the Respondent who participated in, knew of, or had reason to know of the Respondent's conduct.

3. Conduct of one Respondent imputed to other members in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one Respondent in a joint venture or similar arrangement may be imputed to other members if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of the members. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

**END OF SECTION**

---

## **SUPPLEMENTARY CONDITIONS**

## **SUPPLEMENTARY CONDITIONS**

### **PART 2 SCHEDULES**

L. Schedules required by Part 14.01 A may be handwritten, in graphic or text form.

### **WARRANTY START DATE**

The effective start date of the **two year** warranty period is the date that Owner or another public entity as may be appropriate finally accepts improvements for the required warranty period. (See General Conditions Part 14.10 A).

**END OF SECTION**

**MODIFICATIONS, CHANGE ORDERS AND  
FIELD ORDERS**

### CHANGE ORDER

**Project:** \_\_\_\_\_ **Date of Issuance:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **METROPOLITAN DISTRICT** **Change Order No.:** \_\_\_\_\_  
**Address:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Owner's Representative:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

You are directed to make the following changes in the Contract Documents:

**Description:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Purpose of Change Order:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attachments (List Documents Supporting Change):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**CHANGE IN CONTRACT PRICE:**

**CHANGE IN CONTRACT TIME:**

Original Contract Price:

Original Contract Time:

\$

(days or dates)

Previous Change Orders:

Net Change from Previous Change Order:

No. \_\_\_\_ to No. \_\_\_\_

(days)

\$

Contract Price Prior to this Change Order:

Contract Time Prior to this Change Order:

\$

(days or date)

Net Increase of this Change Order:

Net Increase of this Change Order:

\$

(days)

Net Decrease of this Change Order:

\$

Net Change of this Change Order:

\$

Contract Price with All Approved Change Orders:

\$

Net Decrease of this Change Order:

(days)

Net Change of this Change Order:

(days)

Contract Time with all Approved Change Orders:

(days or date)

---

RECOMMENDED:

BY: \_\_\_\_\_  
Engineer

APPROVED:

By: \_\_\_\_\_  
Owner

APPROVED:

By: \_\_\_\_\_  
Contractor

**END OF SECTION**



**CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PROGRESS PAYMENT**

TO WHOM IT MAY CONCERN: \_\_\_\_\_ (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Mail Kiosk Relocation (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of partial payment in the sum of \$\_\_\_\_\_ (the “**Partial Payment**”), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the partial payment received. This waiver and release shall only be effective as of the date the Partial Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Progress Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_  
Signed: \_\_\_\_\_  
Printed  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**UNCONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PAYMENT RECEIVED**

TO WHOM IT MAY CONCERN: The undersigned \_\_\_\_\_ (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Mail Kiosk Relocation (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a partial payment in the sum of \$\_\_\_\_\_ (the “**Partial Payment**”), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the Partial Payment.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Partial Waiver of Claims for Payment Received. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_  
Signed: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR FINAL PAYMENT**

TO WHOM IT MAY CONCERN: The undersigned \_\_\_\_\_ (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Mail Kiosk Relocation (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of final payment in the sum of \$\_\_\_\_\_ (the “**Final Payment**”), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the final payment received. This waiver and release shall only be effective as of the date the Final Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_  
Signed: \_\_\_\_\_  
Printed \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**UNCONDITIONAL WAIVER OF CLAIMS FOR FINAL PAYMENT**

TO WHOM IT MAY CONCERN: The undersigned \_\_\_\_\_ (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Mail Kiosk Relocation (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a final payment in the sum of \$ \_\_\_\_\_ (the “**Final Payment**”), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_  
Signed: \_\_\_\_\_  
Printed  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**END OF SECTION**

## NOTICE OF FINAL PAYMENT

**NOTICE** is hereby given that the **CIMARRON METROPOLITAN DISTRICT** of Jefferson County, Colorado, will make final payment at \_\_\_\_\_, Colorado, on \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_.m. to \_\_\_\_\_ of \_\_\_\_\_, of \_\_\_\_\_, Colorado for all work done by said Contractor(s) in construction or work on ([project description], performed within \_\_\_\_\_, County of \_\_\_\_\_, State of Colorado.

Any person, co-partnership, association of persons, company or corporation that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractors or their subcontractors, in or about the performance of the work contracted to be done or that supplies rental machinery, tools, or equipment to the extent used in the prosecution of the work, and whose claim therefor has not been paid by the contractors or their subcontractors, at any time up to and including the time of final settlement for the work contracted to be done, is required to file a verified statement of the amount due and unpaid, and an account of such claim, to Cimarron Metropolitan District, \_\_\_\_\_ on or before the date and time hereinabove shown for final payment. Failure on the part of any claimant to file such verified statement of claim prior to such final settlement will release Cimarron Metropolitan District, its directors, officers, agents, and employees, of and from any and all liability for such claim.

### BY ORDER OF THE BOARD OF DIRECTORS CIMARRON METROPOLITAN DISTRICT

By:  /s/ \_\_\_\_\_  
Secretary

First Publication: \_\_\_\_\_, 20\_\_\_\_

Last Publication: \_\_\_\_\_, 20\_\_\_\_

---

(Name of Newspaper)

**END OF SECTION**

**BID FORM – EXHIBIT A**

## BID FORM

TO: Owner: Cimarron Metropolitan District  
 c/o IDES, District Engineer  
 1626 Cole Blvd, Suite 125  
 Lakewood, CO 80401

PROJECT: Candelas Slope Failure Repairs Storm Sewer and Drains

THE UNDERSIGNED BIDDER, having familiarized itself with the work required by the Contract Documents, the Site where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the Work, and having satisfied itself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES and agrees, if this Bid is accepted, to enter into the Agreement in the form attached, to perform all work, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Agreement and the furnishing of materials and equipment required to be incorporated into and form a permanent part of the work, tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the Work; and Bond, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor in accordance with the following Bid prices (Contractor must submit on Base Bid and Bid Alternates, if any, to be considered).

### COMPUTER OUTPUT BID FORMS ATTACHED

**A. BASE BID PRICE:** Twenty-Five Thousand, Three Hundred Sixty-Eight Dollars and Thirty-Five Cents (\$25,368.35).

**B. BID FORM DISCREPANCIES:** Add/deduct the following to/from above base bid for Bid Form Discrepancies: \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Bidder shall attach a list of all Bid Form Discrepancies.

The undersigned Bidder agrees to furnish the required Bonds, certificates of insurance on ACORD Form 27, and copies of applicable insurance policies and enter into the Agreement within ten (10) days after acceptance of this Bid, and further agrees to complete all work covered by the Bid, in accordance with specified requirements, as listed in the Special Provisions.

**C. BID ALTERNATE 1:** Ten Thousand, Four Hundred, Eighty-Seven Dollars and Sixty Cents (\$10,487.60)

**D. LIQUIDATED DAMAGES.** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not substantially completed within the time specified in the Special Conditions, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the Owner if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner in accordance with the following:

- 1. Late Startup of all Major Equipment \$1,000 Per Day
- 2. Late Substantial completion (ready for punchlist) \$1,000 Per Day
- 3. Late Punchlist Completion \$1,000 Per Day

**E. ADDENDA.** Receipt of copies of the following addenda is hereby acknowledged.

| <u>Addendum No.</u> | <u>Bidder's Signature</u> | <u>Date Acknowledged</u> |
|---------------------|---------------------------|--------------------------|
| 1                   | _____                     | _____                    |
| 2                   | _____                     | _____                    |
| 3                   | _____                     | _____                    |
| 4                   | _____                     | _____                    |
| 5                   | _____                     | _____                    |
| _____               | _____                     | _____                    |
| _____               | _____                     | _____                    |

**E. BID SECURITY.** Enclosed herewith is the required Bid Security, in the form of Cashier's Check/Bid Bond (strike one), in the amount of Zero Dollars and Zero Cents (\$0.00) which the undersigned Bidder agrees is to be forfeited to and become the property of Owner, as liquidated damages, in connection with the Bid Security, should this Bid be accepted and Bidder fails to enter into the Agreement in the form prescribed and to furnish the required Bonds within ten (10) days, or should Bidder fail to enter such agreement and give such bond or bonds, if Bidder fails to pay to Owner the difference between the amount specified in this Bid and such larger amount for which Owner may in good faith contract with another party to perform the Work covered by this Bid, but otherwise the Bid Security will be returned upon Bidder signing the Agreement and delivering the Performance Bond, Labor and Materials Payment Bond certificates of insurance on ACORD Form 27 and copies of applicable insurance policies.

**F. BID REJECTION.** In submitting this Bid it is understood that Owner reserves the right to reject any and all Bids, to waive any informality, technicality or irregularity in any Bid, to disregard all non-conforming, non-responsive, conditional or alternate Bids, to clarify contract terms with the Successful Bidder, to require statements or evidence of Bidder's qualifications, including financial statements, and to accept the proposal that in the opinion of the Owner is in its best interest. It is understood that this Bid may not be withdrawn during a period of ninety (90) days after the scheduled time for the receipt of Bids.

**G. BID IS GENUINE.** The undersigned Bidder hereby certifies (a) that this Bid is genuine and is not made in the interest of, or in the behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham Bid; (c) that Bidder has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the Owner.





**SIGNATURE OF BIDDER**

Date: \_\_\_\_\_

If an Individual: (Signature)  
print or type name: \_\_\_\_\_  
doing business as: \_\_\_\_\_

If a Partnership: \_\_\_\_\_  
by: (Signature) \_\_\_\_\_ General Partner  
print or type name: \_\_\_\_\_

If a Corporation: \_\_\_\_\_  
(a \_\_\_\_\_ Corporation)  
by: (Signature) \_\_\_\_\_ print or type  
name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

If Bidder is a joint venturer, all venturers or their authorized agents must sign below.

Name of Joint Venture: \_\_\_\_\_  
If Joint Venture is

If an Individual: (Signature)  
print or type name: \_\_\_\_\_  
doing business as: \_\_\_\_\_

If a Partnership: \_\_\_\_\_  
by: (Signature) \_\_\_\_\_ General Partner  
print or type name: \_\_\_\_\_

If a Corporation: \_\_\_\_\_  
(a \_\_\_\_\_ Corporation)  
by: (Signature) \_\_\_\_\_ print or type  
name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

END OF SECTION

**ATTACHMENT 1 TO THE BID FORM  
UNIT PRICE SUMMARY**

**Cimarron Metropolitan District  
Candelas Filing 1  
Mail Kiosk Relocation  
Pay Item Tabulation**

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Owner: **Cimarron Metropolitan District**  
c/o McGeady Becher  
450 E. 17th Avenue, Suite 400  
Denver, CO 80203

| Item Code                     | Item Description                          | Unit | Qty | Unit Price | Extension          |
|-------------------------------|---|------|-----|------------|--------------------|
| <b>General Items</b>          |   |      |     |            |                    |
| 1                             | Mobilization & Insurance                  | LS   | 1   | \$1,200.00 | \$1,200.00         |
| 2                             | Bonds                                     | LS   | 1   | \$1,044.35 | \$1,044.35         |
| <b>Subtotal General Items</b> |   |      |     |            | <b>\$2,244.35</b>  |
| <b>Mail Kiosk</b>             |   |      |     |            |                    |
| 3                             | Demo Non Resuable Portions of Kiosk       | EA   | 1   | \$3,800.00 | \$3,800.00         |
| 4                             | CMU Base                                  | EA   | 1   | \$2,380.00 | \$2,380.00         |
| 5                             | Precast Concrete Caps                     | EA   | 1   | \$3,890.00 | \$3,890.00         |
| 6                             | Column and Steel Roof                     | EA   | 1   | \$7,897.00 | \$7,897.00         |
| 7                             | Install all other Components not Reusable | EA   | 1   | \$3,357.00 | \$3,357.00         |
| 8                             | Relocate and Install Existing Mailboxes   | EA   | 1   | \$1,800.00 | \$1,800.00         |
| <b>Subtotal Mailbox Kiosk</b> |   |      |     |            | <b>\$23,124.00</b> |
| <b>Total</b>                  |   |      |     |            | <b>\$25,368.35</b> |
| <b>Alternate</b>              |   |      |     |            |                    |
| 9                             | Demo Existing Kiosk                       | EA   | 1   | \$0.00     | \$0.00             |
| 10                            | Install at New Location                   | EA   | 1   | \$0.00     | \$0.00             |
| 11                            | Temporary Solar Lighting                  | EA   | 1   | \$0.00     | \$0.00             |
| 12                            | Permanent Solar Lighting                  | EA   | 2   | \$422.80   | \$845.60           |
| 13                            | Temporary Mailbox Relocation              | EA   | 1   | \$0.00     | \$0.00             |
| 14                            | Concrete pad from Kiosk to Sidewalk       | EA   | 1   | \$5,350.00 | \$5,350.00         |
| 15                            | Footer                                    | EA   | 1   | \$4,292.00 | \$4,292.00         |
| <b>Subtotal Alternate</b>     |   |      |     |            | <b>\$10,487.60</b> |

Contractor Representative:  \_\_\_\_\_

Title: CEO

Date: July 10, 2023

**ATTACHMENT 2 TO THE BID SCHEDULE  
PROJECT SCHEDULE**

## **PROJECT SPECIFICATIONS**

## PROJECT SPECIFICATIONS – GENERAL

Measurement and payment for all unit items included in this contract are delineated in this section.

All materials used, installations and tests performed shall conform to the latest City of Arvada Specifications. If any materials or installations are not specified by the City of Arvada, industry standards shall be used. The Owner or City of Arvada shall be the sole judge of the Industry Standard to be used.

Collectively the unit items presented in the Bid Proposal shall be considered to be all items necessary to complete the Project in accordance with the Contract Documents. Any items not included in the Bid Form, needed to complete the Project according to the Contract Documents, shall be considered incidental to the Contract Price.

As a convenience to the Bidder/Contractor descriptions of certain unit items contain references to incidental material, labor or work that is required to complete the item; however additional items, materials, labor or work may be required to complete the item. These additional items, material, labor or work shall be considered incidental to the unit item. The item shall be measured and paid on the unit basis presented for each item; payment shall be at the contract price per unit of measure, complete and in-place, according to the Contract Documents. Payment at the unit price stated in the Bid Form shall be considered full compensation for furnishing all labor, materials, equipment, incidentals, and any other work, necessary to complete the items in place as specified in the Contract Documents.

Contractor shall protect all existing erosion and sediment control measures installed by others and shall promptly replace or maintain all items disturbed during his work at no additional cost to the Owner. Such Erosion Control items include, but are not limited to concrete washouts, tracking pads, silt fence, erosion control logs, and rock socks. Additionally, the Contractor shall not enter restricted areas within the Project. Any damage or disturbance to existing conditions within or at the restricted areas shall be promptly corrected and returned to original condition by the Contractor at no additional cost to the Owner.

The Contractor shall be reimbursed at cost for all fees and permits required by the City of Arvada and/or any other governmental agency.

### MOBILIZATION AND BONDS

**Mobilization and Insurance.** This work shall include all mobilization of all personnel, equipment, contractor field trailers, field offices and supplies at the project site in preparation for work on the Project. This item shall include the establishment of sanitary and other necessary facilities, and all other costs incurred or labor and operations which must be performed prior to beginning items of work for the Project. It is anticipated this work will require multiple Contractor mobilizations. The Mobilization pay item is intended to be full payment for all mobilizations. Mobilization will be paid according to the following schedule of payments:

| PAYMENT DUE     | PERCENT OF CONTRACT COMPLETE |
|-----------------|------------------------------|
| 50% of Lump Sum | 5%                           |
| 25% of Lump Sum | 50%                          |
| 25% of Lump Sum | 90%                          |

**Bonds** This item will be paid as a Lump Sum item. This item shall include the Contractor's cost for obtaining and maintaining Bonds and Insurance in accordance with the Contract Documents. Bonds shall be paid at 100% in the first Pay Application after Bonds and Insurance Certificates have been submitted, in accordance with the Contract Documents.

**Miscellaneous.** This item will be paid as a Lump Sum item.

Payment will be made under:

| <u>Pay Item</u>               | <u>Pay Unit</u> |
|-------------------------------|-----------------|
| <b>Mobilization/Insurance</b> | <b>Lump Sum</b> |
| <b>Bonds</b>                  | <b>Lump Sum</b> |

END OF SECTION



## PROJECT SPECIFICATIONS – MAIL KIOSK

All pay items shall include labor, materials, equipment, permits, utility coordination and all work necessary to complete the item, complete in place, as shown on the plans and in the specifications. Measurement and payment for each pay item shall be at the unit cost for that item at the quantity actually installed. All of the work necessary to complete the plans is to be included in the pay items. If there is portion of work shown on the plans without a particular pay item, it is assumed to be incidental to all the pay items.

### Mail Kiosk

**Mail Kiosk.** The unit costs for Mail Kiosks are to include but are not limited to the mail kiosk, base concrete, foundation, masonry work, column and steel roof, electrical lighting, pedestal and coordination.

Payment will be made as shown below:

| <u>Unit Item</u>                          | <u>Pay Unit</u> |
|---|-----------------|
| Demo Non Reusable Portions of Kiosk       | Each            |
| CMU Base                                  | Each            |
| Precast Concrete Caps                     | Each            |
| Column and Steel Roof                     | Each            |
| Install all other Components not Reusable | Each            |
| Relocate and Install Existing Mailboxes   | Each            |
| <b><u>Alternate Unit Item</u></b>         |                 |
| Permanent Solar Lighting                  | Each            |
| Concrete Pad from Kiosk to Sidewalk       | Each            |
| Footer                                    | Each            |

END OF SECTION

**CIMARRON METROPOLITAN  
DISTRICT**

**CONTRACT DOCUMENTS  
FOR  
CANDELAS SLOPE FAILURE REPAIR STORM SEWER  
AND DRAINS**

**JURISDICTION: CITY OF ARVADA, COUNTY OF JEFFERSON,  
COLORADO**

**DATE: MAY 2023**

**COPY NO. \_\_\_\_\_**

# **AGREEMENT**

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (this “**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **CIMARRON METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, located in the County of Jefferson, State of Colorado, hereinafter referred to as “**Owner**,” and **CJB’s Excavation**, hereinafter referred to as “**Contractor**.”

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, Owner and Contractor agree as follows:

### **PART 1 CONTRACTOR’S AGREEMENT AND SCOPE OF WORK**

A. Contractor agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all Work required for the construction of the Project in strict compliance with the Contract Documents as herein defined.

### **PART 2 CONTRACT DOCUMENTS**

A. The “**Contract Documents**” which comprise the entire agreement and contract between Owner and Contractor and which are attached to this Agreement and are incorporated herein by this reference, consist of:

1. This Agreement and any Amendments thereto;
2. Performance Bond;
3. Labor and Materials Payment Bond;
4. Certificates of Insurance;
5. Notice of Award;
6. Notice to Proceed;
7. Drawings and specifications consisting of:

**Plans entitled:**

(a) Candelas Filing1A6 Concept Grading, by Martin and Martin Consulting Engineers, dated May 16, 2023, and consisting of 5 sheets.

(b) Candelas Filing 1 Structural Drawings, by Martin/Martin Consulting Engineers, dated April 30, 2012, and consisting of 1 sheet

**Geotechnical reports:**

(a) Candelas, Filing No. 1 Retaining Walls Progress Report, by CTL Thompson, dated April 26, 2023, and consisting of 39 pages.

8. General Conditions and Supplementary Conditions, if any;
  9. All Addenda included within the Contract.
  10. Any Modifications, Change Orders, Field Orders or other such revisions properly authorized after execution hereof.
  11. Documentation submitted by Contractor with Bid and prior to Notice of Award;
  12. Contractor's Bid Form, which is attached hereto and incorporated herein by this reference as **Exhibit A**, (hereafter, "**Contractor's Bid**," the "**Bid**," or the "**Bid Form**").
  13. Contractor's Project Schedule, which is attached hereto and incorporated herein by this reference as **Exhibit B**, (hereafter, "**Project Schedule**");
  14. Specifications and Standards as follows:
    - (a) See **Exhibit C** – Project Specification
  15. Notice of Substantial Completion and Notice of Final Completion and Acceptance; and
  16. All documents contained within the Contract Specifications for the Project.
- B. There are no Contract Documents other than those listed above in this Part 2. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in the General Conditions).
- C. If, and to the extent of any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) any Modifications including, but not limited to Change Orders; (2) this Agreement; (3) the General Conditions; (4) the Supplementary Conditions (if any); (5) any exhibits attached to this Agreement; (6) Addenda, with those of later date having precedence over those of earlier date; (7) the Specifications; and (8) the Drawings.

D. The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

### **PART 3 ENGINEER AND OWNER'S REPRESENTATIVE**

A. The Project has been designed by Martin/Martin (hereinafter called "**Engineer**"), who will assume all duties and responsibilities of Engineer, and who will have the rights and authority assigned to Engineer in the Contract Documents. Engineer will make itself reasonably available to perform the services required of Engineer under the Contract Documents.

B. Independent District Engineering Services (hereinafter called "**Owner's Representative**") will assume all duties and responsibilities of Owner's Representative and will have the rights and authority assigned to Owner's Representative in the Contract Documents. Owner's Representative will make itself reasonably available to perform the services required of Owner's Representative under the Contract Documents. Owner's Representative may, at the direction of Owner, undertake some duties and responsibilities assigned to Engineer.

C. If no person or entity is described in Part 3(b) above, then Owner shall assume all responsibilities for Owner's Representative hereunder.

### **PART 4 AGREEMENT PRICE**

A. For the performance of all Work and completion of the Project as specified in the Contract Documents, Owner shall pay Contractor Two Hundred Fifty Nine Thousand, Three Dollars and Eighty Three Cents, (\$ 259,003.83), in accordance with the Contract Documents. The Agreement Price shall be subject to adjustment for changes in the Drawings and Specifications or for extensions of time to complete performance, if approved by Owner and Contractor as hereinafter provided, and for changes in quantities, if bid on a unit-price basis in the Bid Form, which shall be verified by Engineer. The Agreement Price expressly includes all labor, materials, equipment, and services required by, incidental to, or reasonably inferable from the Work required by this Agreement as necessary to achieve the Owner's intended use for the Project.

### **PART 5 CONTRACT TIME**

A. Contractor shall commence performance on the Project within ten (10) days after receipt of written Notice to Proceed. The Contractor will achieve Substantial Completion (as that term is defined in the General Conditions) of the entire Work by October 15, 2023:

B. Owner and Contractor recognize that TIME IS OF THE ESSENCE of this Agreement and that Owner will suffer financial loss if Project is not substantially completed within the time specified in Part 5 A., above, plus

any extensions thereof granted by Owner in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if Project is not substantially completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall be liable to Owner for liquidated damages until Substantial Completion of the entire Work has been achieved, at the following rates: \$1,000 per day. Unless otherwise agreed in writing by the Parties, Contractor shall achieve Final Completion of the entire Work within thirty (30) days of the date it achieves Substantial Completion.

C. Nothing herein or otherwise shall limit Owner's rights under the Contract Documents for any matter other than delay, including (but not limited to) Owner's rights in the event of termination, or Owner's right to pursue a claim for damages due to defective or non-conforming Work or for Contractor's breach of contract. For the avoidance of doubt, nothing herein shall impair or limit Owner's rights to indemnity and defense under the Contract Documents.

## **PART 6 PAYMENT PROCEDURES**

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit an Application for Payment for the preceding month, in accordance with the General Conditions. Applications for Payment will be reviewed and processed by Engineer and Owner's Representative as provided in the General Conditions.

B. Subject in all events to the following retainage provisions and the other rights of the Owner to retain amounts, Owner shall make progress payments on the basis of Contractor's Applications for Payment, as recommended by Owner's Representative, by the end of the following month (the "**Due Date**").

1. If, in the opinion of the Owner, the Contractor is satisfactorily performing this Agreement, progress payments shall be in an amount equal to ninety-five percent (95%) of the calculated value of completed Work, less the aggregate payments previously made. If, in the opinion of Owner, satisfactory progress is not being made on the Project, or if a claim is filed under Section 38-26-107, Colorado Revised Statutes, Owner may retain such additional amounts as may be deemed reasonably necessary by Owner to assure completion of the Work or to pay such claims and any engineer's and attorney's fees reasonably incurred or to be incurred by Owner in defending or handling such claims. Subject to the foregoing, the withheld percentage of the Agreement Price may be retained until this Agreement is completed satisfactorily and the Project is finally

accepted by Owner in accordance with the provisions of the Contract Documents. Progress payments shall not constitute final acceptance of the Work.

2. Payments will be made for materials stored on-site in accordance with Part 14.01 B of the General Conditions.

3. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., Owner shall make final payment, including release of any retainage, to Contractor as recommended by Engineer, and in accordance with the Contract Documents and Section 38-26-107, C.R.S., within sixty (60) days.

C. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. ("**Contractor's Bonds and Lien on Funds**"), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. ("**General Mechanics' Liens**"). Nevertheless, to the extent that any portion of the Project, the underlying property, or the improvements thereon, is/are subject to the assertion of a mechanic's lien under the General Mechanic's Liens statute, then Contractor hereby forever waives and releases any and all rights, which may now or heretofore exist or accrue, to record a lien thereon for any work or services performed, materials or equipment furnished, or labor supplied, regardless of whether such services, work, materials, equipment, or labor were required by the Contract Documents, to the maximum extent allowable by law. Contractor further agrees that all debts owed by Contractor to any third party relating to the goods or services covered by this waiver of lien rights have been paid or will be timely paid. Apart from their right to timely and properly assert claims against the Performance Bond or Labor and Materials Payment Bond required hereunder or under C.R.S. § 38-26-106, the sole remedy of Contractor's subcontractors and suppliers, and any other person, as defined in section 2-4-401(8), C.R.S., that has furnished labor, materials, sustenance, or other supplies used or consumed by a contractor or his or her subcontractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor, as against the Owner, the Project, the underlying property, or the improvements thereon, shall be to file a verified statement of claim before the time of final settlement pursuant to C.R.S. § 38-26-107. No Subcontractor, laborer, supplier, nor any other person for whom Contractor is responsible in connection with this Agreement shall have the right to lien the Project or the real property underlying the Project, any such rights being expressly waived.

D. Contractor agrees to require each of its Subcontractors and suppliers (at all tiers) to expressly incorporate Part 6, Subparagraph C of this



Agreement into their respective subcontracts and/or purchase orders, with the word "Contractor" being substituted for the name of such Subcontractor and/or supplier. This obligation shall represent a material term of this Agreement. Upon Owner's written request, Contractor shall provide copies of its subcontracts and/or purchase orders (whether executed or unexecuted) to Owner. Owner reserves the right (but not the obligation) to verify that such subcontracts and/or purchase orders expressly incorporate the acknowledgments, waivers, and releases of Part 6, Subparagraph C of this Agreement.

E. Contractor shall defend, indemnify, and hold harmless the Owner, from and against any and all General Mechanics' Liens recorded by Contractor, or by any Subcontractors engaged by Contractor, directly or indirectly, for any work or services performed, materials or equipment supplied, or labor furnished in relation to or arising out of this Agreement.

## **PART 7      DEFAULT**

**7.01**      If any of the events or circumstances described in Section 7.02 occur, and the Contractor fails within a seven (7) calendar day period after receipt of notice from the Owner to commence and continue correction of such events or circumstances with diligence and promptness, the Owner may, without prejudice to other remedies in the Contract Documents, in equity, or at law, undertake any of the remedies described in Section 7.03.

**7.02**      Without limiting any other right, remedy, or term under the Contract or at law, any one or more of the following shall constitute a default or an event of default by the Contractor:

A.      The Contractor fails or refuses to comply with or perform, in whole or in part, any term, requirement, or condition of the Agreement or the Contract Documents;

B.      The Contractor fails to pay or cause to be paid (as applicable) any of its Subcontractors, other subtiers of any level, supervisory staff, or work force, or for any materials, labor, equipment, or other expenses incurred in the performance of the Work, when such payments are due and in accordance with the respective agreements requiring such payment and/or any and all applicable laws requiring the same, including (without limitation) C.R.S. § 24-91-103(2);

C.      The Contractor becomes insolvent, makes or attempts to make any assignment for the benefit of creditors, commences any proceeding in bankruptcy, or any such proceedings are commenced against it and are not discharged within thirty days of such commencement;

D.      The Contractor abandons any or all of the Work, or reduces its management, supervisory staff, or work force to a level that may not allow

the Contractor to maintain the appropriate progression of the Work according to the Project Schedule and/or the otherwise appropriate provision of services or the Work for the timely and proper completion of the Project, as determined by the Owner (including services during pre-construction as well as during construction), and including without limitation Work being performed prior to Substantial Completion as well as following Substantial Completion and until all Punch List items are complete and the Project achieves Final Completion;

E. The Contractor fails to achieve Final Completion of the Work (including, without limitation, the completion of all Punchlist Items) within thirty (30) calendar days from the date of Substantial Completion;

F. The Contractor fails to perform this Agreement or the Work in accordance with applicable laws, ordinances, codes, statutes, rules and regulations, or the lawful orders of any governmental authorities having jurisdiction over the Project; or

G. Contractor is otherwise in breach of any material term(s) of the Contract Documents.

### **7.03**

If the Contractor is ever in default or an event of default exists the Owner may, without limiting any other right, remedy, or term under the Contract or at law, elect to do any one or more of the following:

A. Issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, provided that the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity;

B. Direct the Contractor to comply with the terms of the Agreement and/or Contract Documents;

C. Direct the Contractor to remove any defective or hazardous material or Work which the Contractor controls, which the Contractor shall do at its sole cost;

D. Accept any non-conforming work or materials, in which event the Owner shall be entitled to a reduction in Agreement Price for the reduced value thereof;

E. Make payments directly to Subcontractors, other subtiers of any level, supervisory staff, or work force, to satisfy the Contractor's obligations for any materials, labor, equipment, or other expenses incurred in the performance of the Work;

- F. Withhold any further payments to the Contractor or to any Subcontractor until the cause for the default or the event of default is cured to the satisfaction of the Owner;
- G. Terminate the Contract pursuant to Section 15.02 of the General Conditions;
- H. Engage separate contractors to perform, repair, or complete the Work required by the Contract Documents, or to perform Contractor's warranty obligations under the Contract Documents; and/or
- I. Exercise any other action or seek any other remedy to which the Owner may be entitled under the Contract Documents, at law, or in equity.

**7.04** The Owner's choice of a remedy under Section 7.03 hereof shall not be construed or interpreted as a waiver of any other rights or remedies provided to the Owner under the Contract Documents, at law, or in equity, against the Contractor, its surety, or any other party. Owner, at its option, may choose more than one remedy or choose one or more particular remedies at different times, without prejudice to any other remedies, and Owner may exercise any remedies in any sequence or combination.

**7.05** The Contractor shall pay, immediately upon demand, all costs, losses, damages, and expenses, including, without limitation, all administrative, management, overhead, and other costs and expenses, as well as all reasonable attorneys' fees, costs, and expenses (collectively, "Default Costs"), incurred by the Owner in connection with any default by the Contractor or exercise of any right or remedy upon the Contractor's default. Payment shall be due immediately upon Contractor's receipt of written demand, and interest shall accrue at a rate of 1.5% per month on any amounts not paid by Contractor within thirty (30) days. If the Contractor does not pay the Default Costs immediately, the Owner may deduct them from any unpaid portion of the Contract Sum and the Agreement Price, including (without limitation) any retainage.

## **PART 8 CONTRACTOR'S REPRESENTATIONS**

- A. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  1. Contractor is familiar with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of Project.
  2. Contractor has carefully studied the Site and has performed all necessary investigations, tests, and subsurface investigations to

define the latent physical conditions of the construction Site affecting cost, progress, or performance of Project.

3. Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data as Contractor deems necessary for the performance of Project at the Agreement Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.

4. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

5. Contractor has given Engineer and Owner's Representative written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

## **PART 9 OWNER'S REPRESENTATIONS**

A. Owner makes the following representations:

1. This Agreement is subject to the provisions of Section 24-91-103.6, C.R.S., as amended. Owner has appropriated money equal to or in excess of the Agreement Price. This Agreement is subject to annual appropriation by Owner.

2. Owner will not issue any Change Order or other form of order or directive by Owner requiring additional compensable work to be performed by Contractor, which work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement Price unless Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. By executing a Change Order which causes an increase in the Agreement Price, Owner represents to Contractor that Contractor is being given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made. Any claim for additional compensation shall be in full compliance with Section 24-91-103.6(4), C.R.S., as amended.

## **PART 10 MISCELLANEOUS**

A. Terms used in this Agreement which are defined in Part 1 of the General Conditions shall have the meanings indicated in the General Conditions.

B. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of Owner, specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

C. The terms of this Agreement, and all covenants, agreements, and obligations contained in the Contract Documents shall inure to and be binding upon the partners, legal representatives, successors, heirs, and permitted assigns of the parties hereto.

D. If any term, section or other provision of the Contract Documents shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of the Contract Documents, and to this end, each term, section and provision of the Contract Documents shall be severable.

E. No waiver by either party of any right, term or condition of the Contract Documents shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of the Contract Documents.

F. None of the remedies provided to either party under the Contract Documents shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable in accordance with Part 21 of the General Conditions. The Contract Documents shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

G. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

H. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and superseded by, the Contract Documents.

I. In the event any provision of this Agreement conflicts with any provision of any other Contract Document, then the provisions of this Agreement shall govern and control such conflicting provisions.

J. Unless otherwise expressly provided, any reference herein to “days” shall mean calendar days. All times stated in the Contract Documents are of the essence.

K. Contractor authorizes the Owner to provide to any person any pertinent information, personal or otherwise, regarding the Contractor’s performance with respect to the Contract Documents and releases all parties from liability for any damage that may result from the Owner’s furnishing such information to others.

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(Signatures appear on following pages)



**CONTRACTOR:**

**CJB's Excavation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

CONTRACTOR'S LICENSE NO.: \_\_\_\_\_

AGENT FOR SERVICE OF

PROCESS: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )  
\_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**END OF SECTION**



## **PERFORMANCE BOND**

## Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and Travelers\*, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and firmly bound unto the Cimarron Metropolitan District, as Obligee, in the sum Two Hundred Fifty Nine Thousand, Three Dollars and Eighty Three Cents, (\$259,003.83), for the payment of which penal sum, well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed an Owner-Contractor Agreement dated \_\_\_\_\_, for the construction of the Candelas Slope Failure Repair Storm Sewer and Drains (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform said Contract, including a two (2) **year** warranty period described in the Contract Documents, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives any notice of any alteration of the Contract or extension of the Contract Time, as stated in the Contract, as may be agreed upon by the Obligee and the Contractor and embodied in any written Change Order whether or not it increases the total price of the Project.

Whenever the Principal shall be in default under the Contract and is declared so by the Obligee and the Obligee has performed all obligations under the Contract, the Surety may (1) remedy the default, or (2) complete the Contract in accordance with its terms and conditions, or (3) obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest, qualified, responsive and responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest, qualified, responsive and responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) funds sufficient to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this Bond must be instituted before the expiration of **two (2) years** from the date final payment under the Contract is due. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the

Obligee for any judgements, and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default, together with interest thereon at the rate of eight percent (8%) per annum from the date of judgment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

(Signatures appear on following pages)

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26,101 et seq., C.R.S. This bond must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute the Bond.

**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 Attached)

**LABOR AND MATERIALS PAYMENT BOND**

## Labor and Materials Payment Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned, \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and bound firm unto Cimarron Metropolitan District, as Obligee, in the penal sum of Two Hundred Fifty Nine Thousand, Three Dollars and Eighty Three Cents (\$ 259,003.83), together with interest at the rate of eight percent (8%) per annum on all payments becoming due in accordance with the Contract (defined below) from the time such payments shall become due until such payment shall be made, for the payment of which sum well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed a Contract dated \_\_\_\_\_, for the construction of the Candelas Slope Failure Repair Storm Sewer and Drains (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for the use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant shall be defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract; labor and material being construed to include, but not be limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant, as herein defined, who has not been paid in full before the expiration of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for sums as may be justly due claimant, together with interest at the rate of eight percent (8%) per annum, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgments, and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default.

3. No suit or action shall be commenced hereunder by any claimant:

- a) Unless the claimant, other than one having a direct contract with the Principal, shall have given written notice to the Obligee and either the Principal or the Surety within six (6) months after such claimant did or performed the last of the work or labor, or furnished the last of the material for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the Project is located, save that such service need not be made by a public officer.
- b) After the expiration of **one (1) year** following the date on which the Principal ceased work on the above-described Project, it being understood, however, that, if any limitation embodied in this Bond is prohibited by any law controlling construction hereof, such limitation shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.
- c) Other than in a state court of competent jurisdiction in and for the county of the state in which the Project, or any part thereof, is situated, and not elsewhere.
- d) In addition, if the Principal or its subcontractor shall fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such Principal or its subcontractor in performance of the Contract or shall fail to duly pay any person who supplies laborers, rental machinery, tools or equipment in the prosecution of the Work, then the Surety shall pay the same in an amount not exceeding the sum specified in this Bond together with interest at a rate of eight percent per annum.
- e) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of statutory claims which may be filed of record for the Project, whether or not the claim or the amount of such claim be presented under and against this Bond.



Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26-101 et. seq., C.R.S., and must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute Bond.

**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 Attached)

**END OF SECTION**

**NOTICE OF AWARD**

# NOTICE OF AWARD

**Cimarron Metropolitan District  
370 Interlocken Blvd Suite 500  
Broomfield, CO 80021**

**July 20, 2023**

**TO: CJB’s Excavation  
325 Ravine Way  
Lochbuie, CO 80603**

The Owner, having duly considered the Bid Form submitted on June 16, 2023 for the Work covered by the Bid and Contract Documents titled Candelas Slope Failure Repair Storm Sewer and Drains, for the amount of Two Hundred Fifty Nine Thousand, Three Dollars and Eighty Three Cents (\$259,003.83), and it appearing that the price and other information in your Bid Form is fair, equitable and to the best interest of the Owner, the offer in your Bid Form is hereby accepted.

In accordance with the terms of the Contract Documents, you are required to execute the Agreement within ten (10) consecutive days from receipt of the Agreement.

In addition, you are required to furnish at said time your Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies evidencing compliance with the requirements for insurance as stated in the Contract Documents.

The Bid Security submitted with your Proposal will be returned upon execution of the Agreement, furnishing of the required Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies within the time limit specified. In the event that you should fail to execute the Agreement and provide the executed Performance Bond and Labor and Materials Payment Bond within the time limit specified, said security will be retained by the Owner as liquidated damages and not as a penalty for the delay and extra work caused thereby.

You are required to return an acknowledged copy of this Notice of Award to Owner.

\_\_\_\_\_  
Cimarron Metropolitan District

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF AWARD:**

Receipt of the above Notice of Award is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
CJB’s Excavation

By: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTICE TO PROCEED**

**NOTICE TO PROCEED**

\_\_\_\_\_, Colorado  
Date: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby authorized to proceed on \_\_\_\_\_, 20\_\_\_\_, or within ten (10) consecutive calendar days thereafter, with the Work as set forth in the Contract Documents.

You are to notify the Engineer forty-eight (48) hours before starting work.

**CIMMARON METROPOLITAN DISTRICT**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE TO PROCEED:**

Receipt of the above Notice to Proceed is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**END OF SECTION**

## **DRAWINGS, PLANS, AND/OR REPORTS**

## **CIMARRON METROPOLITAN DISTRICT CANDELAS SLOPE FAILURE REPAIR STORM SEWER AND DRAINS**

### **General Description and Scope of Work:**

The Work generally consists of furnishing all labor, materials, equipment, and any and all other items necessary to complete the Candelas Slope Failure Repair Storm Sewer and Drains Project, in accordance with Contract Documents including the plans and specifications.

A description of the Work to be performed includes but is not limited to the excavation, trench boxes, backfill, storm sewer pipe installation and reinstallation of reusable pipe, manhole and inlet construction, underdrain, interceptor drains, wall drain connection stub, cutoff wall installation and irrigation service line extension. Coordination with geotechnical representative on field changes and any and all other work necessary to complete the project in accordance with Contract Documents including the plans and specifications.

### **Plans:**

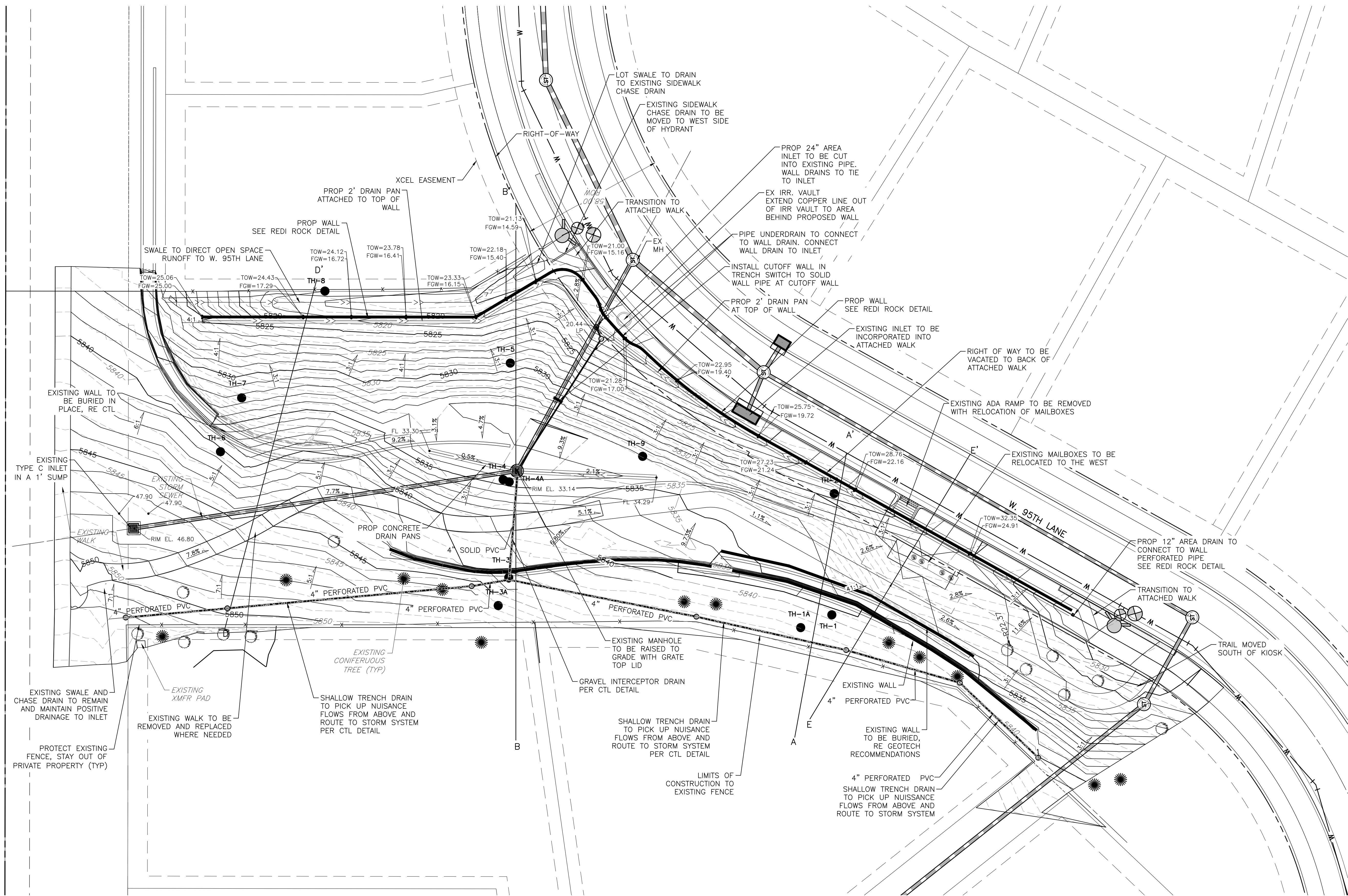
#### **Plans entitled:**

- (a) Candelas Filing1A6 Concept Grading, by Martin and Martin Consulting Engineers, dated May 16, 2023, and consisting of 5 sheets.
- (b) Candelas Filing 1 Structural Drawings, by Martin/Martin Consulting Engineers, dated April 30, 2012, and consisting of 1 sheet

#### **Geotechnical reports:**

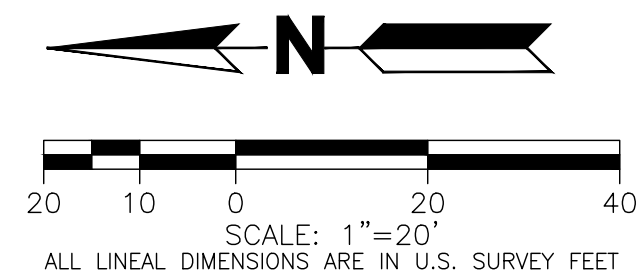
- (a) Candelas, Filing No. 1 Retaining Walls Progress Report, by CTL Thompson, dated April 26, 2023, and consisting of 39 pages.





**NOTES:**

1. GRAVEL INTERCEPTOR DRAIN TO BE FIELD FIT BASED ON CTL OBSERVATIONS DURING CONSTRUCTION
2. ALL TRENCHES TO BE BACKFILLED AT THE END OF THE DAY



**CANDELAS FILING NO. 1  
 SLOPE STABILITY**

**CITY OF ARVADA**

GRADING

| No. | Issue / Revision | Date     | Name |
|-----|------------------|----------|------|
| 1   | FOR REVIEW       | 11/16/22 | DAK  |
| 2   | FOR REVIEW       | 04/18/23 | DAK  |
| 3   | FOR BID          | 05/16/23 | DAK  |

|                     |           |
|---------------------|-----------|
| Job Number          | CIMARRON  |
| Project Manager     | D. KUNTZ  |
| Design By           | D. KUNTZ  |
| Drawn By            | J. CLAMP  |
| Principal In Charge | D. LOVATO |

THE DESIGNS SHOWN HEREIN INCLUDING ALL TECHNICAL DRAWINGS, SPECIFICATIONS, NOTES, AND CALCULATIONS ARE THE PROPERTY OF MARTIN/MARTIN CONSULTING ENGINEERS AND CAN NOT BE COPIED, REPRODUCED, OR COMMERCIALLY EXPLOITED IN WHOLE OR IN PART WITHOUT THE SOLE AND EXPRESS WRITTEN PERMISSION FROM MARTIN/MARTIN, INC.

Sheet Number:

**1  
 OF 4**

**CANDELAS FILING NO. 1**  
**SLOPE STABILITY**  
**CITY OF ARVADA**

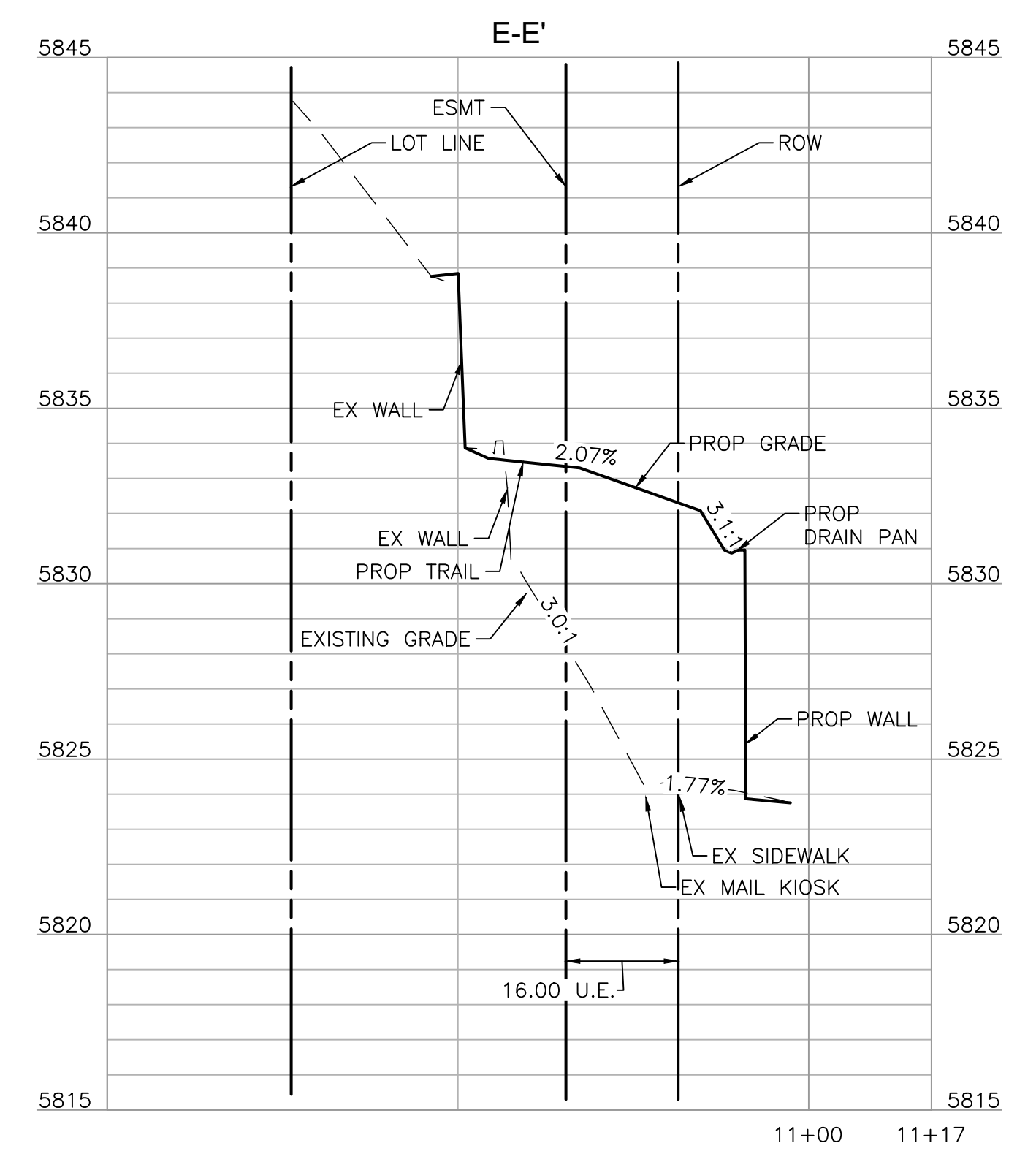
**CROSS SECTIONS**

| No. | Issue / Revision | Date     | Name |
|-----|------------------|----------|------|
| 1   | FOR REVIEW       | 11/16/22 | DAK  |
| 2   | FOR REVIEW       | 04/18/23 | DAK  |
| 3   | FOR BID          | 05/16/23 | DAK  |

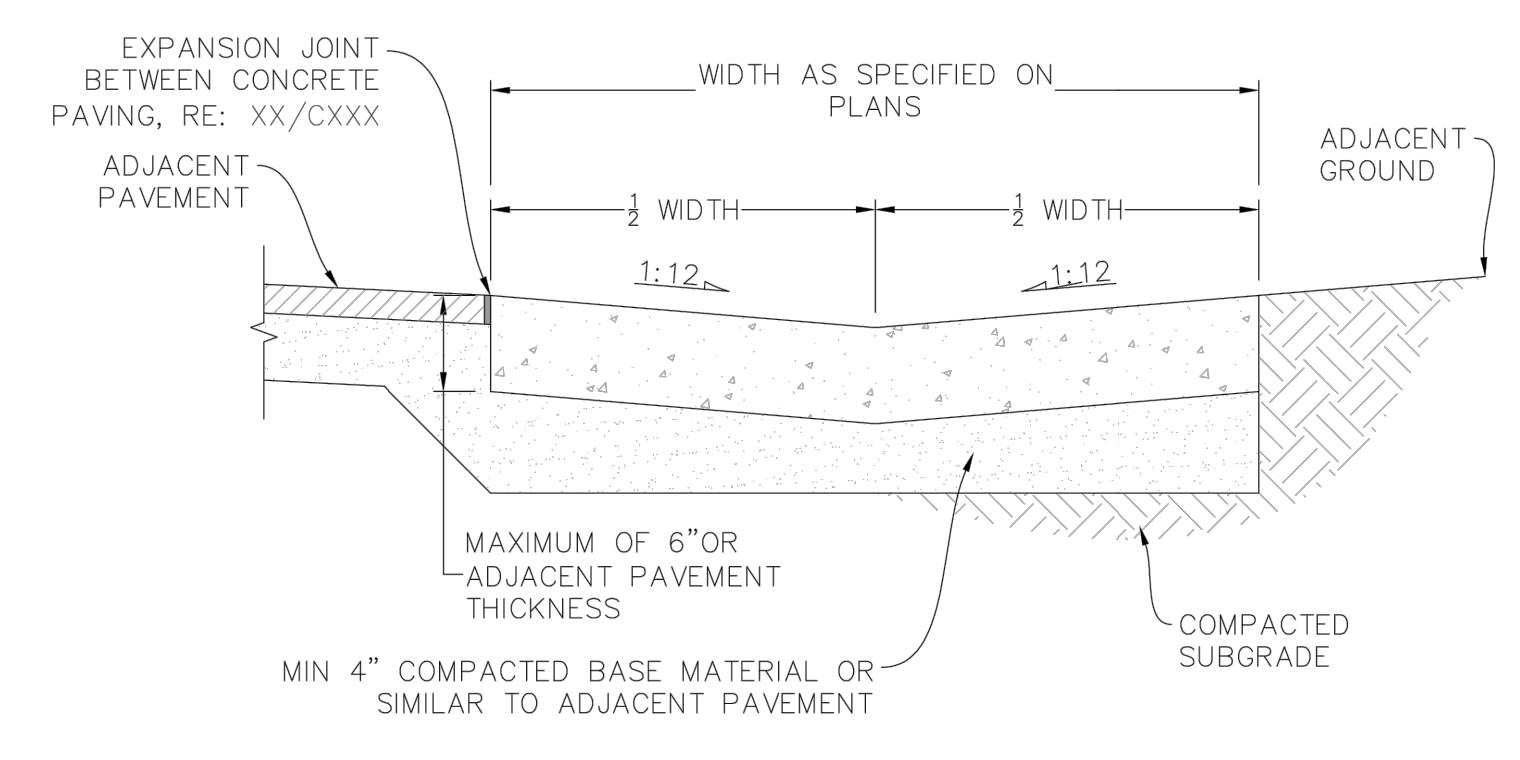
|                     |           |
|---------------------|-----------|
| Job Number          | CIMARRON  |
| Project Manager     | D. KUNTZ  |
| Design By           | D. KUNTZ  |
| Drawn By            | J. CLAMP  |
| Principal In Charge | D. LOVATO |

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Sheet Number:

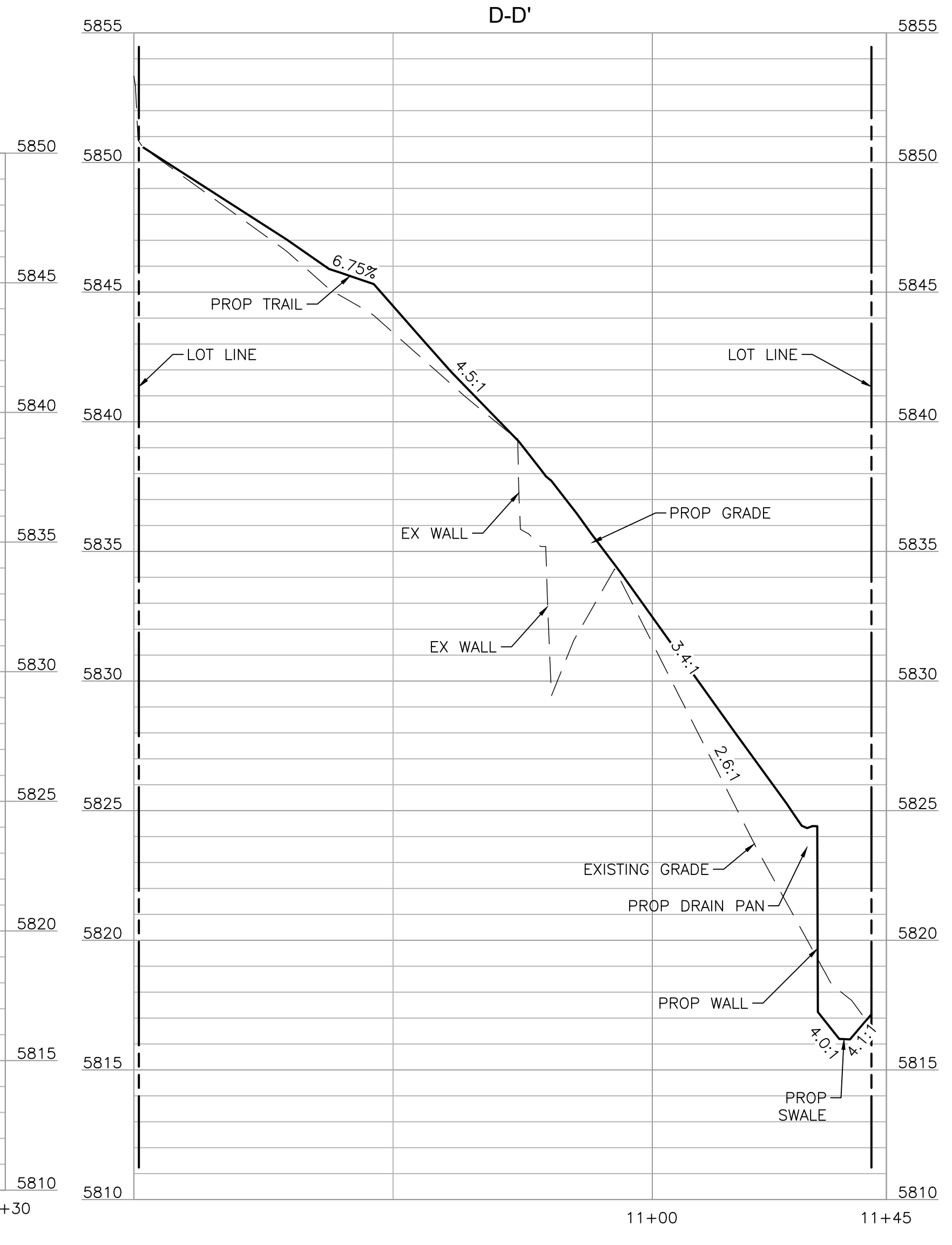


**E-E'**  
N.T.S.

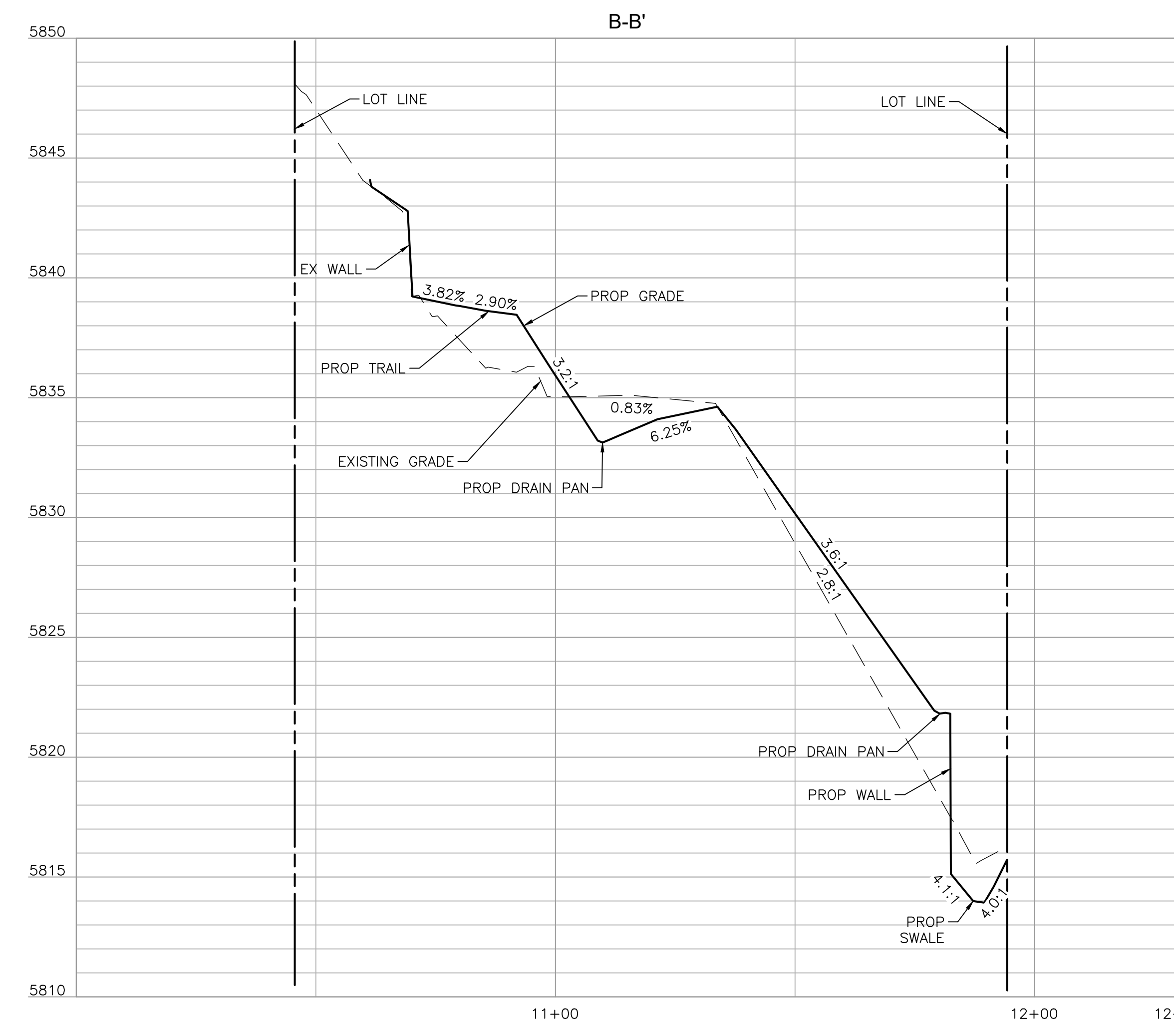
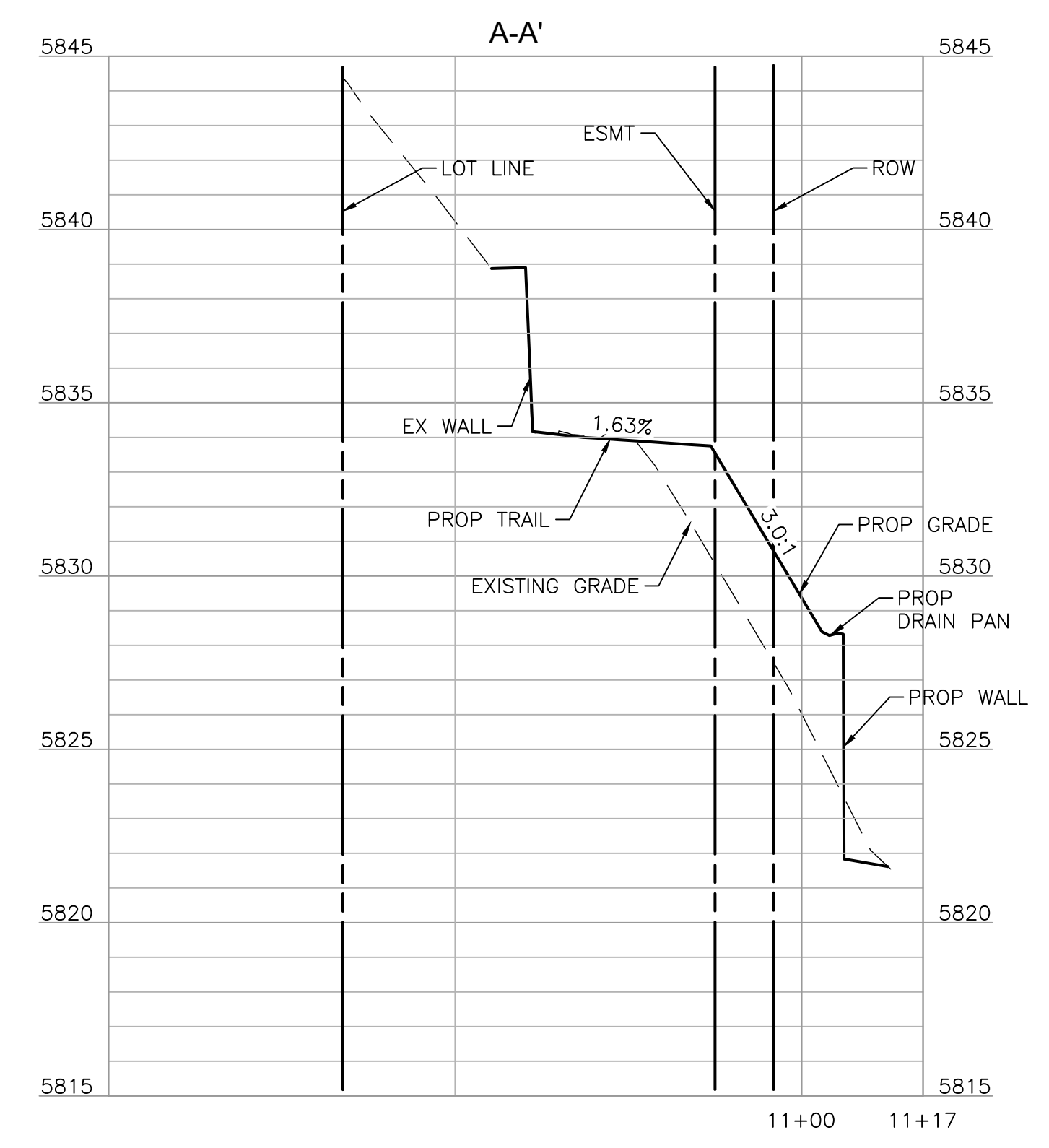


- NOTES:**
- CONTRACTION JOINT (XX/CXXX) TO BE SPACED MAXIMUM OF 10' AND EXPANSION JOINTS ARE TO BE EVERY 100' (XX/CXXX)
  - PAN THICKNESS TO BE MAXIMUM OF EITHER 6" OR ADJACENT PAVEMENT THICKNESS

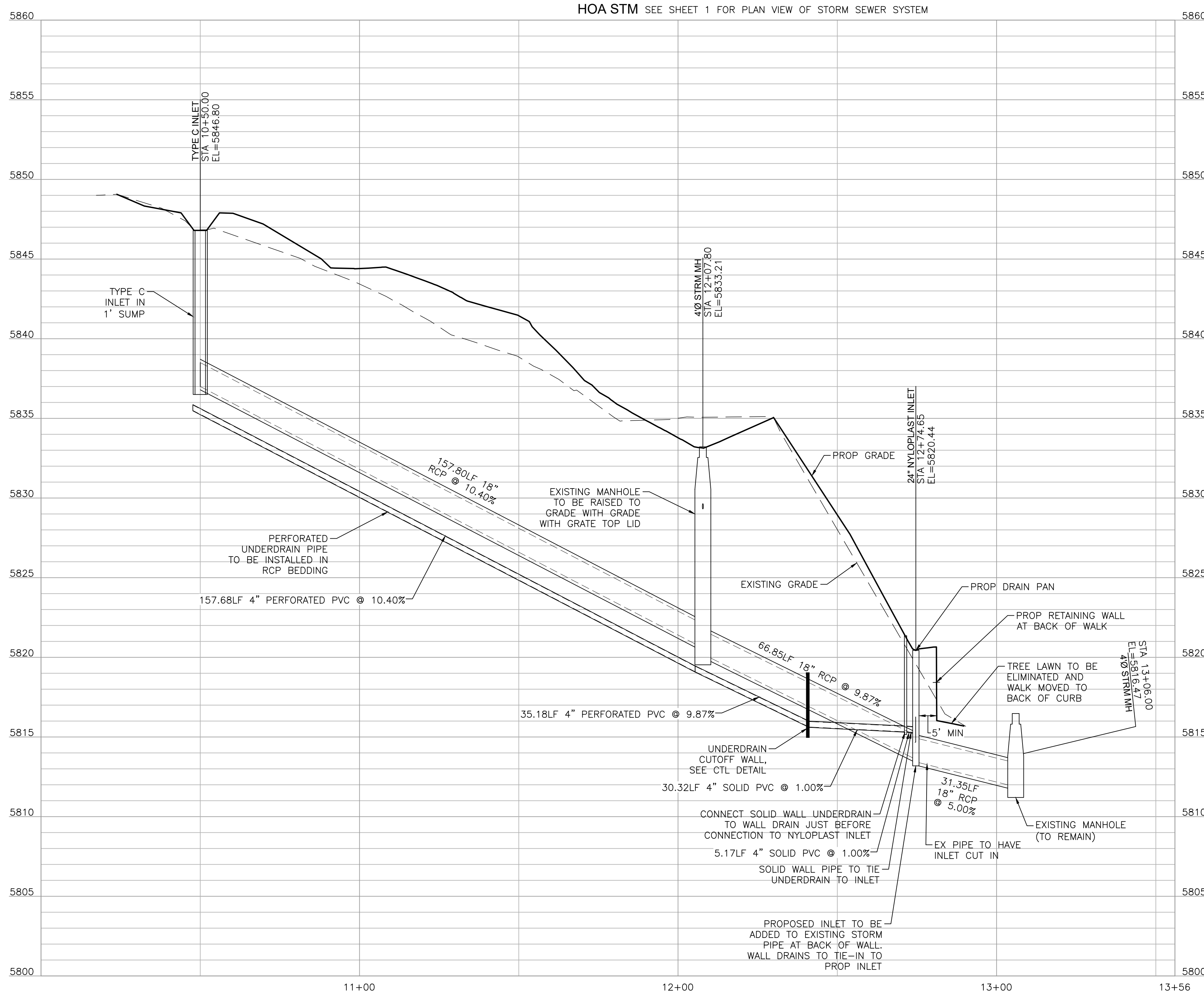
**CONCRETE VALLEY PAN**  
N.T.S.



- NOTES:**
- GRAVEL INTERCEPTOR DRAIN TO BE FIELD FIT BASED ON CTL OBSERVATIONS DURING CONSTRUCTION
  - ALL TRENCHES TO BE BACKFILLED AT THE END OF THE DAY

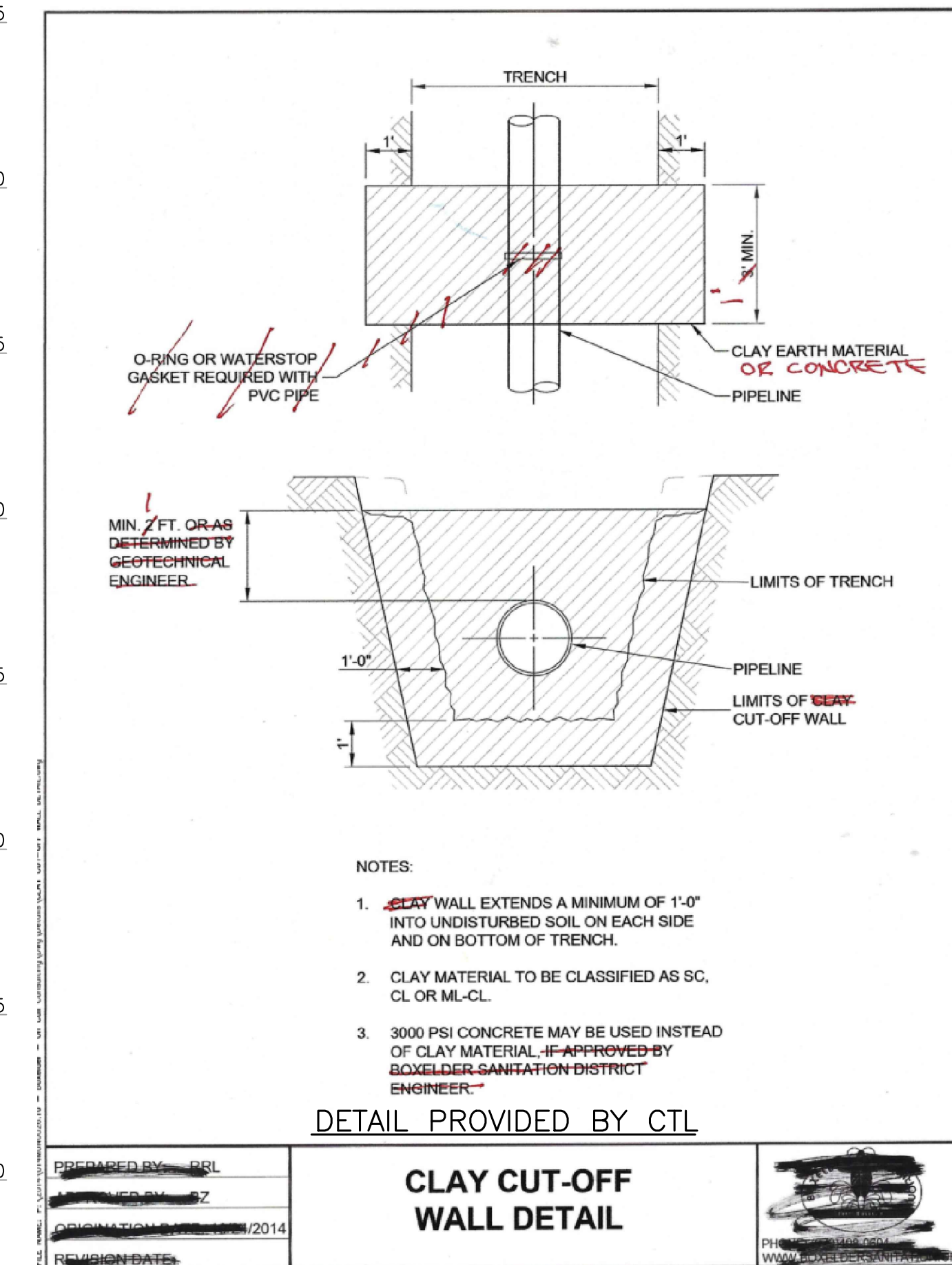






**QUANTITIES:**

1. EARTHWORK CUT TO FILL - 1538 CY FILL
2. REMOVE AND REPLACE DAMAGED WALL (PER CTL RECOMMENDATIONS)
3. SHALLOW SLOPE INTERCEPTOR DRAIN - 389.44 LF
4. 4" STORM CLEANOUT - 8 EA
5. GRAVEL INTERCEPTOR DRAIN - 45 LF
6. 18" RCP (REUSE IF ACCEPTABLE TO ARVADA INSPECTOR) - 224.65 LF
7. 48" DIA MANHOLE (REUSE IF ACCEPTABLE TO ARVADA INSPECTOR) - 1 EA
8. PROPOSED 4" PERF STORM SEWER BEDDING UNDERDRAIN - 582.30 LF
9. PROPOSED 4" SOLID STORM SEWER BEDDING UNDERDRAIN - 79.95 LF
10. PROPOSED 24" NYLOPLAST DRAIN BASIN - 1 EA
11. PROPOSED WALL 2352.24 FACE FOOT
12. PROPOSED WALL DRAIN (4" PERF) - 399 LF
13. PROPOSED WALL DRAIN (4" SOLID) - 399 LF
14. PROPOSED 2' CONCRETE DRAIN PAN - 488.63 LF
15. PROPOSED 12" NYLOPLAST DRAIN BASIN - 1 EA
16. RELOCATE EXISTING CHASE DRAIN - 1 EA
17. RELOCATE EXISTING MAILBOX KIOSK - 1 EA
18. PROPOSED ATTACHED 5' WIDEWALK - 278 LF
19. REMOVED EX ADA RAMP - 1 EA
20. IRRIGATION EXTENSION BEYOND PROPOSED WALL - 1 LS



**NOTES:**

1. GRAVEL INTERCEPTOR DRAIN TO BE FIELD FIT BASED ON CTL OBSERVATIONS DURING CONSTRUCTION
2. ALL TRENCHES TO BE BACKFILLED AT THE END OF THE DAY

CANDELAS FILING NO. 1  
 SLOPE STABILITY

CITY OF ARVADA  
 STORM PROFILE

| No. | Issue / Revision | Date     | Name |
|-----|------------------|----------|------|
| 1   | FOR REVIEW       | 11/16/22 | DAK  |
| 2   | FOR REVIEW       | 04/18/23 | DAK  |
| 3   | FOR BID          | 05/16/23 | DAK  |

|                     |           |
|---------------------|-----------|
| Job Number          | CIMARRON  |
| Project Manager     | D. KUNTZ  |
| Design By           | D. KUNTZ  |
| Drawn By            | J. CLAMP  |
| Principal in Charge | D. LOVATO |

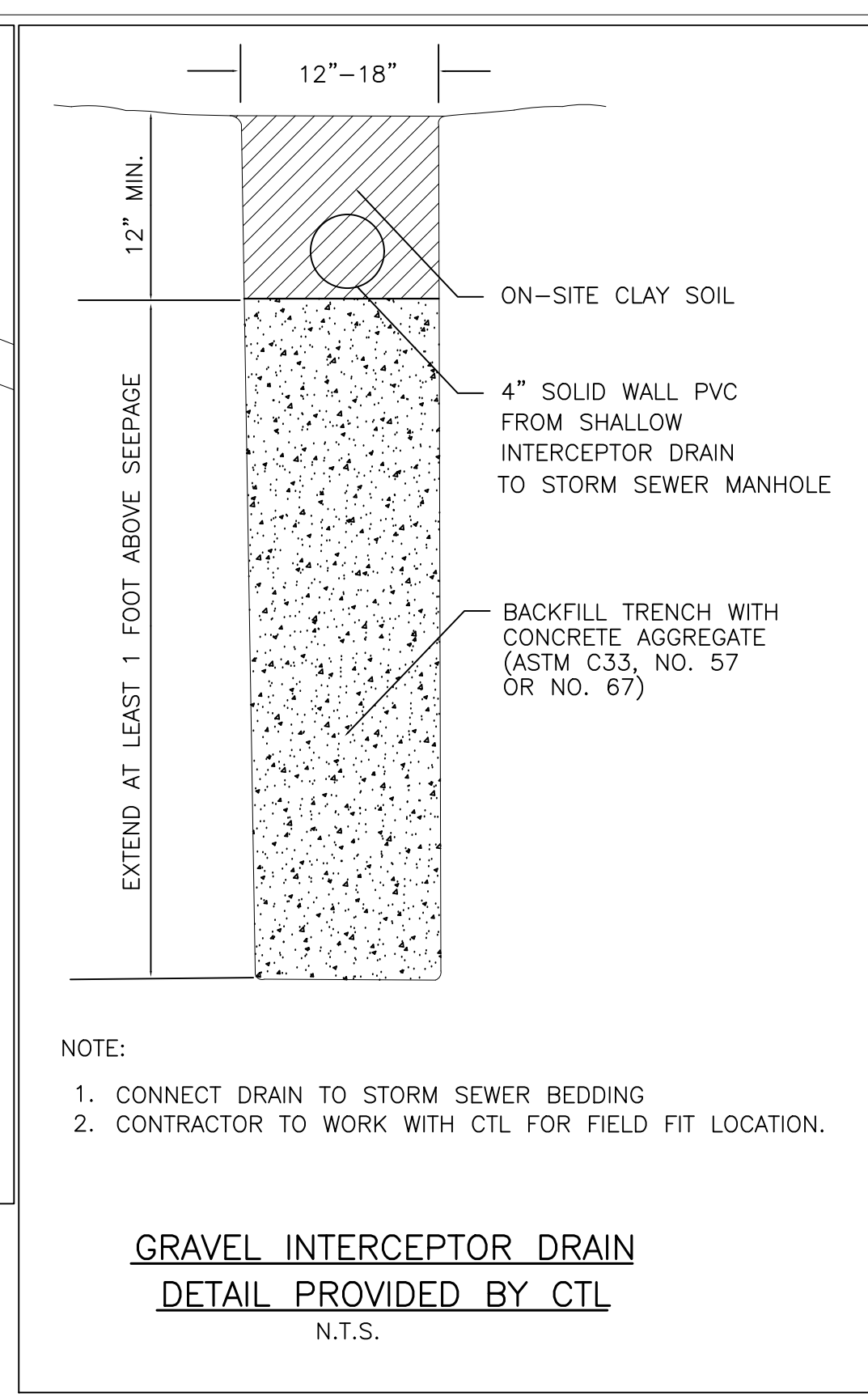
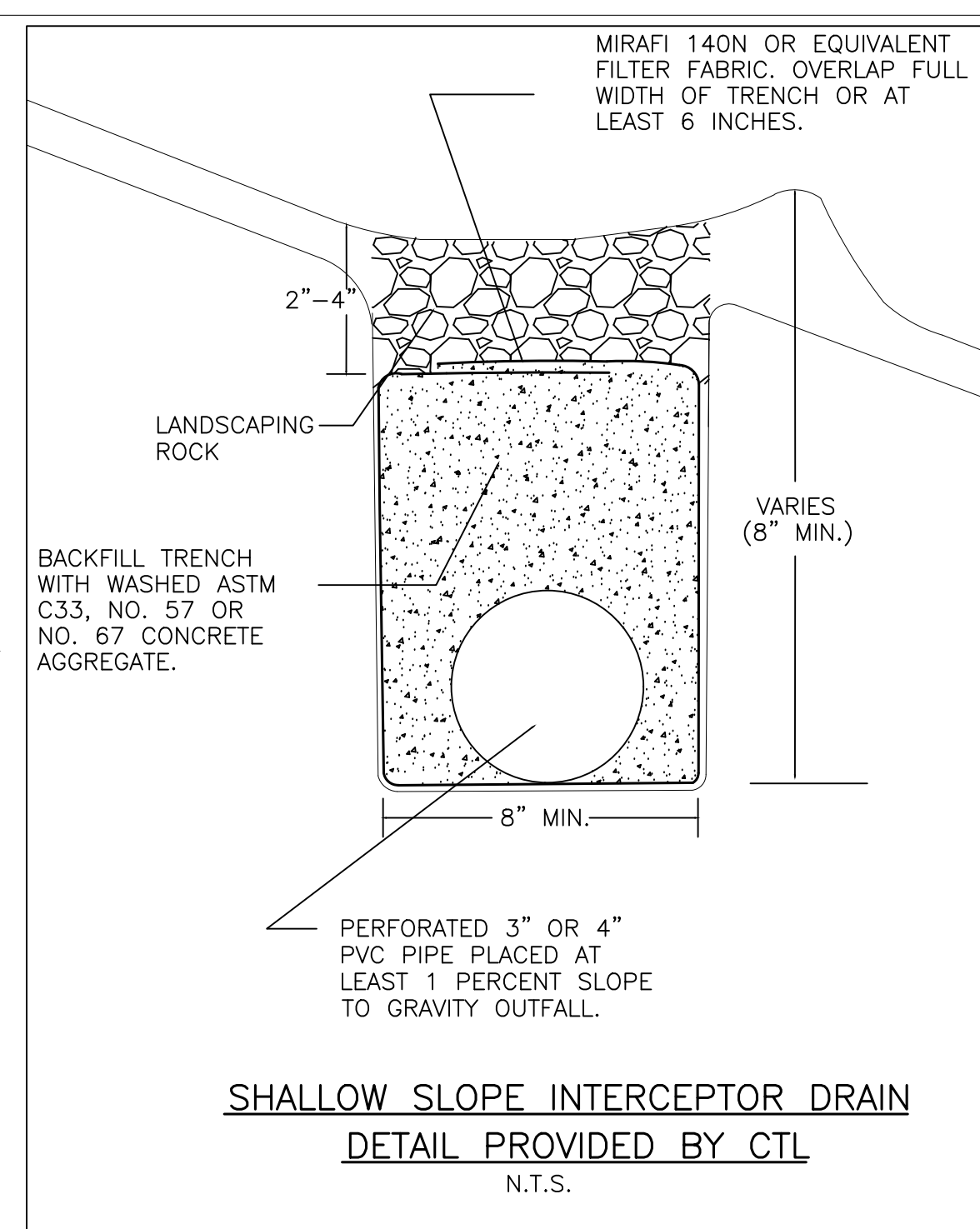
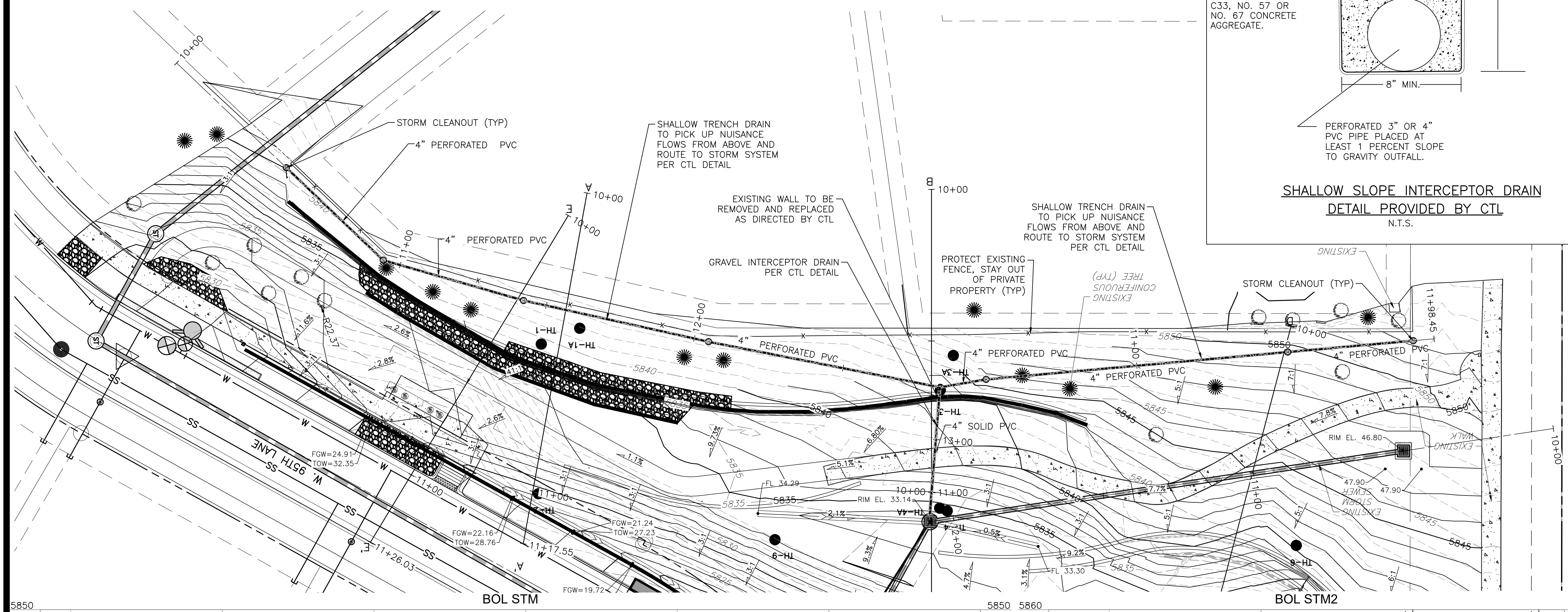
Sheet Number:

**3**  
 OF 4

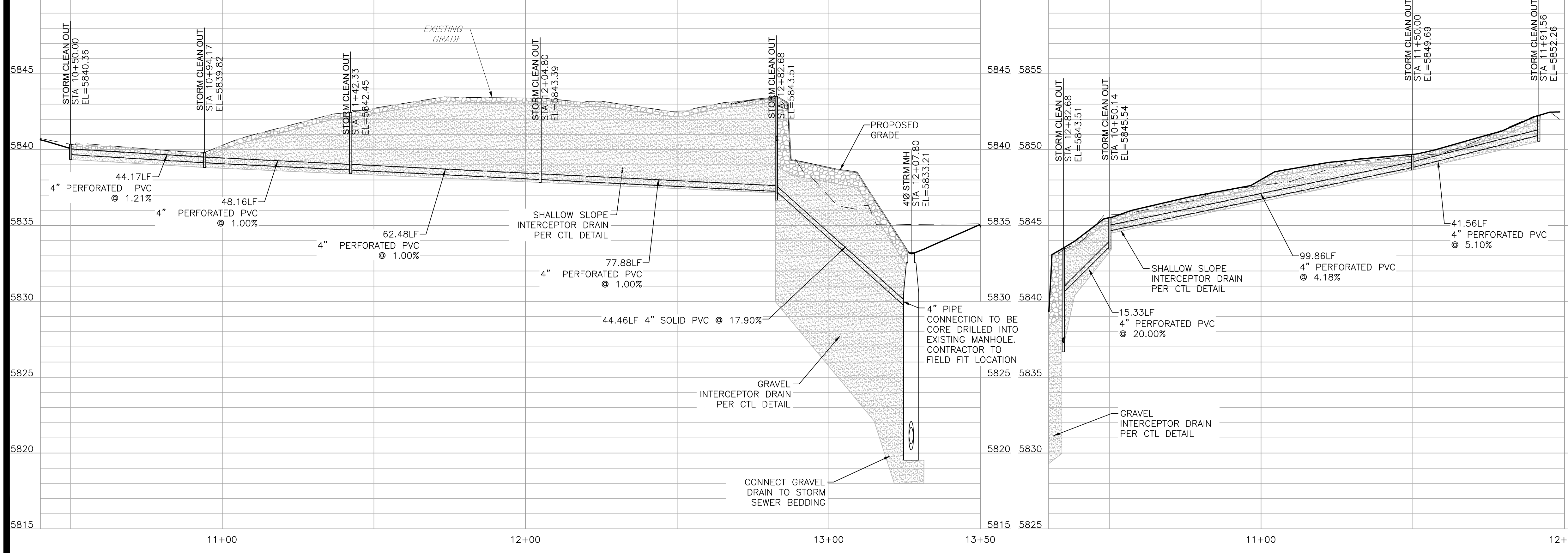
NOT FOR CONSTRUCTION



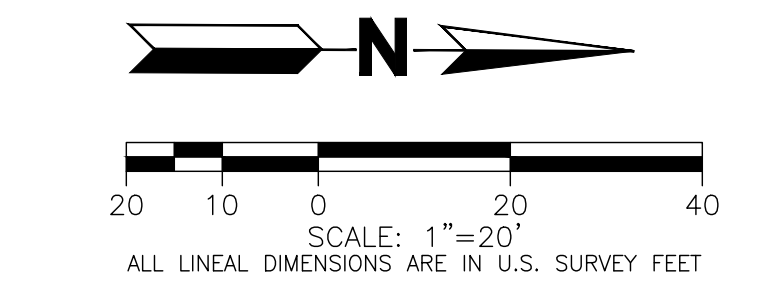
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 DRAWING LOCATION: G:\Tuttle\Cimarron\BASE\C3D\C-GRADE-2022.dwg



NOTE:  
 1. CONNECT DRAIN TO STORM SEWER BEDDING  
 2. CONTRACTOR TO WORK WITH CTL FOR FIELD FIT LOCATION.



**NOTES:**  
 1. GRAVEL INTERCEPTOR DRAIN TO BE FIELD FIT BASED ON CTL OBSERVATIONS DURING CONSTRUCTION  
 2. ALL TRENCHES TO BE BACKFILLED AT THE END OF THE DAY



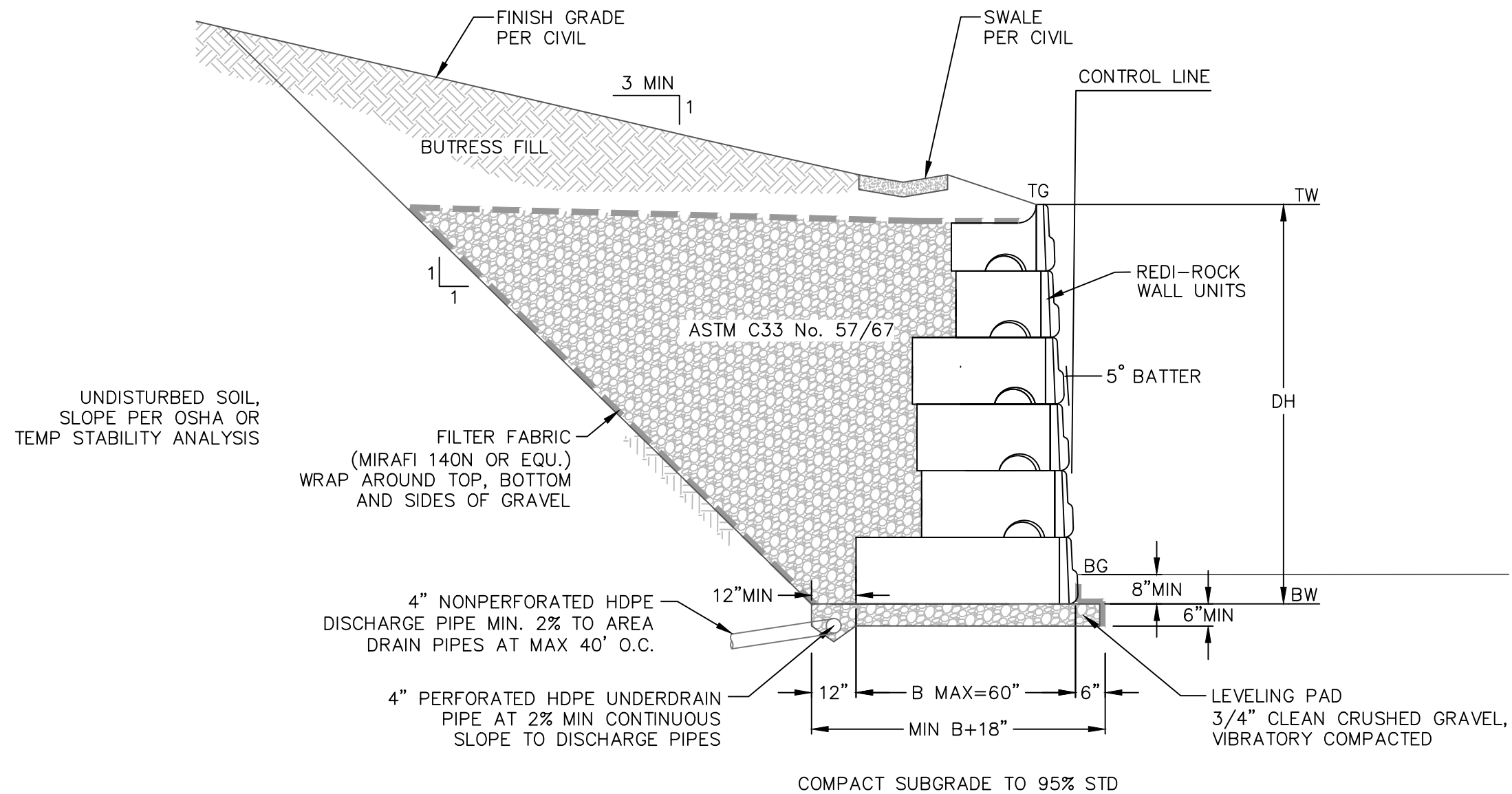
| No. | Issue / Revision | Date     | Name |
|-----|------------------|----------|------|
| 1   | FOR REVIEW       | 11/16/22 | DAK  |
| 2   | FOR REVIEW       | 04/18/23 | DAK  |
| 3   | FOR BID          | 05/16/23 | DAK  |

|                     |           |
|---------------------|-----------|
| Job Number          | CIMARRON  |
| Project Manager     | D. KUNTZ  |
| Design By           | D. KUNTZ  |
| Drawn By            | J. CLAMP  |
| Principal in Charge | D. LOVATO |

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Sheet Number:

NOT FOR CONSTRUCTION



1 TYPICAL REDI-ROCK WALL SECTION  
A NTS

Initial Date: 4/14/23

File Name: WDETAILS - REDI-ROCK.DWG

Horiz. Scale: NTS | Vert. Scale: NTS



Sheet Revisions

| Date: | Comments | Init. |
|-------|----------|-------|
|       |          |       |
|       |          |       |
|       |          |       |

CANDELAS 2B W19-23  
TYPICAL REDI-ROCK WALL SECTION

|              |         |              |    |              |
|--------------|---------|--------------|----|--------------|
| Project No.: | TBD     | Designed By: | CH | SHEET NUMBER |
| Issue Date:  | 4/14/23 | Approved By: | CH | 1 OF 1       |

April 26, 2023

Cimmaron Metropolitan District  
c/o Independent District Engineering Services  
355 Union Boulevard, Suite 302  
Lakewood, Colorado 80228

Attention: Brian Daly

Subject: Progress Report No. 6  
Candelas Filing No. 1 Retaining Walls  
Northwest of Orion Way and West 95<sup>th</sup> Lane  
Arvada, Colorado  
Project No. DN51,452-145-L7

On April 19, Martin/Martin provided plans for additional remediation of the slope and retaining walls in Filing No. 1 at Candelas (Fig. 1) which were prepared with our input. The City of Arvada provided a letter from Shannon & Wilson dated March 15, 2023, which includes comments regarding the slope evaluation. The purpose of this letter is to summarize our review of the plans and respond to the Shannon & Wilson comments.

Use of gravity walls at the toe of the existing slope is currently planned, along with installation of surface and subsurface drains, repair of the storm sewer which crosses the site, and site grading. The mail kiosk currently present in the south part of the site will be moved off-site permanently to allow access for repairs and grading. A portion of the proposed gravity wall will be in the general area of the existing mail kiosk.

We have performed stability analysis of the slope and wall configurations shown on the plans using Cross-Sections A-A', B-B', D-D' and E-E' shown on Fig. 1. In each case, we analyzed the existing slope configuration and the proposed slopes and walls. We focused on how the proposed improvements would affect stability of the existing interpreted slip surfaces. Results are summarized in Appendix A.

Shannon & Wilson was provided several of our letters and a portion of the available data regarding slope movement and groundwater monitoring. Their comments and our response are provided in Appendix B. We considered the Shannon and Wilson comments in our analyses. Table I summarizes the results, followed by notes with additional details.



Table I: Summary of Stability Calculations

| Section | Description   | Factor of Safety | Assumptions  |
|---------|---|------------------|--|
| A-A'    | Existing Berm   | 1.06             | Failure Surface based on deflection of I-1 and observed toe bulge at back of sidewalk  |
|         | Proposed Wall and Grading   | 1.31             | Failure Surface based on deflection of I-1 and observed toe bulge at back of sidewalk  |
| B-B'    | Existing Berm   | 1.13             | "Deep Failure" based on deflection of I-3A, I-4 and I-5 and toe bulge near fence.  |
|         | Proposed Wall and Grading, No Drain   | 1.25             | "Deep Failure" based on deflection of I-3A, I-4 and I-5 and toe bulge near fence   |
|         | Proposed Wall and Grading, Drains Installed                                       | 1.44             | "Deep Failure" based on deflection of I-3A, I-4 and I-5 and toe bulge near fence. Drain below Storm Sewer and Lateral Drain to TH-3 area |
|         | Proposed Wall and Grading, No Drain   | 1.29             | "Shallow Failure" based on shearing of I-3 and I-5, and deflection at I-4  |
|         | Proposed Wall and Grading, Drains Installed                                       | 1.47             | "Shallow Failure" based on shearing of I-3 and I-5, and deflection at I-4. Drain below Storm Sewer and Lateral Drain to TH-3 area        |
| D-D'    | Existing Berm   | 1.17             | Shallow water based on TH-6 and TH-8. Failure toe near property line   |
|         | Proposed Grading, Shallow Groundwater   | 1.25             | Shallow water based on TH-6 and TH-8. Failure toe near property line   |
|         | Proposed Grading Deeper Groundwater   | 1.34             | Water based on installation of drain at base of excavation for foundation repair. Failure toe near property line                         |
|         | Proposed Grading Shallow Groundwater, Soil Anchors                                | 1.33             | Shallow water based on TH-6 and TH-8. Failure toe near property line. Soil Anchors installed   |
| E-E'    | Existing slope Groundwater at base of existing wall and ground surface            | 0.896            | Failure surface based on TH-1A and toe at back of kiosk  |
|         | Proposed Wall and Grading Groundwater at base of existing wall and ground surface | 1.77             | Failure surface based on TH-1A and toe at back of kiosk.   |

## Notes:

1. An angle of internal friction of 16 to 18 degrees was estimated based on initial back calculations after slope movement occurred. Sixteen was used for each section except E-E'. Eighteen was used for E-E' because an abnormally low Factor of Safety resulted for the existing slope.
2. The uphill limits for failure surfaces were based on observed evidence of surface movements.
3. We judge there is a high probability the underdrain planned below or adjacent to the storm sewer and the lateral drain extending to near TH-3 will lower groundwater along Section B-B'.



We believe the results of the stability analyses demonstrate the retaining wall, grading and drainage improvements shown on the Martin/Martin plans provided April 11, 2023, will result in satisfactory improvements in slope stability for most of the site.

If foundation repair of the house located east of the site (16201W 95<sup>th</sup> Lane) is attempted, we assume excavation will be necessary. Excavation retention may be necessary to complete the repairs safely. The planned walls and grading may affect the design and construction of the excavation and retention system. The excavation and retention system should be designed so that stability of the planned slope and walls is not impaired.

If you have questions regarding this letter, please contact us.

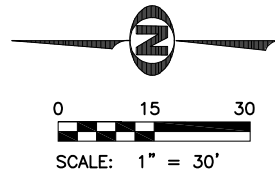
CTL|THOMPSON, INC.

Ronald M. McOmber, P.E.  
Senior Consultant

Alan Lisowy, P.E.  
Principal

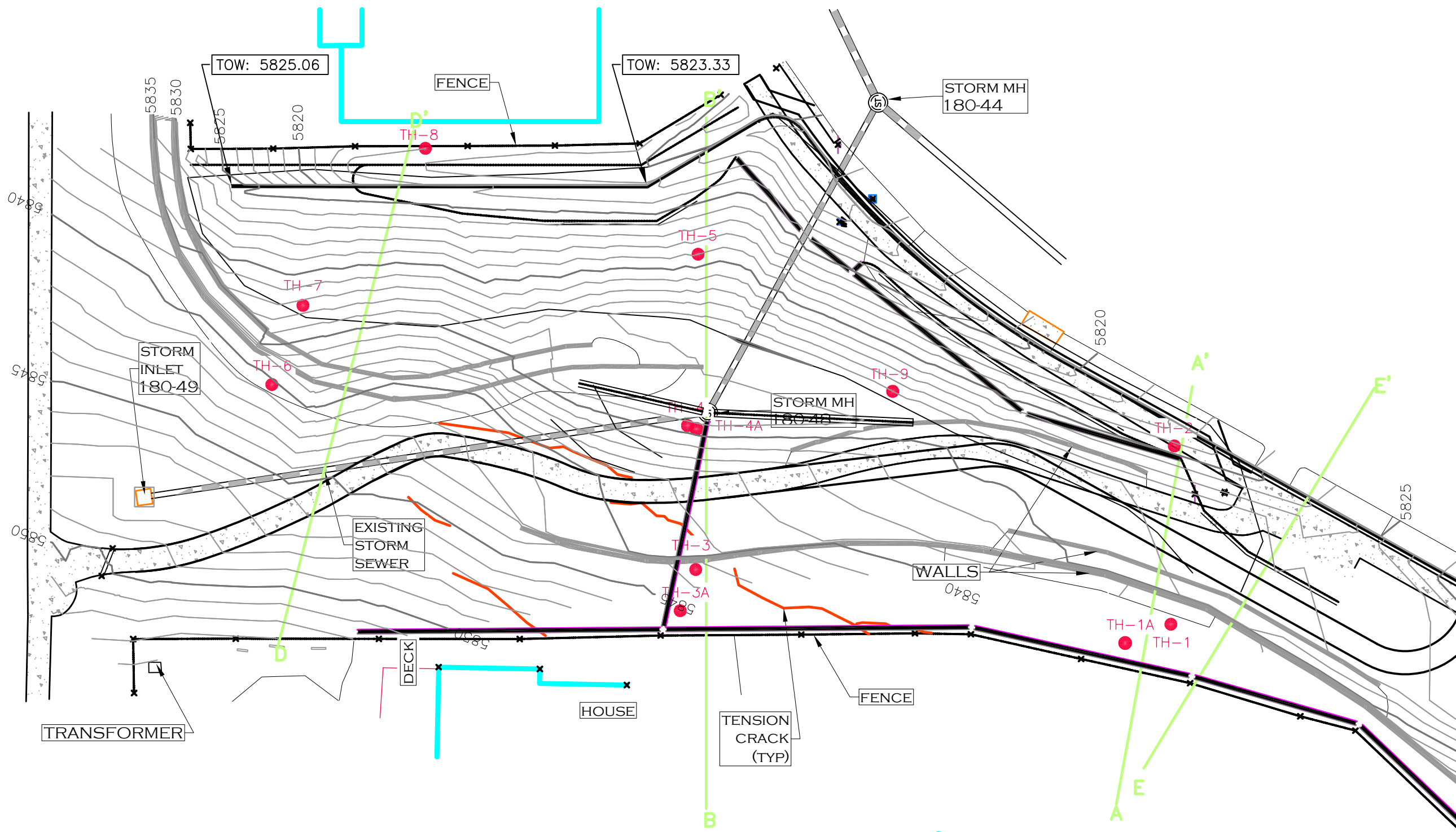
Via email: [bdaly@mylandsteward.com](mailto:bdaly@mylandsteward.com)  
[hfarbes@bhfs.com](mailto:hfarbes@bhfs.com)





LEGEND:

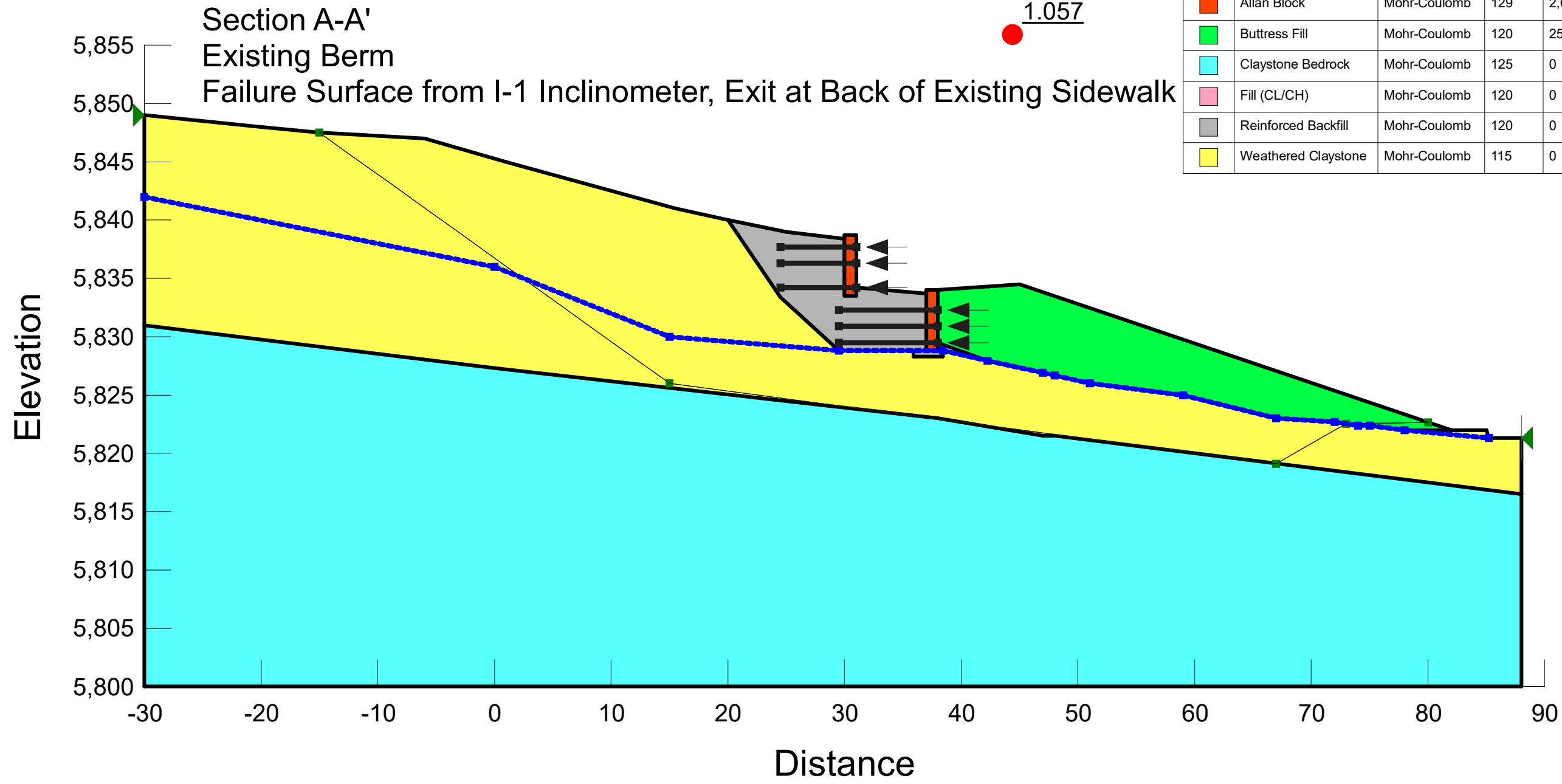
- TH-1 APPROXIMATE LOCATION OF EXPLORATORY BORING/INCLINOMETER



**Locations of  
 Exploratory Boring  
 and Cross Sections**



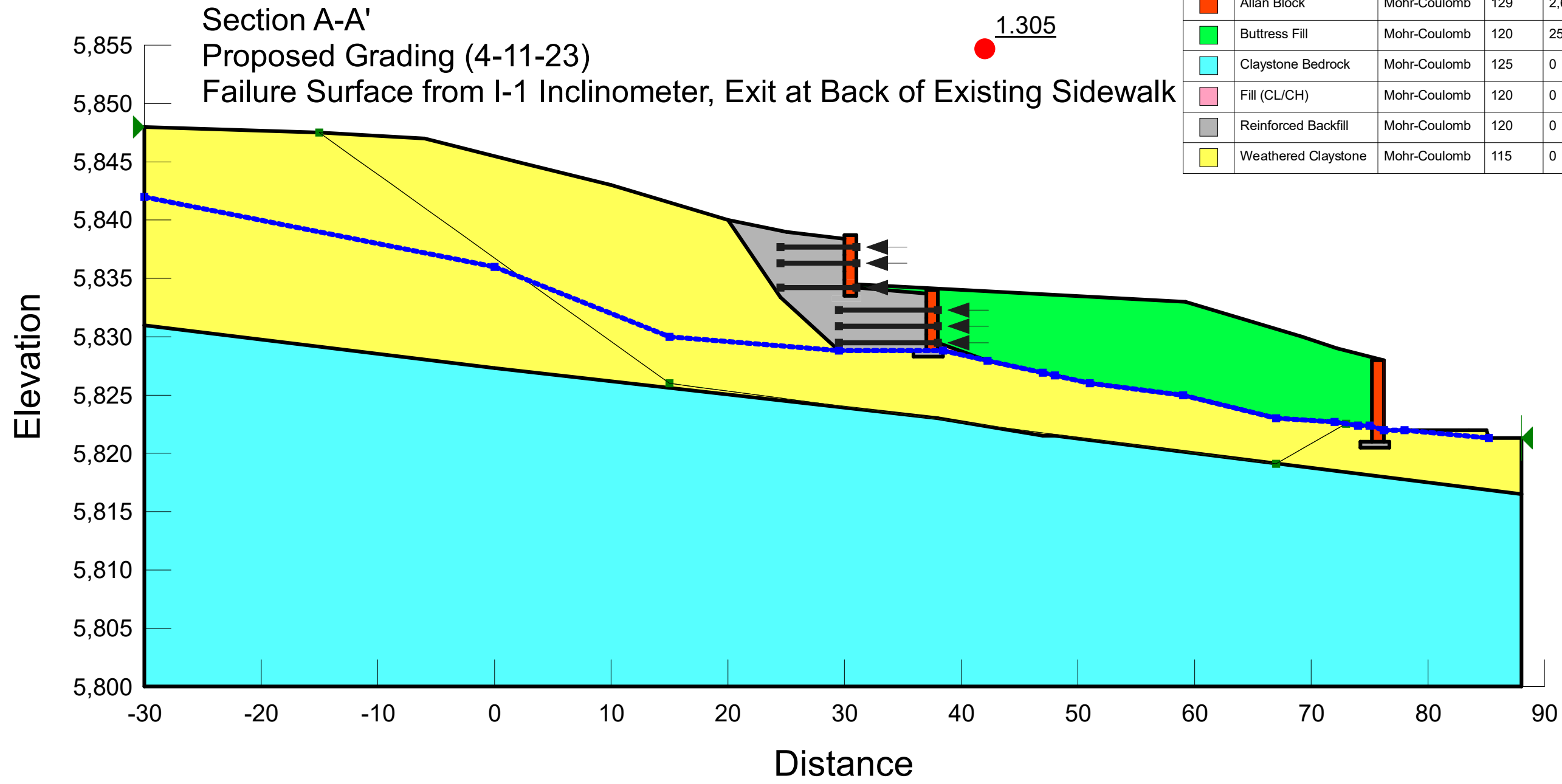
APPENDIX A  
SLOPE STABILITY CALCULATION RESULTS



| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Buttrass Fill       | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

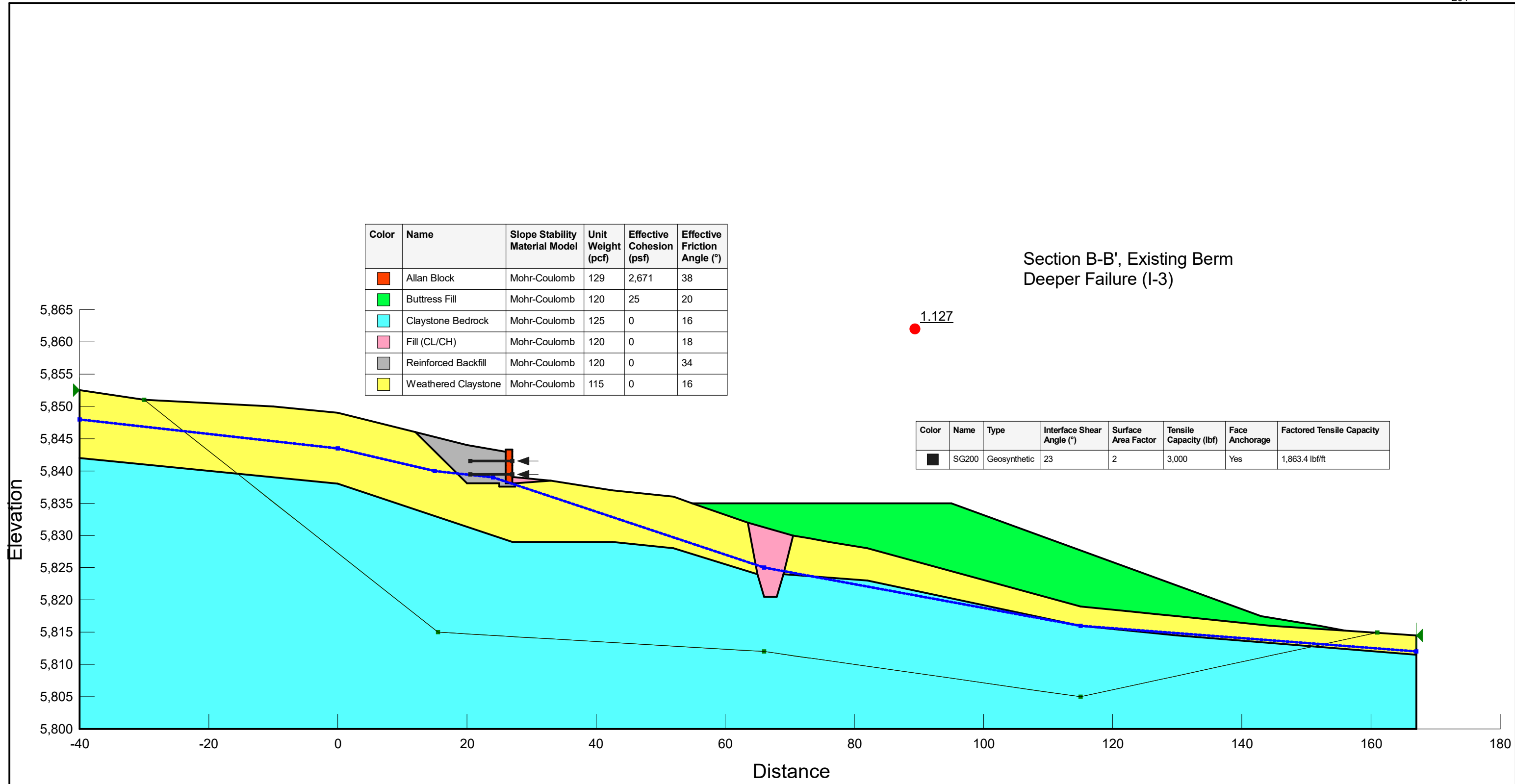
Section A-A' Ex. Berm, Inclinometers  
 Candelas Landslide, A-A' Section - Incr. Extent of Failure.gsz  
 04/12/2023 1:120.22274



| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Buttrass Fill       | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

Section A-A' Prop. Grading, Inclinator (2)  
 Candelas Landslide, A-A' Section - Prop. Grading (4-7-23).gsz  
 04/14/2023 1:120.22274



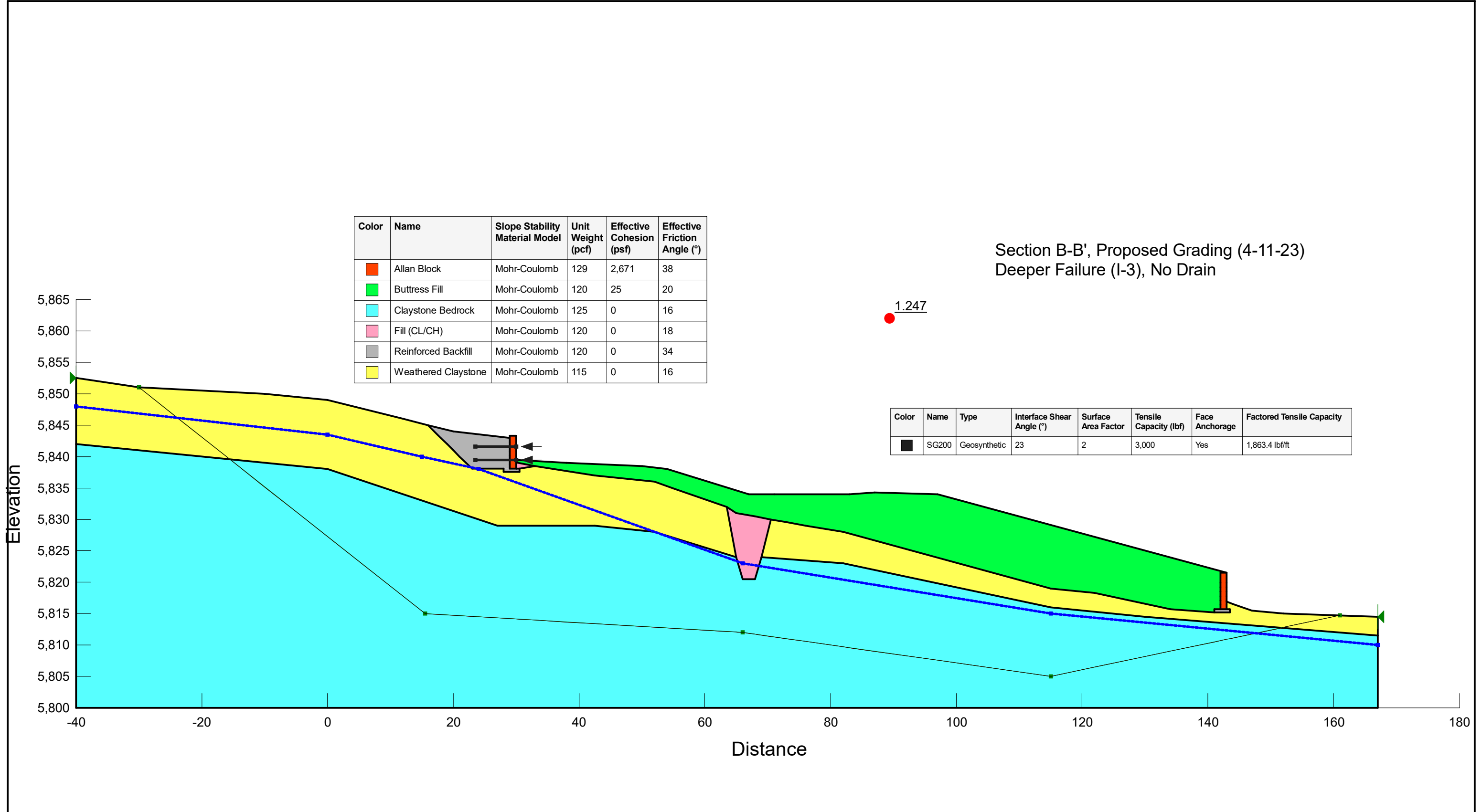
| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Butress Fill        | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

Section B-B', Existing Berm  
Deeper Failure (1-3)

1.127

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

Section B-B' Ex. Berm Deeper Failure  
 Candelas Landslide, Section B-B' - Incr. Extent of Failure.gsz  
 04/12/2023 1:175.32483

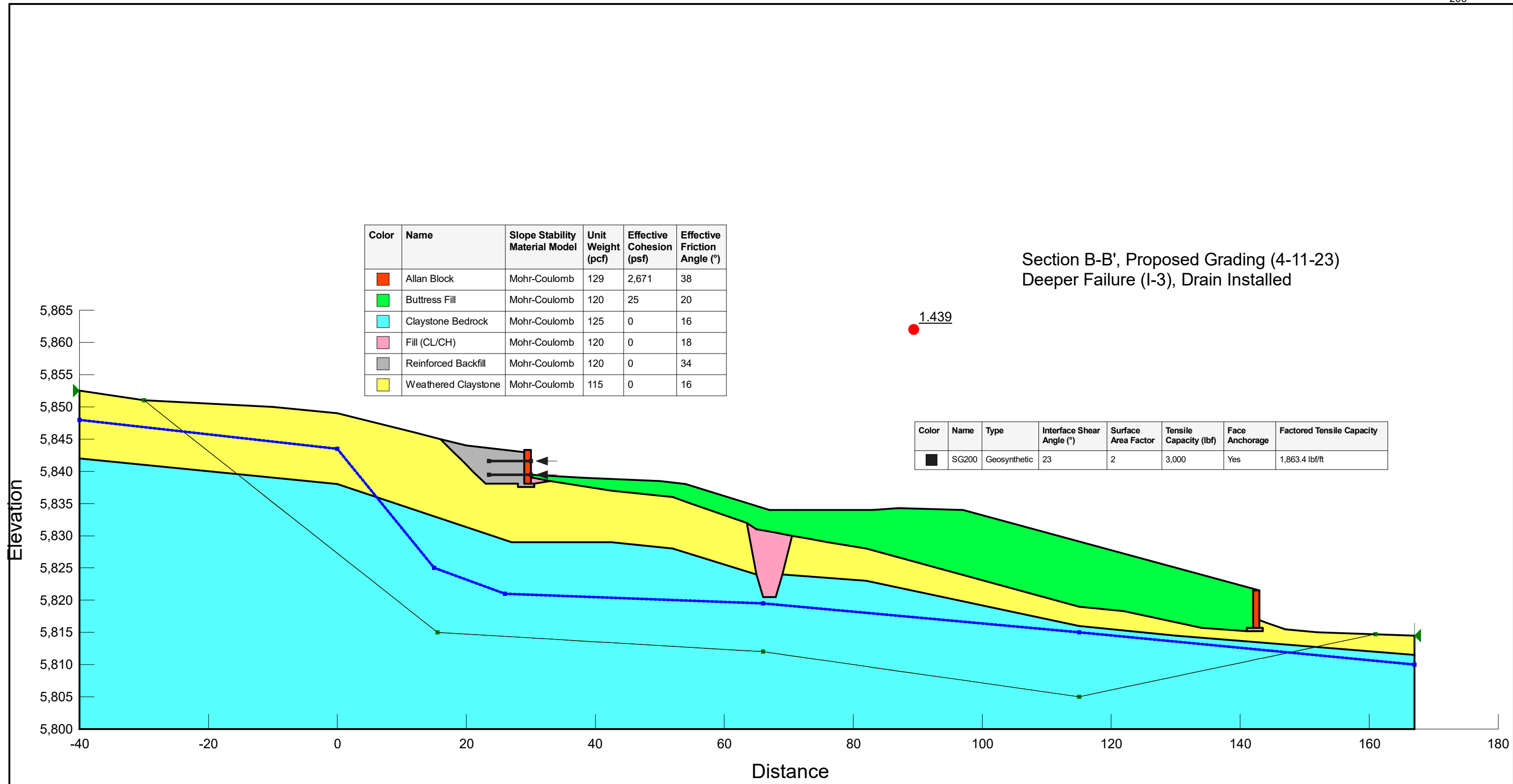


| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Butress Fill        | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

Section B-B', Proposed Grading (4-11-23)  
Deeper Failure (I-3), No Drain

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

|  |             |
|--|-------------|
| Section B-B' Prop. Grading, Deeper Failure, No Drain           |             |
| Candelas Landslide, Section B-B' - Prop. Grading (4-11-23).gsz |             |
| 04/12/2023   | 1:175.32483 |

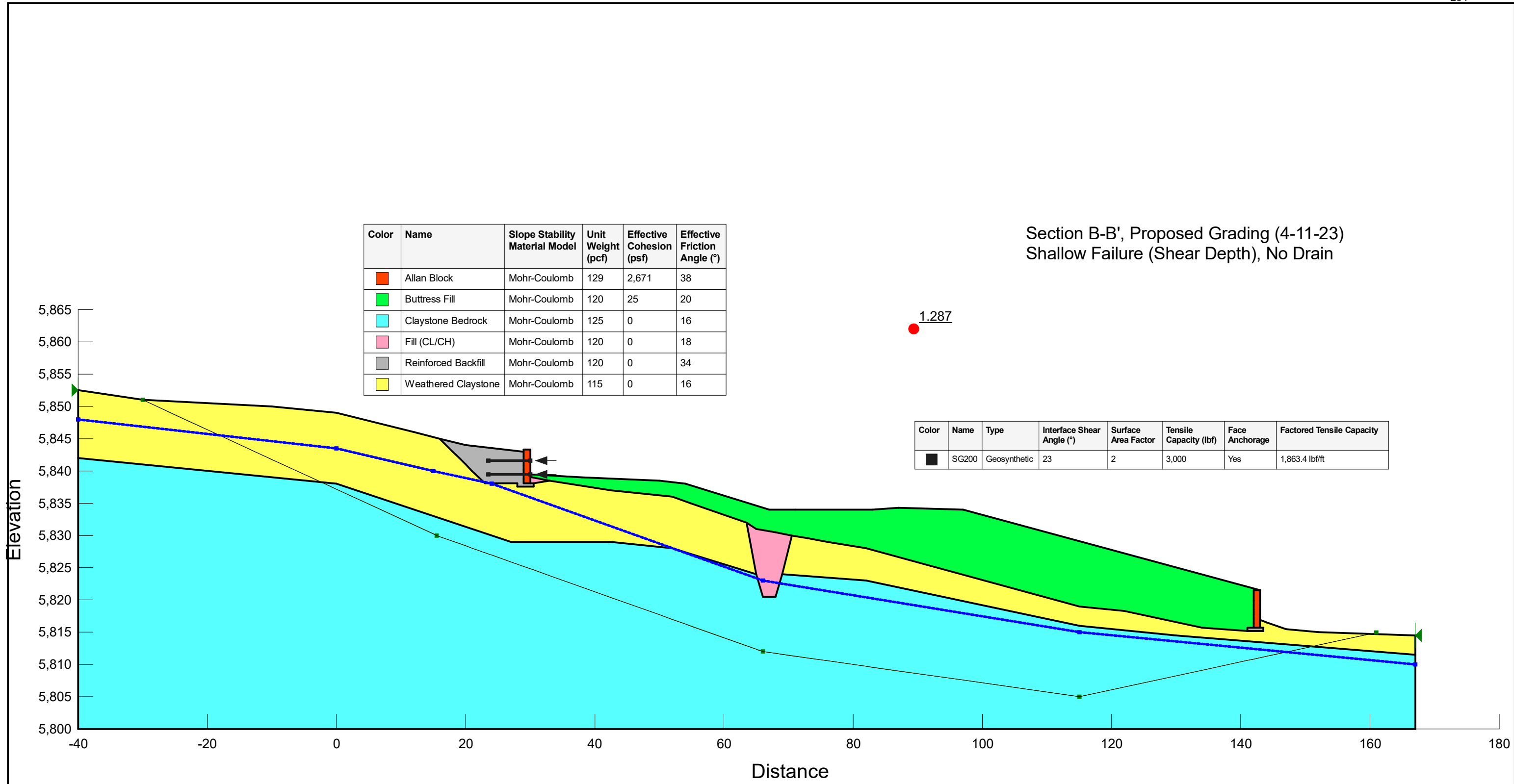


| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Buttress Fill       | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

Section B-B', Proposed Grading (4-11-23)  
Deeper Failure (I-3), Drain Installed

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

|  |             |
|--|-------------|
| Section B-B' Prop. Grading, Deeper Failure, Drain              |             |
| Candelas Landslide, Section B-B' - Prop. Grading (4-11-23).gsz |             |
| 04/12/2023   | 1:175.32483 |



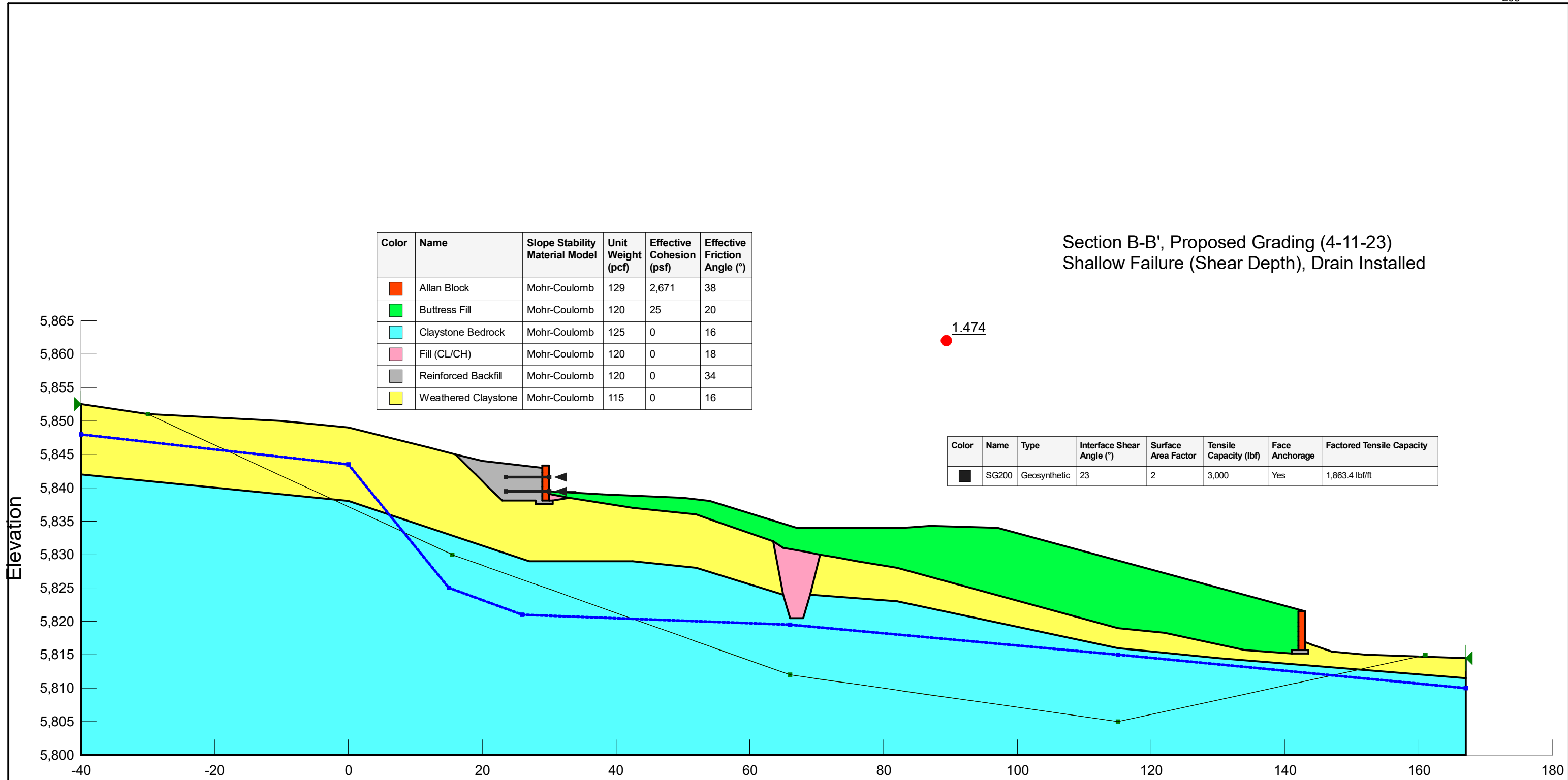
| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Buttress Fill       | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

Section B-B', Proposed Grading (4-11-23)  
Shallow Failure (Shear Depth), No Drain

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

|  |             |
|--|-------------|
| Section B-B' Prop. Grading, Shear Failure, No Drain            |             |
| Candelas Landslide, Section B-B' - Prop. Grading (4-11-23).gsz |             |
| 04/12/2023   | 1:175.32483 |





| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Butress Fill        | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

Section B-B', Proposed Grading (4-11-23)  
Shallow Failure (Shear Depth), Drain Installed

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

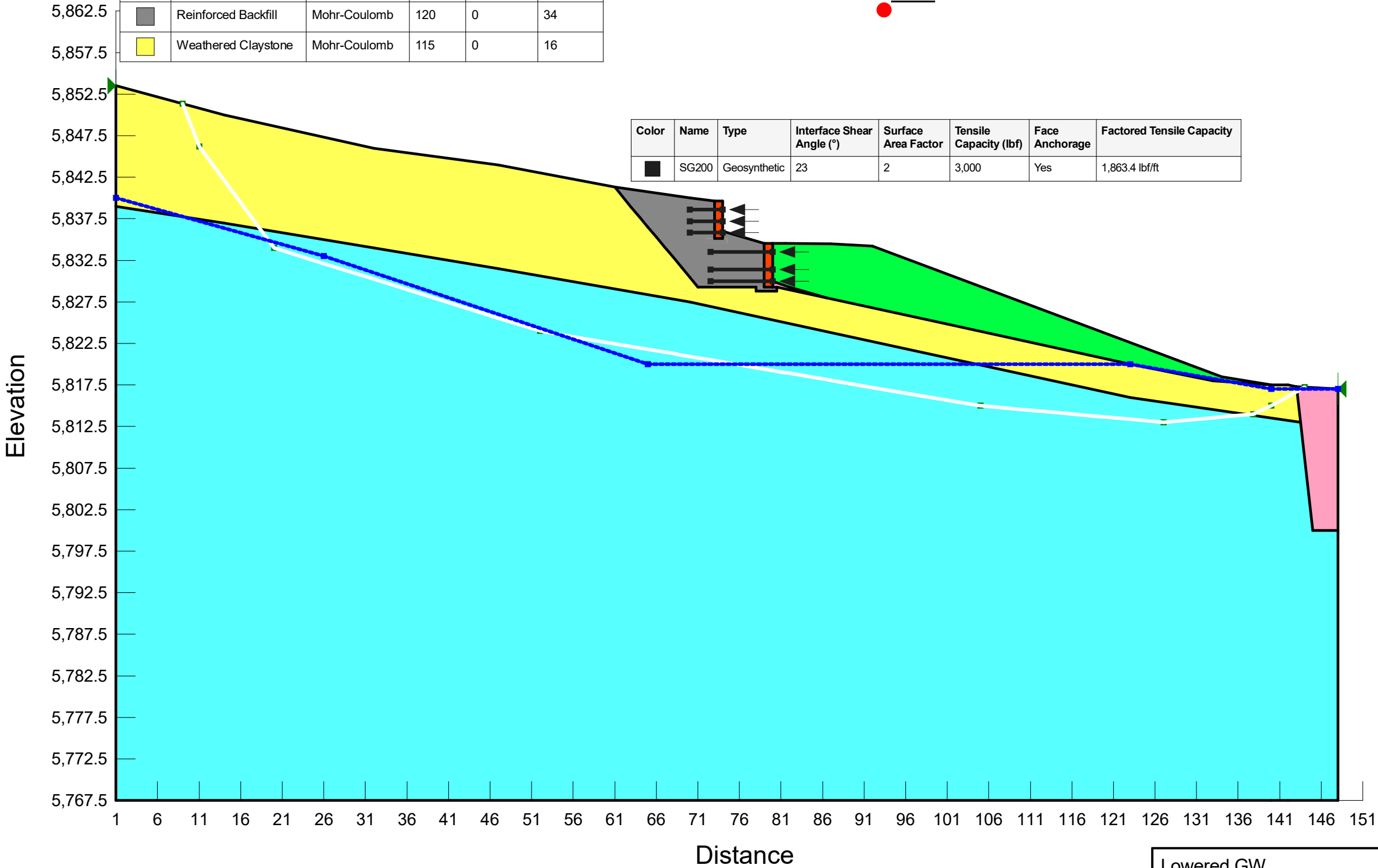
Section B-B' Prop. Grading, Shear Depth Drain  
 Candelas Landslide, Section B-B' - Prop. Grading (4-11-23).gsz  
 04/12/2023 1:175.32483

Section D-D'  
Existing Berm  
Shallow Groundwater

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Buttress Fill       | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

1.169

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

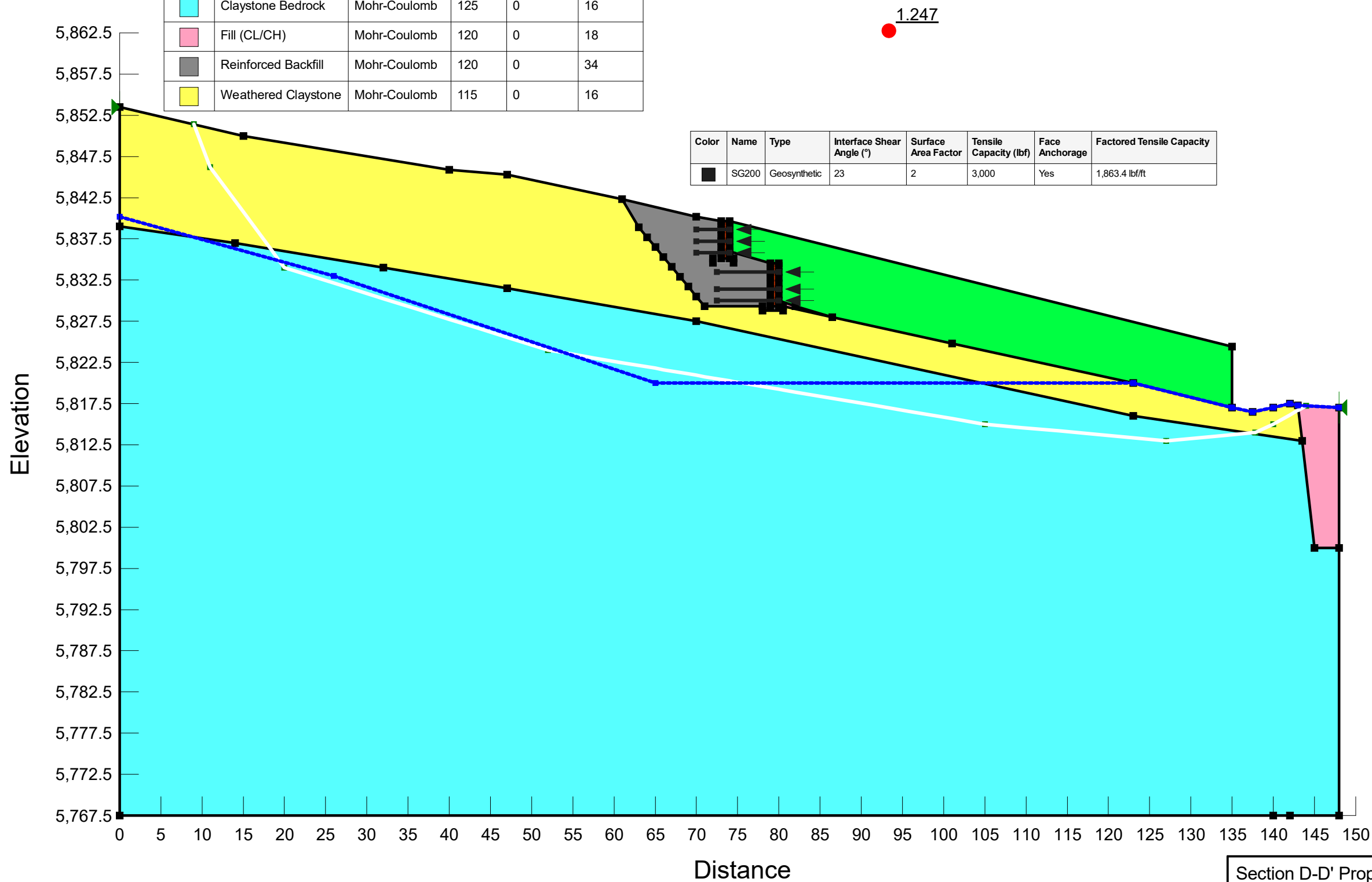


|   |
|---|
| Lowered GW  |
| Candelas Landslide, Section D-D', Existing Berm.gsz |
| 04/12/2023  |
| 1:165.30626   |

Section D-D'  
Proposed Grading (4-19-23)  
Shallow Groundwater

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Buttress Fill       | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

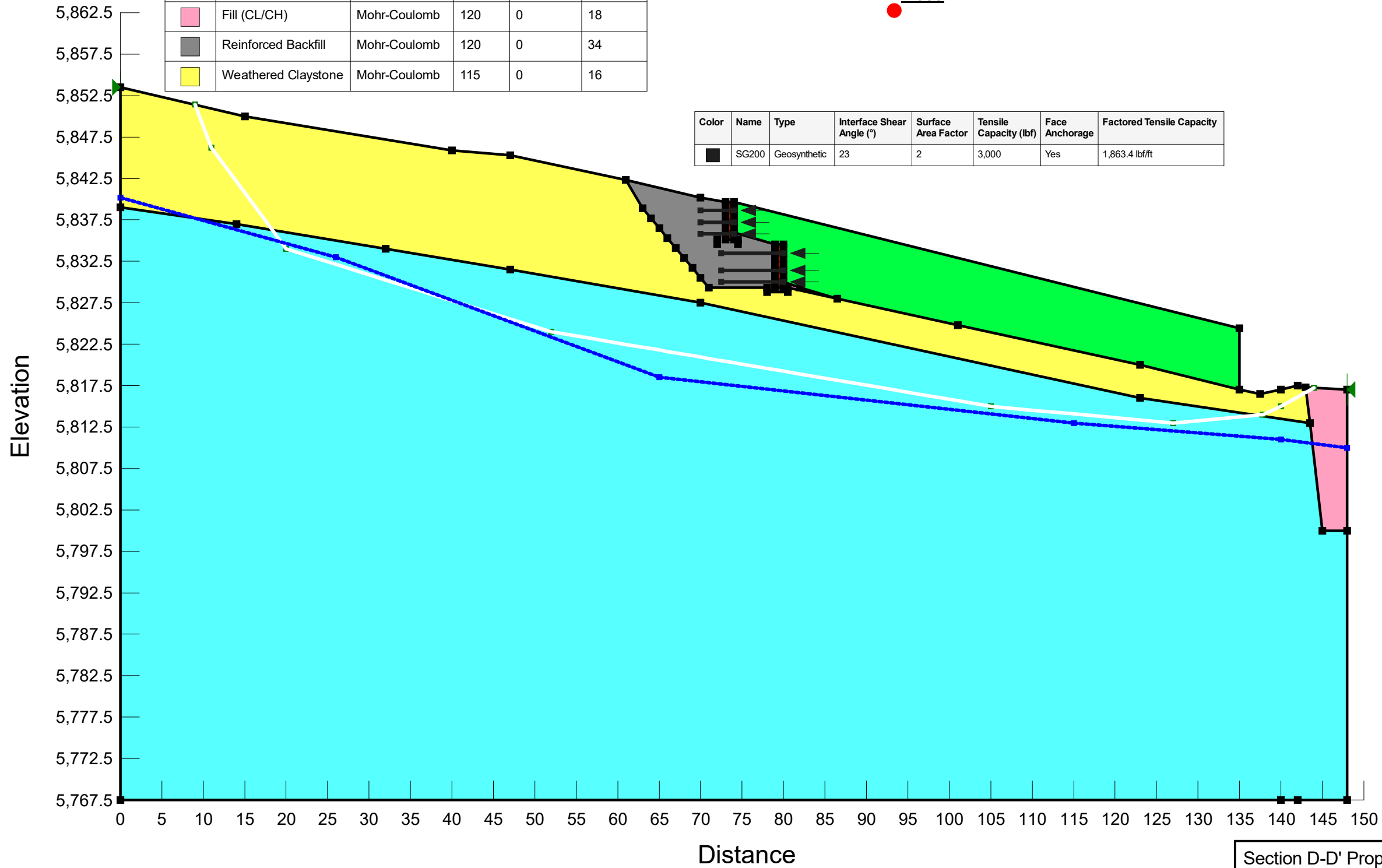


|   |            |
|---|------------|
| Section D-D' Prop. Grading (4-19-23) Shallow GW |            |
| Candelas Landslide, Section D-D' - 4-19-23.gsz  |            |
| 04/21/2023                                      | 1:162.3007 |

Section D-D'  
Proposed Grading (4-19-23)  
Deep Groundwater

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Buttress Fill       | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

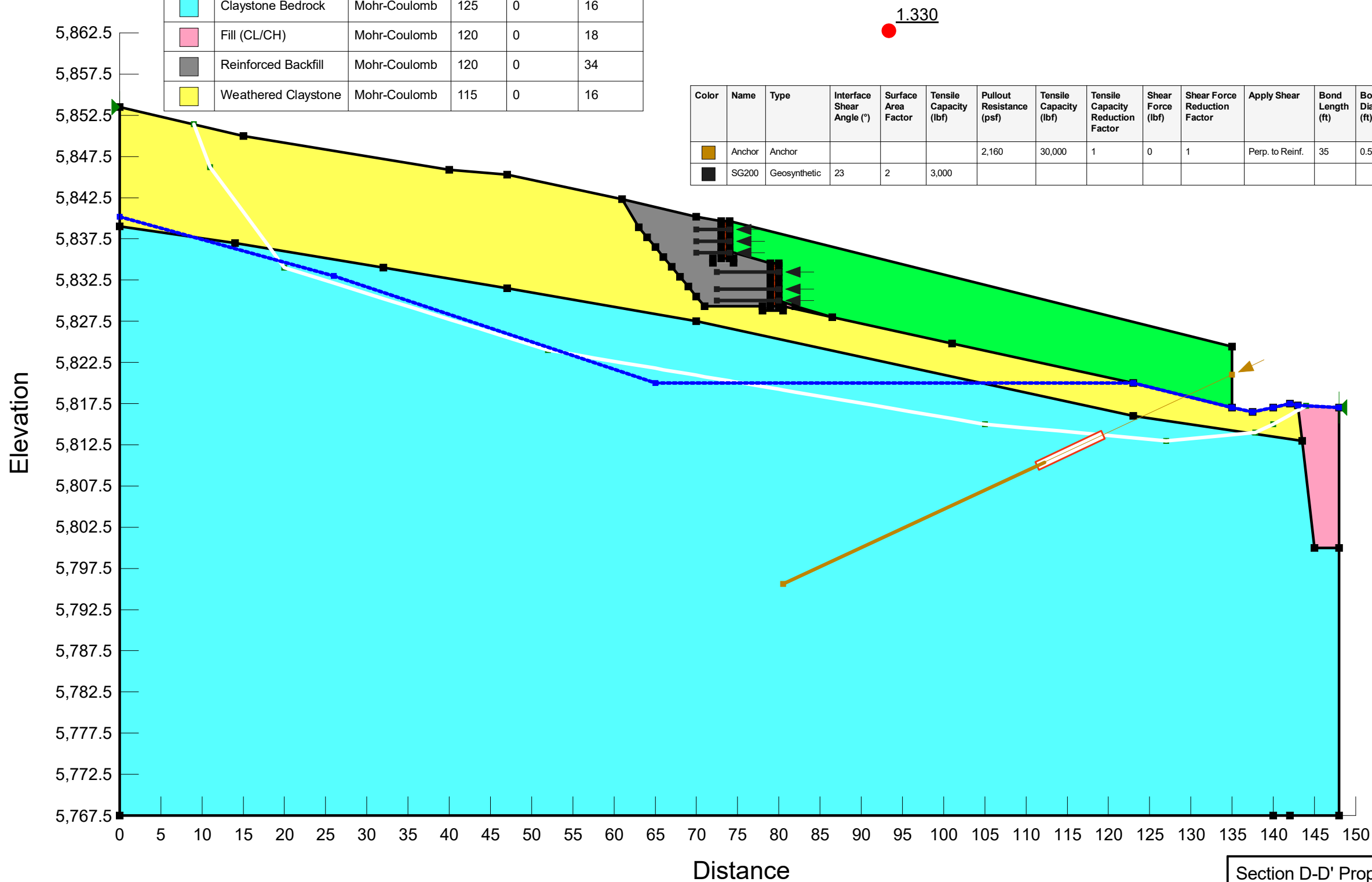


|  |            |
|--|------------|
| Section D-D' Prop. Grading (4-19-23)           |            |
| Candelas Landslide, Section D-D' - 4-19-23.gsz |            |
| 04/21/2023                                     | 1:162.3007 |

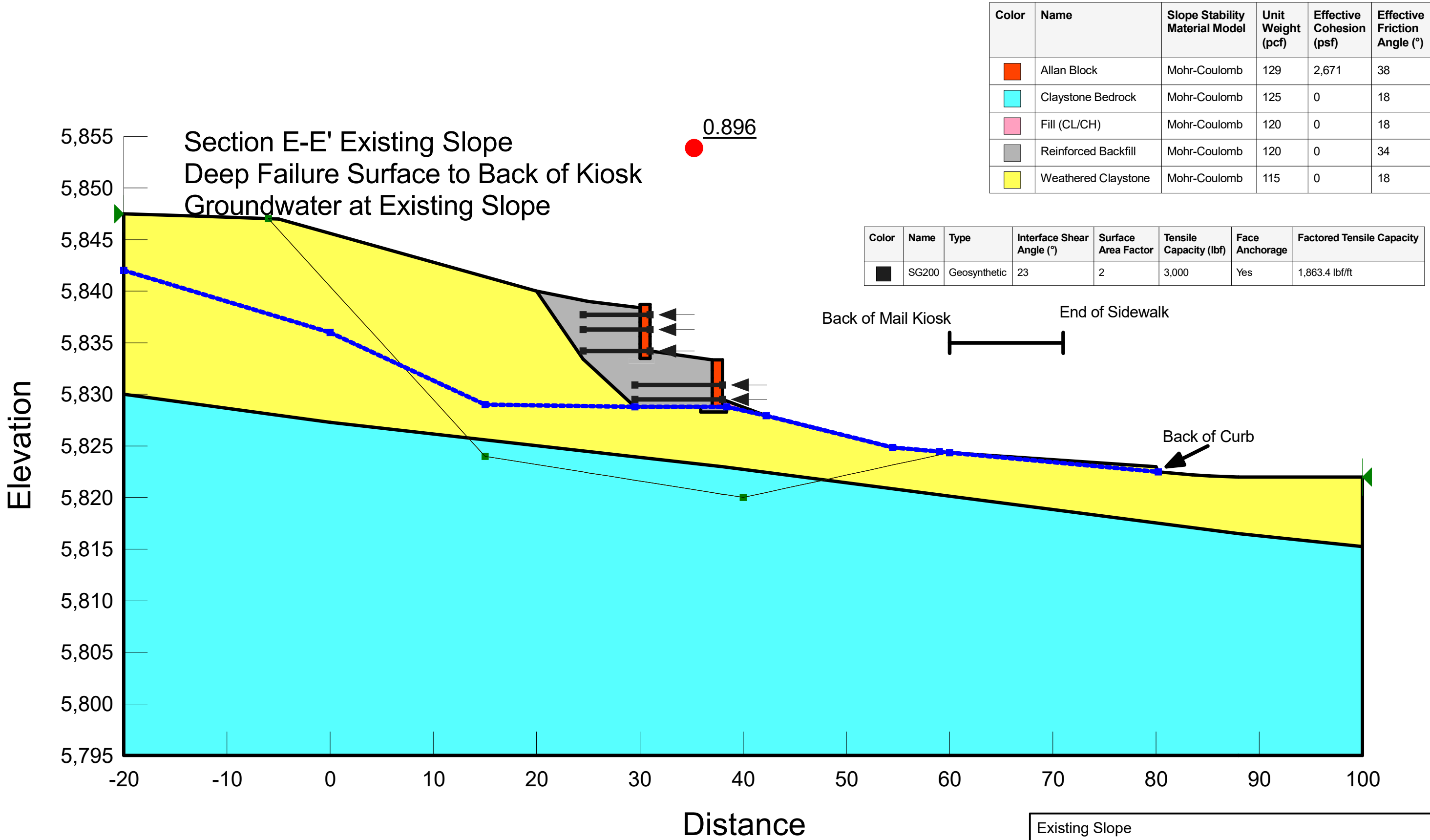
### Section D-D' Proposed Grading (4-19-23) Shallow Groundwater Soil Anchor

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Buttress Fill       | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

| Color  | Name   | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Pullout Resistance (psf) | Tensile Capacity (lbf) | Tensile Capacity Reduction Factor | Shear Force (lbf) | Shear Force Reduction Factor | Apply Shear     | Bond Length (ft) | Bond Diameter (ft) | Out-of-Plane Spacing (ft) | Face Anchorage | Factored Pullout Resistance | Factored Tensile Capacity |
|--------|--------|--------------|---------------------------|---------------------|------------------------|--------------------------|------------------------|-----------------------------------|-------------------|------------------------------|-----------------|------------------|--------------------|---------------------------|----------------|-----------------------------|---------------------------|
| Orange | Anchor | Anchor       |                           |                     |                        | 2,160                    | 30,000                 | 1                                 | 0                 | 1                            | Perp. to Reinf. | 35               | 0.5                | 9                         | Yes            | 376.99 lbf/ft               | 3,333.3 lbf/ft            |
| Black  | SG200  | Geosynthetic | 23                        | 2                   | 3,000                  |                          |                        |                                   |                   |                              |                 |                  |                    |                           | Yes            |                             | 1,863.4 lbf/ft            |



Section D-D' Prop. Grading (4-19-23) Shallow GW Anchor  
 Candelas Landslide, Section D-D' - 4-19-23.gsz  
 04/21/2023 1:162.3007



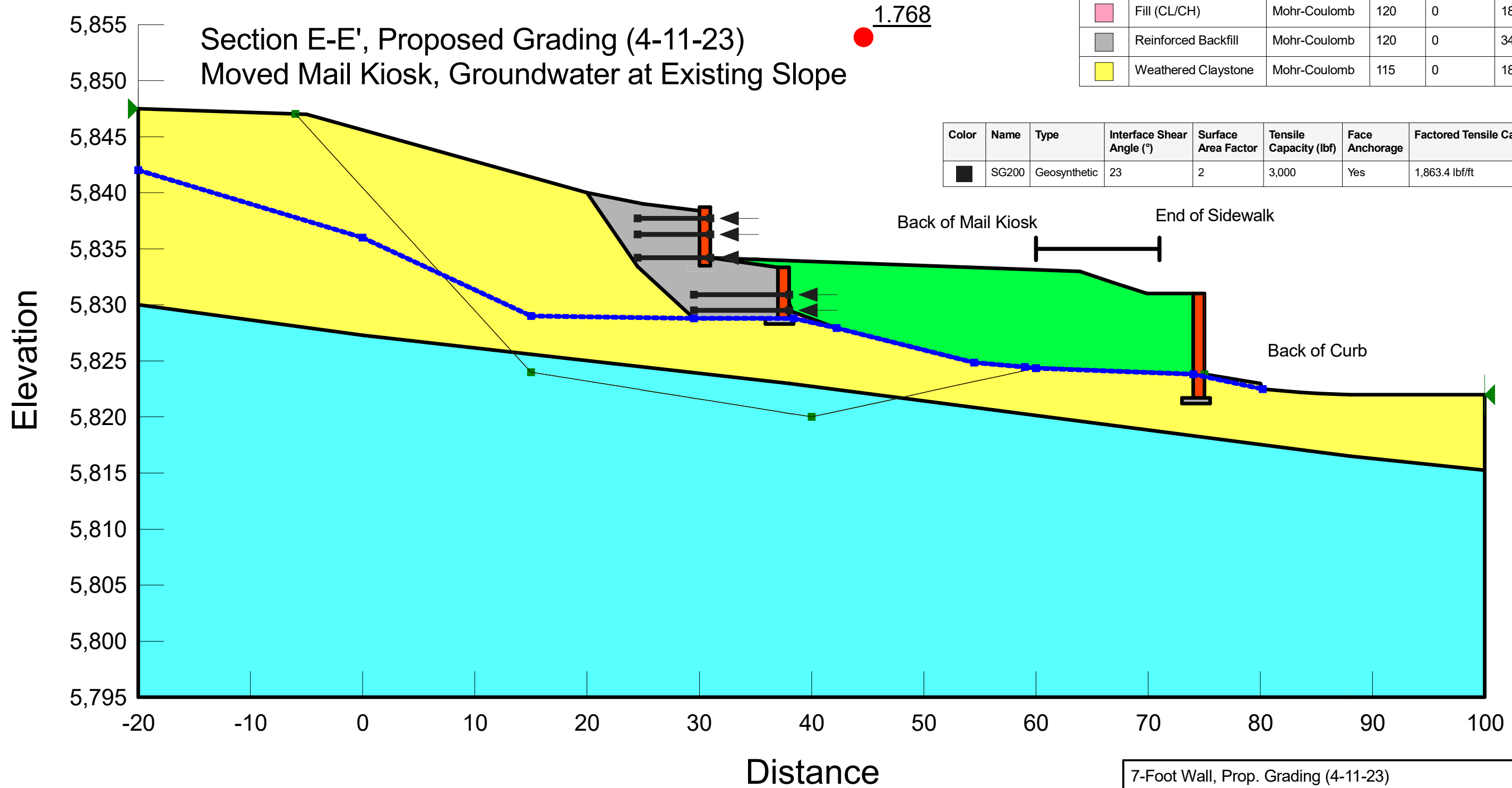
| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 18                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 18                           |

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

|   |             |
|---|-------------|
| Existing Slope  |             |
| Candelas Landslide, Section E-E' - Moved Kiosk, Adj Failure.gsz |             |
| 04/12/2023  | 1:109.20232 |

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Green  | Buttress Fill       | Mohr-Coulomb                   | 120               | 25                       | 20                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 18                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 18                           |

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |



|   |             |
|---|-------------|
| 7-Foot Wall, Prop. Grading (4-11-23)                              |             |
| Candelas Landslide, Section E-E' - Moved Kiosk, Adj x-section.gsz |             |
| 04/12/2023  | 1:109.20232 |



APPENDIX B  
RESPONSE TO SHANNON & WILSON COMMENTS





The Shannon & Wilson comments are shown italicized and listed by page number, followed by our response.

*Page 7*

*...the trench drains shown in and referenced by the models listed above, as well as those presented on Figure 2 in CTL Progress Report #3 do not appear on the most recent grading plans provided by Martin/Martin (Candelas F1A6 Concept Grading 2023.1.13.pdf). The only trench drains labeled on the grading plans are along the property line at the top of the slope and along the top of the retaining wall segment located adjacent to W. 95<sup>th</sup> Lane (Exhibit 4). A drainage swale (described as a drain pan in Candelas F1A6 Concept Grading 2023.1.13.pdf) located in the middle of the slope and above the top of the wall is also proposed.*

The deeper trench drains have not been added to the plans yet. We understand M/M plans to do so after the grading plan has been finalized. These drains will include an underdrain below the storm sewer extending from the damaged section north of the manhole near TH-4 to a new drop inlet near the southeast corner of the site. A lateral drain will also be extended from the manhole to near TH-3.

*Page 9*

*We recommend that CTL complete a back-analysis for each cross-section to an FS of 1.0 for conditions when inclinometer data showed ground movement (i.e. with the temporary buttress in place) and use this calibrated model as the basis for analyses of slope stability improvements.*

We have made measurements and performed dozens of analyses to develop an understanding of the likely failure modes for the slope. Back analysis of cross-section A-A', B-B' and D-D' was performed to evaluate appropriate shear strength parameters for the soil materials present when the initial slope movement occurred. Examples are shown in Appendix C. We also considered experience with landslide and retaining wall movements in the Laramie formation bedrock at Candelas and other sites. The stability analyses with this letter include the "temporary" berm and resulted in FS's which we judge are consistent with the current degree of slope stability.

*Page 9*

*We recommend that the project design team confirm the target FS value and if this value will be achieved by the proposed grading and drainage improvements. We recommend that CTL provide a discussion of potential risks based on the selected target FS value, particularly if a value less than 1.3 is used for design.*

We have evaluated conceptual repair alternatives to achieve a minimum FS of 1.3, including additional grading, retaining walls and/or use of slope retention anchors. It will be necessary to move the mail kiosk so that modifications to the adjacent slope can be completed regardless of whether these modifications include grading,



retaining wall(s) or anchors. The design of retaining walls is being performed by Ground Engineering. Our analysis using anchors along the east side of the site is intended only to judge the feasibility of this approach. The contractor who installs the anchors (if chosen) should evaluate the stability of the reinforced slope.

*Page 10*

*We recommend CTL clarify the basis of the groundwater drawdown shown on slope models in CTL Supplemental Stability Analysis.*

The subsurface drains proposed include an underdrain below the portion of the storm sewer which will be repaired/replaced and a trench excavated from the manhole near TH-4A to the area of TH-3. The underdrain will extend north of the manhole to at least the area where the storm sewer has been damaged. There will also be surface drains behind the retaining walls, along the west property boundary, and around the manhole at TH-4A to help control subsurface wetting. The estimate of the groundwater drawdown was based on judgement and the anticipated elevations of the proposed drains. Our evaluation of stability of the proposed slopes (Appendix A) included conservative assumptions about the groundwater levels as indicated in Shannon & Wilson comments below.

The presence of shallow groundwater in TH-8 indicates the exterior foundation drain around the adjacent residence is not controlling the water. It is possible the water measured in TH-8 has developed due to poor surface drainage and is not indicative of "groundwater." We believe it will be necessary to install some form of slope retention system to excavate for repair of the damaged foundation wall. We envision a line of drilled shafts or soldier piles and installation of a drain at the bottom of the excavation. It is possible this drain could be connected to the existing sanitary sewer underdrain system in the streets.

*Page 10*

*We recommend that CTL provide an evaluation of how dependent the stability of the final design is on the drawdown of groundwater by evaluating slope stability for the proposed berm and walls neglecting groundwater drawdown.*

We have included conservative assumptions about the groundwater conditions in our evaluation of the design (Appendix A). Slope movement has slowed/stopped with the current berm and groundwater conditions. Additional measurement of groundwater depths and slope movements is planned to allow further evaluation of groundwater impacts and the changes in groundwater conditions after drains are installed.

*Page 10*

*We recommend that the design team consider and assess other alternatives that may be more effective and have a lower risk of unacceptable performance (i.e. ongoing landslide movement).*



As discussed previously, other alternatives have been considered, particularly for the area near the mail kiosk and adjacent to the residence to the east.

*Page 11*

*We recommend that the design team comment on the degree of compaction that occurred during buttress placement. If limited compaction was obtained, the design team should confirm that the risk of leaving this material in place is acceptable.*

The purpose of the buttress fill was to add weight to the lower portion of the slope; this was achieved. We recommended the previous slope be “benched” as the fill was placed to key the fill into the slope to reduce likelihood the fill would slide along this interface. Benching is also recommended when additional fill is placed. At this time, we believe the fill can remain in place. We plan additional drilling and testing of the fill.

*Page 11*

*We recommend that CTL address how they chose the locations of the head and toe of the landslide for slope stability modeling and design. Exhibit 6 presents the location of slope stability cross-sections in relation to existing landslide-induced geomorphic features.*

The toe of the landslide was based on the observed toe bulge which developed behind the sidewalk and in the adjacent yard to the east. The head of the slide was originally selected at the property line based on observations of tension cracks in early 2022. Slope movements uphill of the property line did not become apparent to us until the end of May 2022. The additional slope stability analyses presented in this letter used the approximate locations of the landslide-induced features and the original grading plans for the site to the west.

*Page 12*

*We recommend that CTL address how profile orientations were chosen for slope stability analyses.*

We chose the cross-section locations to coincide with exploratory boring locations and to be roughly perpendicular to the original slope, since that was the slope which failed. Initial survey monitoring generally confirmed these orientations. We maintained the orientations to evaluate repairs to judge the improvement in FS. We also performed analysis for a new cross-section, E-E’.

*Page 12*

*There are discrepancies between the depth of the slip surface shown at locations of inclinometers in the slope stability modeling and the depth of movement indicated by those inclinometers. These discrepancies occur in every progress report where slope stability modeling was conducted.*

*Progress Report #3 states, “We re-installed inclinometers at two locations (TH-1A and TH-3A) where previous slope movement had sheared the pipe and prevented*



*subsequent measurements.” The depth at which these inclinometers sheared is not indicated on the displacement plots. Knowing this depth may help clarify the selected depth of the slip surface shown in the slope stability models.*

*We recommend that CTL clarify the discrepancies noted above between the depth of movement indicated by the inclinometers and the depth of the slip surface shown in the slope stability analyses.*

We used the slip surface locations indicated by inclinometers in our evaluation of stability of the proposed repairs (Appendix A). The depths where shearing occurred in the inclinometers are shown on the Logs of Exploratory Borings (Appendix D).

*Page 13*

*We recommend that CTL clarify the basis of the changes between the slope stability modeling presented in Progress Report #2 and Progress Report #3.*

The stability calculation results presented in the progress reports represent a small fraction of the analyses we used to evaluate the slope. As is typical, assumptions regarding the slip surface and groundwater evolved as more was learned. The analyses presented in this letter (Appendix A, Table 1) represent our current assessment.

*Page 13*

*The groundwater table in Section D-D’ in the CTL Supplemental Stability analyses is up to 5 feet below the ground surface at the base of the slope. Groundwater measurements at I-8 at the base of the slope at that location indicate the groundwater table could be at the surface at the base of the slope.*

*We recommend that CTL explain the basis for using a groundwater table at the base of the slope that appears to be deeper than indicated by monitoring data.*

As discussed previously, we are not sure that water measurements in TH-8 are indicative of “groundwater” or a result of poor surface drainage. We assumed water at the ground surface in our evaluation of the stability of the proposed repairs (Appendix A). We anticipate a drain will be installed when foundation repairs are completed. If so, then the groundwater level will probably be lower as shown in some of our results.

*Page 13*

*CTL Supplemental Stability Analysis does not present any analyses for local failures on the berm or around proposed retaining walls.*

*We recommend CTL provide these analyses or discuss results if they were carried out but not included in the progress reports.*



Additional global stability analysis for the proposed retaining walls is being performed by Ground Engineering. CTL is also evaluating possible local failures. Benching of the slope during fill placement should reduce likelihood of shallow surface movements.

*Page 14*

*We recommend the design team clarify the apparent discrepancies between the drain configuration assumed by CTL and that shown in updated grading and wall plans submitted by Martin/Martin.*

This has been addressed previously.

*ADDITIONAL RECOMMENDATIONS AND CONSIDERATIONS*

*Based on our review of the available documents and our observations of conditions at the site, additional recommendations and considerations for the proposed improvements are provided below.*

- *Water from downspouts and sumps adjacent to the slide area (particularly Parcels 9597 and 9599) should be redirected outside of the landslide limits.*
- *Though it is unclear if an irrigation system originally existed across the slope, irrigation on slope should be avoided. Irrigation on the slope and from uphill residences may exacerbate landslide movement. Irrigation infrastructure may also leak or be damaged in the future, which may have a significant adverse effect on slope stability.*
- *Excavations for proposed slope and subsurface drainage improvement on or at the base of the slope may destabilize the slope and damage nearby residences. We recommend implementing an active monitoring program while site grading is occurring. Additionally, it will likely be necessary to limit the extents of open excavation to minimize destabilization of the slope.*
- *Slope monitoring as inclinometer data (CTL Progress Report #4) indicates potential ongoing of the slope. We recommend continuing to read the existing inclinometers*

We agree with these recommendations and considerations.



APPENDIX C  
PRELIMINARY BACK-ANALYSIS  
CROSS-SECTION A-A', B-B' and D-D'

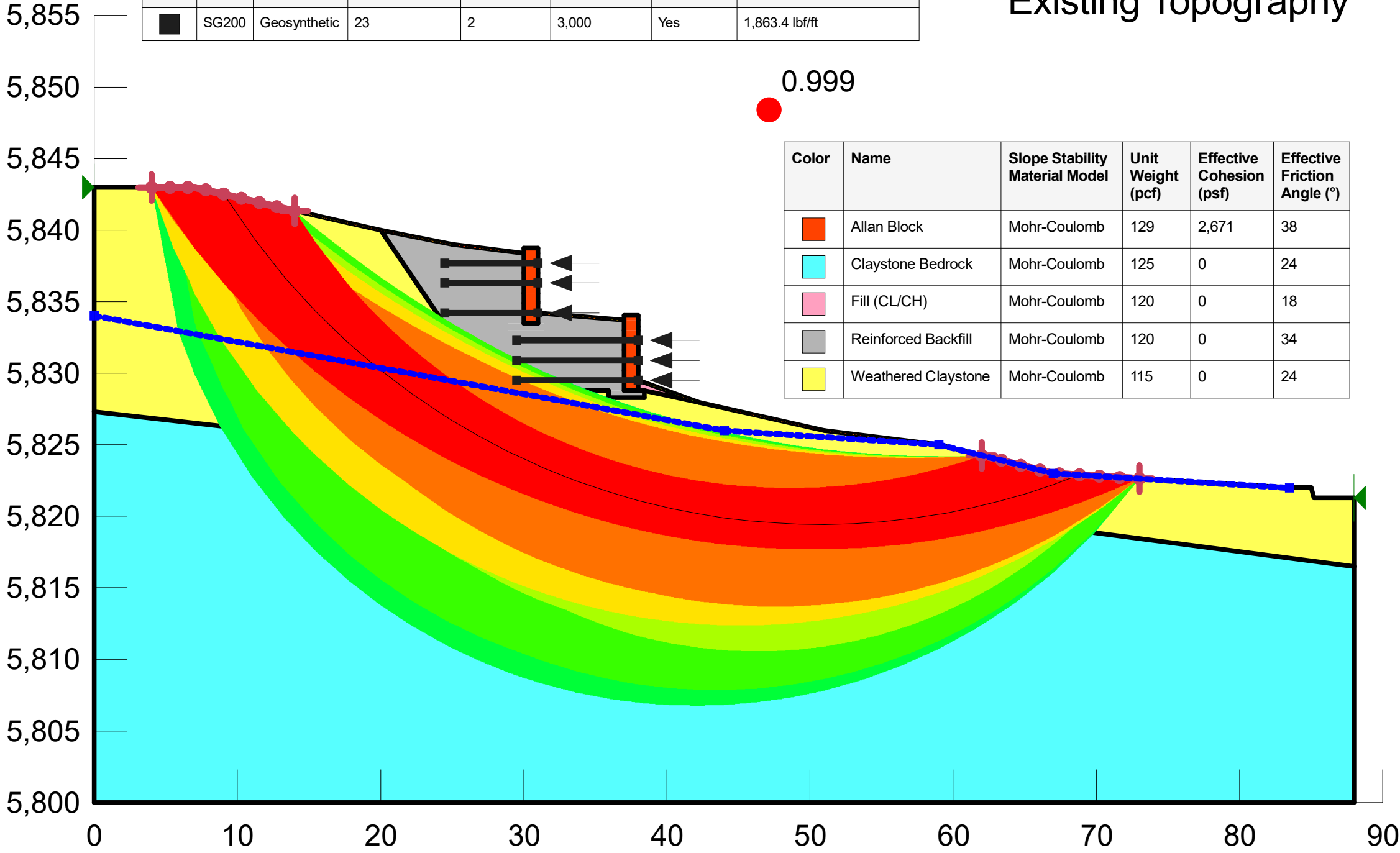
# Section A-A', Fully Softened Friction Angle Existing Topography

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| ■     | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

0.999

| Color | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|-------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| ■     | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| ■     | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 24                           |
| ■     | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| ■     | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| ■     | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 24                           |

Elevation



**Factor of Safety**

- 0.957 - 1.057
- 1.057 - 1.157
- 1.157 - 1.257
- 1.257 - 1.357
- 1.357 - 1.457
- 1.457 - 1.557
- 1.557 - 1.657
- 1.657 - 1.757
- 1.757 - 1.857
- $\geq 1.857$

Distance

|   |             |
|---|-------------|
| Section A-A' Existing Topography (2)                |             |
| Candelas Landslide, A-A' Section 2.5-1 buttress.gsz |             |
| 08/29/2022  | 1:100.18561 |



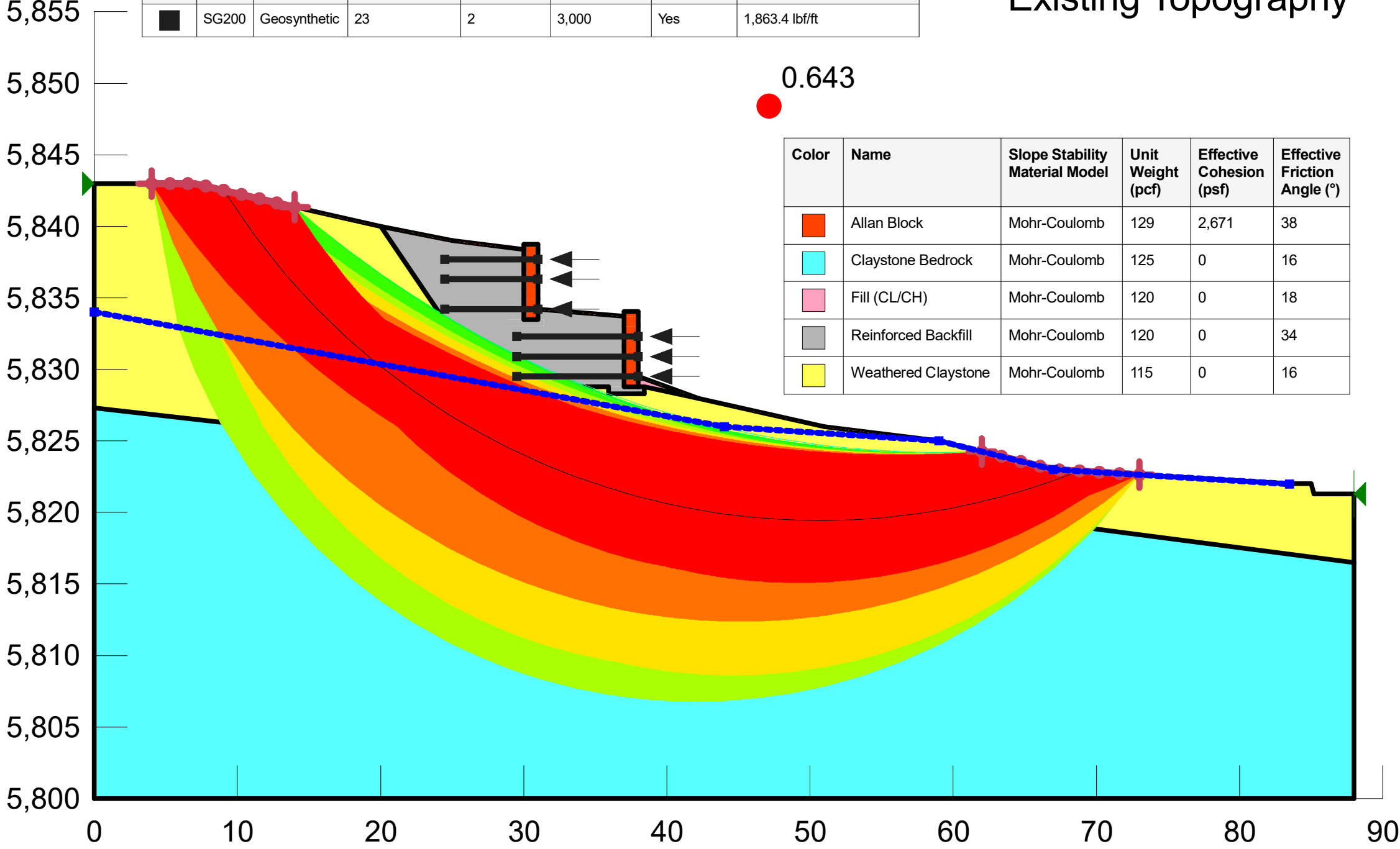
# Section A-A', Residual Friction Angle Existing Topography

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| ■     | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

0.643

| Color | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|-------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| ■     | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| ■     | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| ■     | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| ■     | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| ■     | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

Elevation



| Factor of Safety |               |
|------------------|---------------|
| ■                | 0.617 - 0.717 |
| ■                | 0.717 - 0.817 |
| ■                | 0.817 - 0.917 |
| ■                | 0.917 - 1.017 |
| ■                | 1.017 - 1.117 |
| ■                | 1.117 - 1.217 |
| ■                | 1.217 - 1.317 |
| ■                | 1.317 - 1.417 |
| ■                | 1.417 - 1.517 |
| ■                | ≥ 1.517       |

Distance

|   |             |
|---|-------------|
| Section A-A' Existing Topography (2)                |             |
| Candelas Landslide, A-A' Section 2.5-1 buttress.gsz |             |
| 08/29/2022  | 1:100.18561 |



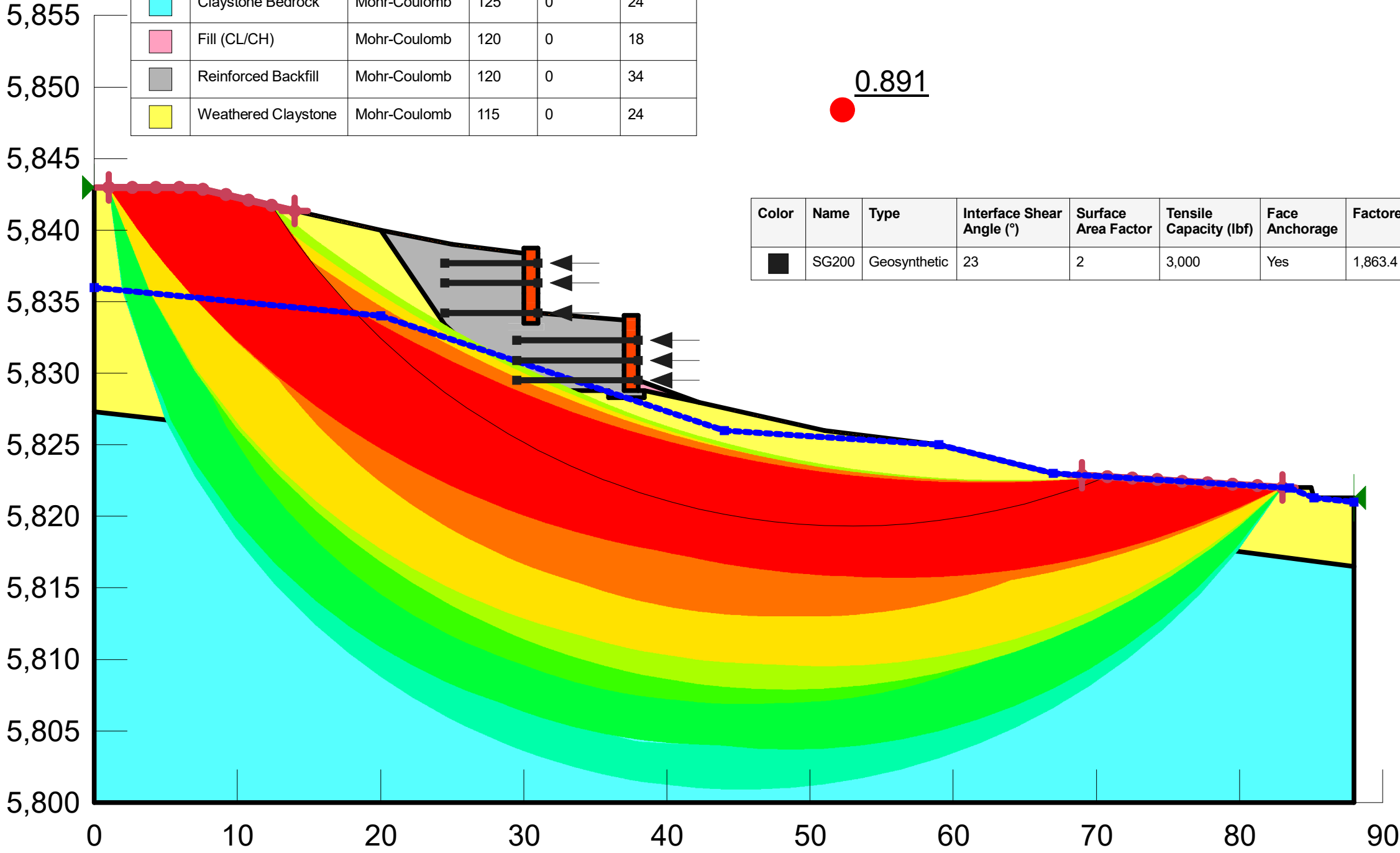
# Section A-A', Existing Topography Fully Softened Friction Angle Critical Failure Surface Auto-Selected

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Red    | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 24                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 24                           |

0.891

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

Elevation



| Factor of Safety |               |
|------------------|---------------|
| Red              | 0.891 - 0.991 |
| Orange           | 0.991 - 1.091 |
| Yellow           | 1.091 - 1.191 |
| Light Green      | 1.191 - 1.291 |
| Green            | 1.291 - 1.391 |
| Bright Green     | 1.391 - 1.491 |
| Cyan             | 1.491 - 1.591 |
| Light Blue       | 1.591 - 1.691 |
| Blue             | 1.691 - 1.791 |
| Dark Blue        | ≥ 1.791       |

Distance

|   |             |
|---|-------------|
| Section A-A' Existing Topography (2)                |             |
| Candelas Landslide, A-A' Section 2.5-1 buttress.gsz |             |
| 08/29/2022  | 1:100.18561 |

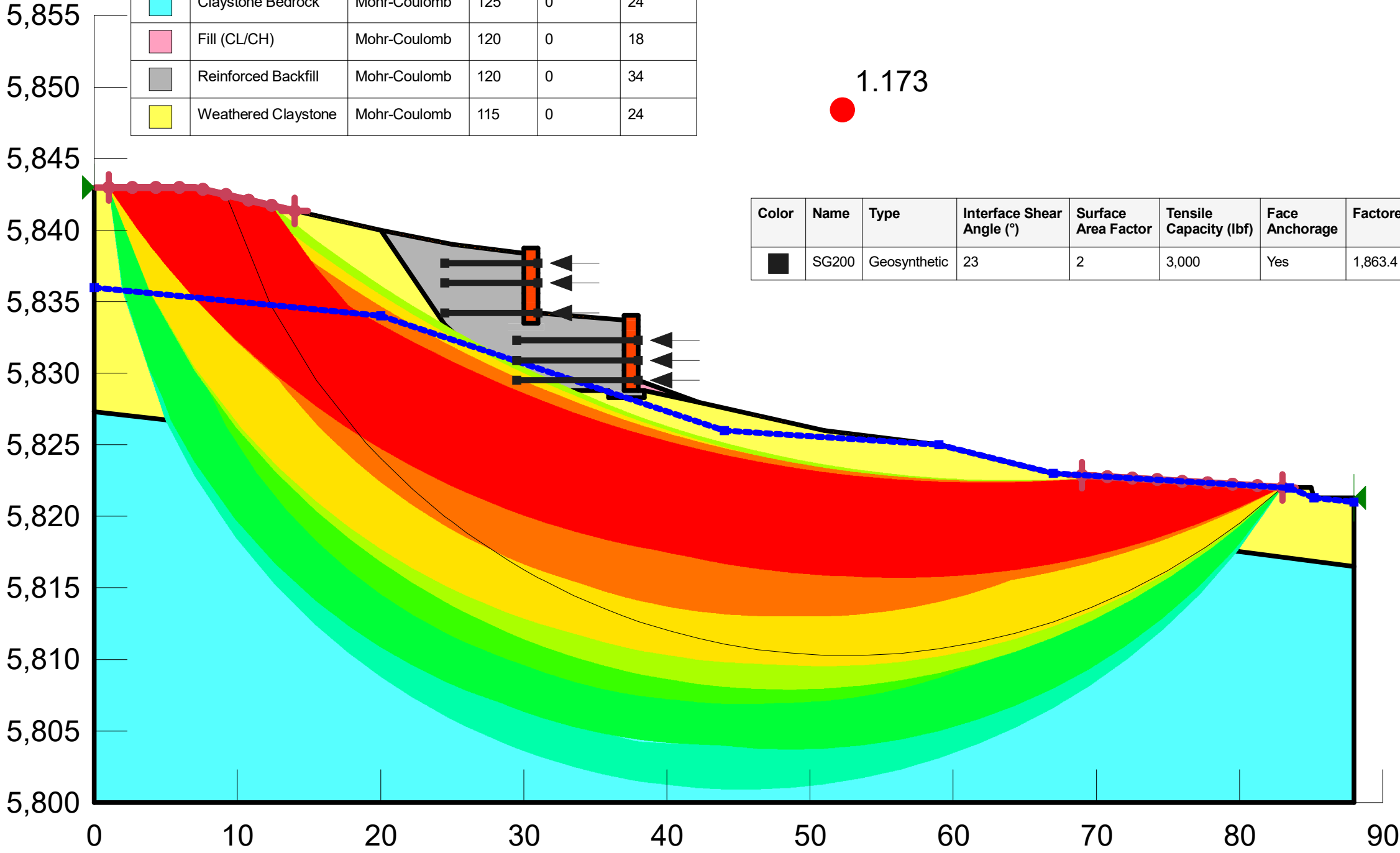
# Section A-A', Existing Topography Fully Softened Friction Angle Specified Critical Failure Surface

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Red    | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 24                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 24                           |

1.173

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

Elevation



**Factor of Safety**

- Red: 0.891 - 0.991
- Orange: 0.991 - 1.091
- Yellow: 1.091 - 1.191
- Light Green: 1.191 - 1.291
- Green: 1.291 - 1.391
- Cyan: 1.391 - 1.491
- Blue: 1.491 - 1.591
- Dark Blue: 1.691 - 1.791
- Dark Blue:  $\geq 1.791$

Distance

|   |             |
|---|-------------|
| Section A-A' Existing Topography (2)                |             |
| Candelas Landslide, A-A' Section 2.5-1 buttress.gsz |             |
| 08/29/2022  | 1:100.18561 |

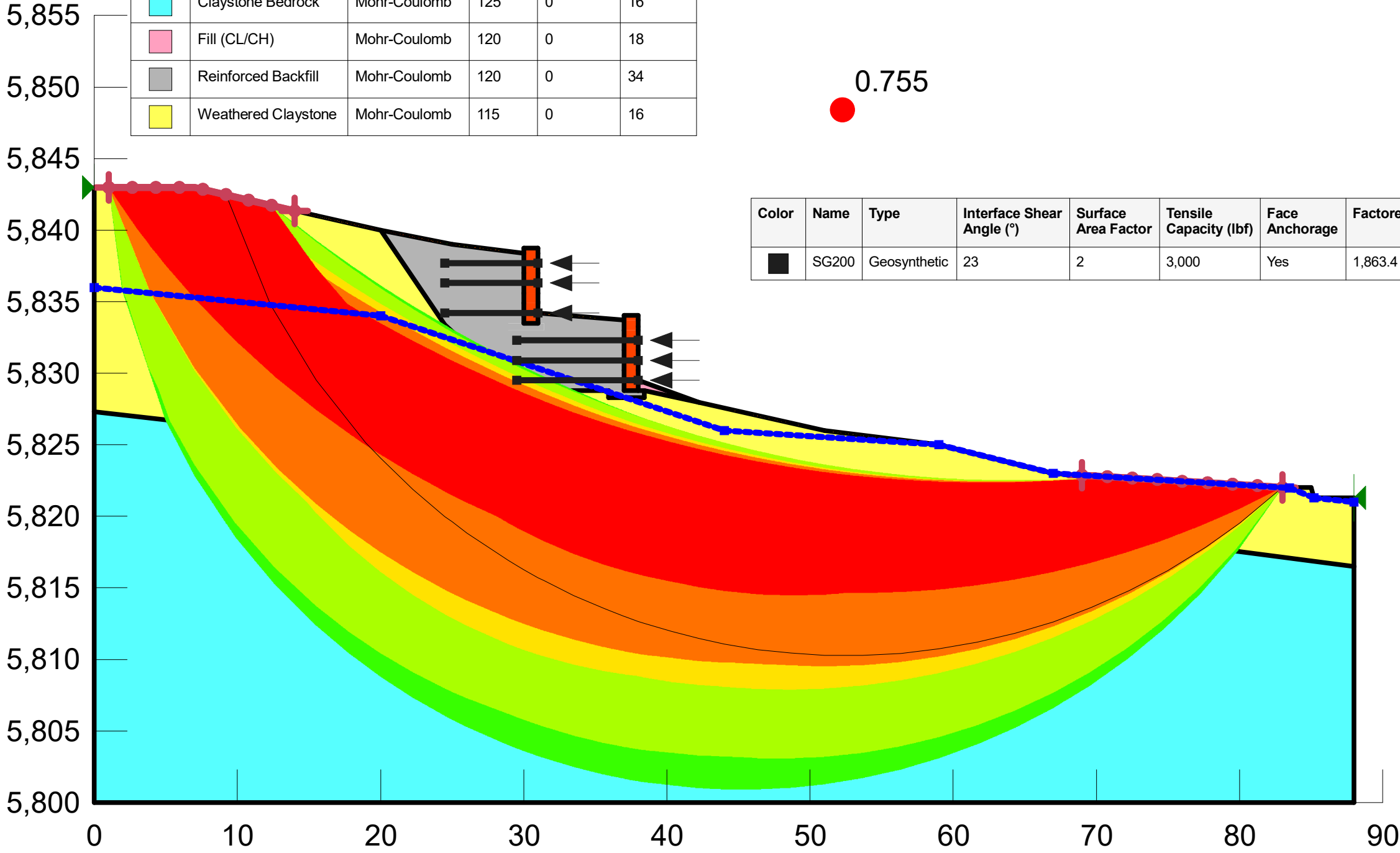
# Section A-A', Existing Topography Residual Friction Angle Specified Critical Failure Surface

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Red    | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

0.755

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

Elevation



| Factor of Safety |               |
|------------------|---------------|
| Red              | 0.574 - 0.674 |
| Orange           | 0.674 - 0.774 |
| Yellow           | 0.774 - 0.874 |
| Light Green      | 0.874 - 0.974 |
| Green            | 0.974 - 1.074 |
| Bright Green     | 1.074 - 1.174 |
| Cyan             | 1.174 - 1.274 |
| Blue             | 1.274 - 1.374 |
| Dark Blue        | 1.374 - 1.474 |
| Dark Blue        | ≥ 1.474       |

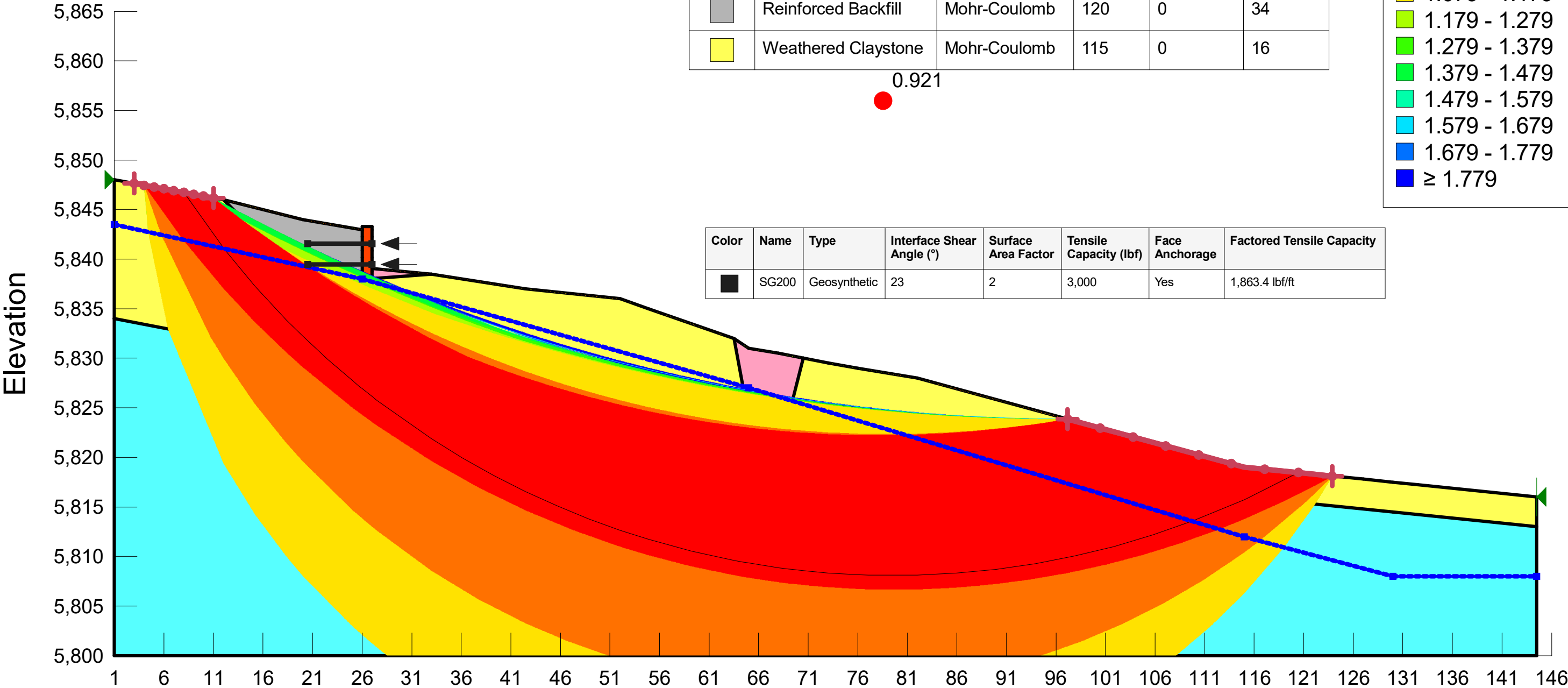
Distance

|   |             |
|---|-------------|
| Section A-A' Existing Topography (2)                |             |
| Candelas Landslide, A-A' Section 2.5-1 buttress.gsz |             |
| 08/29/2022  | 1:100.18561 |

Section B-B', Residual Friction Angle  
Existing Topography

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

| Factor of Safety |               |
|------------------|---------------|
| Red              | 0.879 - 0.979 |
| Orange           | 0.979 - 1.079 |
| Yellow           | 1.079 - 1.179 |
| Light Green      | 1.179 - 1.279 |
| Green            | 1.279 - 1.379 |
| Bright Green     | 1.379 - 1.479 |
| Cyan             | 1.479 - 1.579 |
| Blue             | 1.679 - 1.779 |
| Dark Blue        | ≥ 1.779       |



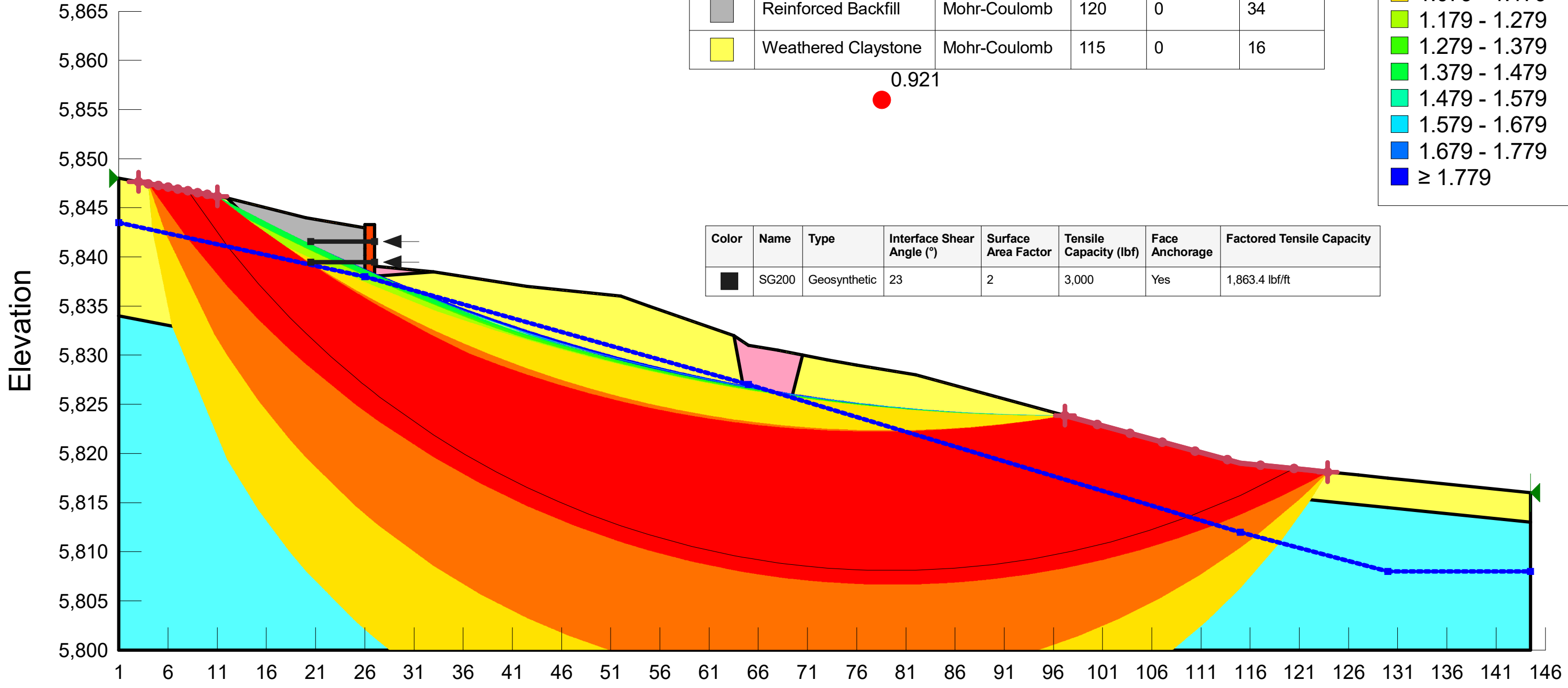
| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

|   |
|---|
| Wall 19, Section B-B' - Existing Topography, Entry/Exit |
| Candelas Landslide - Ex. Topo.gsz                       |
| 08/24/2022  |
| 1:125.23202   |

### Section B-B', Residual Friction Angle Existing Topography

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

| Factor of Safety |               |
|------------------|---------------|
| Red              | 0.879 - 0.979 |
| Orange           | 0.979 - 1.079 |
| Yellow           | 1.079 - 1.179 |
| Light Green      | 1.179 - 1.279 |
| Green            | 1.279 - 1.379 |
| Bright Green     | 1.379 - 1.479 |
| Cyan             | 1.479 - 1.579 |
| Blue             | 1.679 - 1.779 |
| Dark Blue        | ≥ 1.779       |



| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

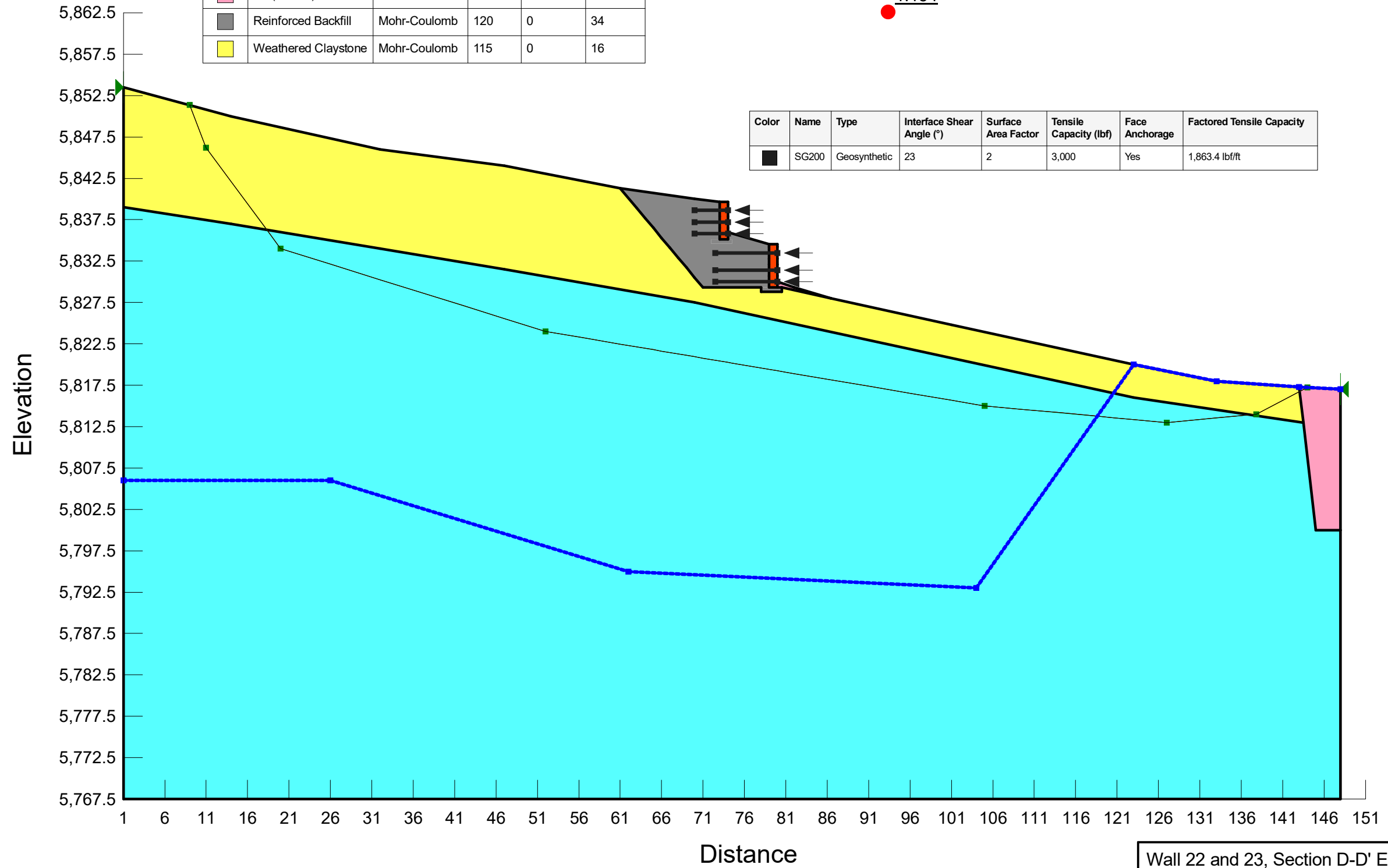
Wall 19, Section B-B' - Existing Topography, Entry/Exit  
 Candelas Landslide - Ex. Topo.gsz  
 08/24/2022 1:125.23202

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 16                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 16                           |

Section D-D', Residual Strength Friction Angle Existing Topo with Measured GW Levels

1.154

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |



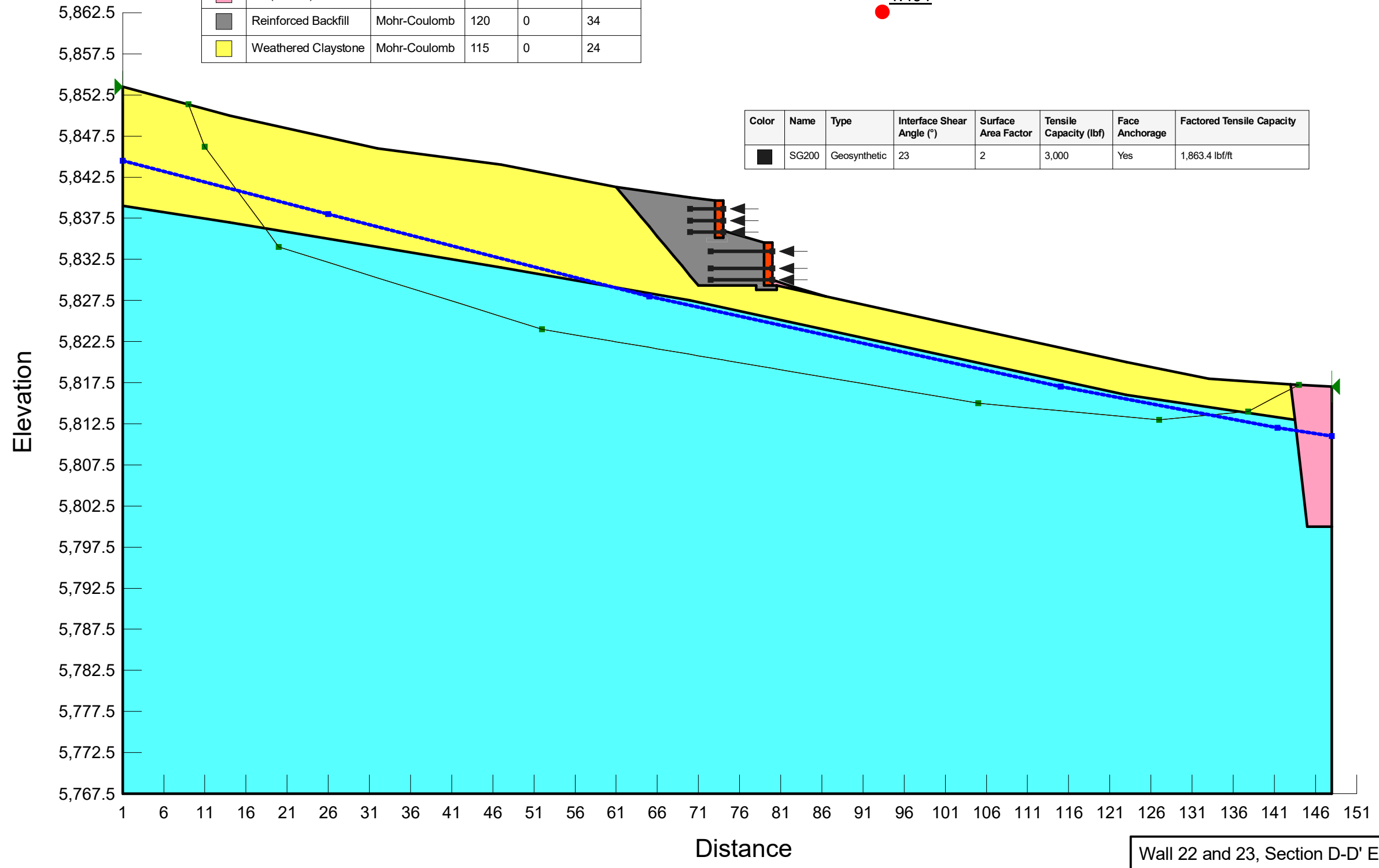
Wall 22 and 23, Section D-D' Existing Topo w/ Lowered GW  
 Candelas Landslide Section D-D'.gsz  
 08/23/2022 1:162.3007

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 24                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 24                           |

Section D-D', Fully Softened Strength Friction Angle Existing Topo

1.491

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

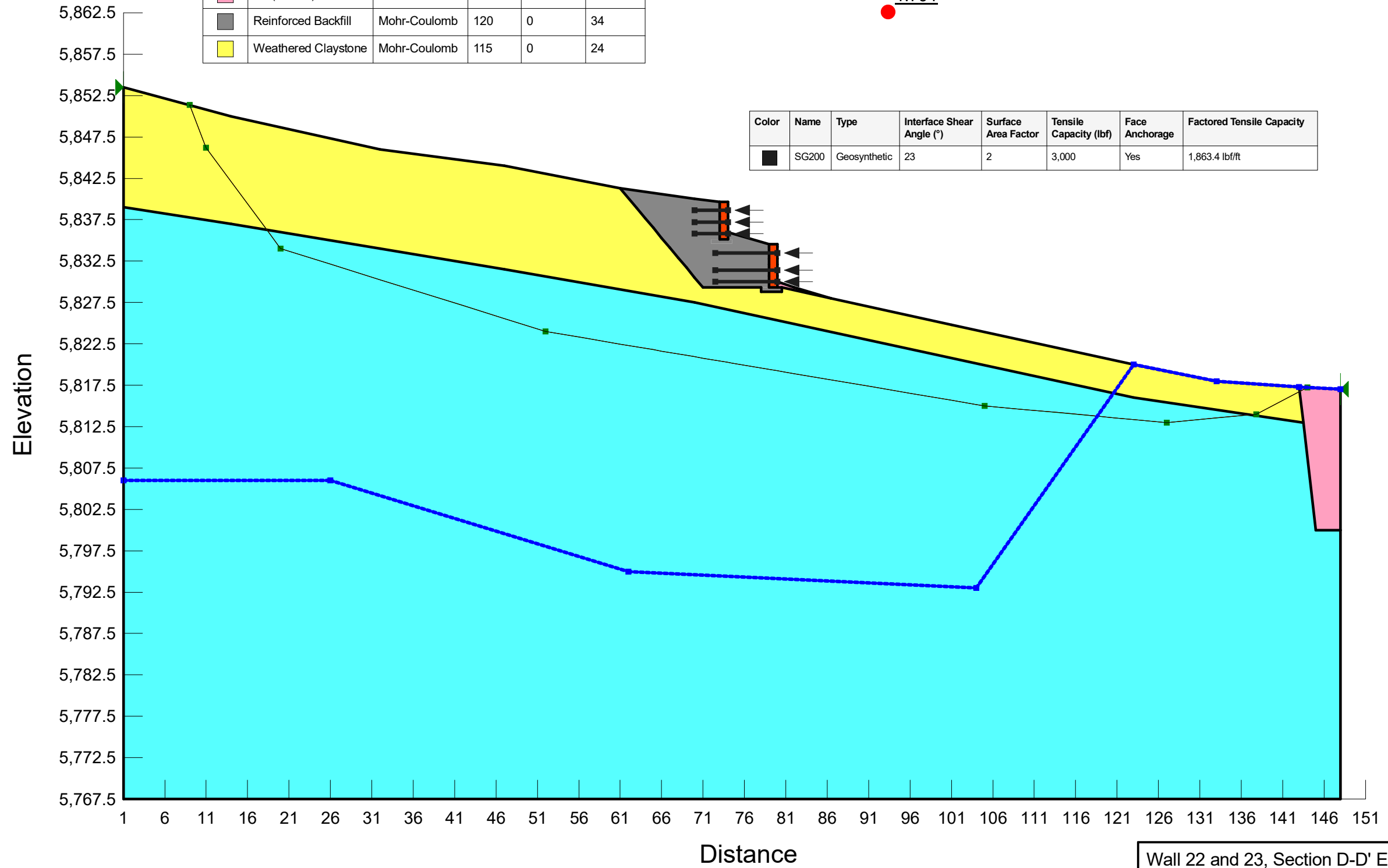


Wall 22 and 23, Section D-D' Existing Topo  
 Candelas Landslide Section D-D'.gsz  
 08/23/2022 1:162.3007

Section D-D', Fully Softened Strength Friction Angle  
Existing Topo with Measured GW Levels

| Color  | Name                | Slope Stability Material Model | Unit Weight (pcf) | Effective Cohesion (psf) | Effective Friction Angle (°) |
|--------|---------------------|--------------------------------|-------------------|--------------------------|------------------------------|
| Orange | Allan Block         | Mohr-Coulomb                   | 129               | 2,671                    | 38                           |
| Cyan   | Claystone Bedrock   | Mohr-Coulomb                   | 125               | 0                        | 24                           |
| Pink   | Fill (CL/CH)        | Mohr-Coulomb                   | 120               | 0                        | 18                           |
| Grey   | Reinforced Backfill | Mohr-Coulomb                   | 120               | 0                        | 34                           |
| Yellow | Weathered Claystone | Mohr-Coulomb                   | 115               | 0                        | 24                           |

| Color | Name  | Type         | Interface Shear Angle (°) | Surface Area Factor | Tensile Capacity (lbf) | Face Anchorage | Factored Tensile Capacity |
|-------|-------|--------------|---------------------------|---------------------|------------------------|----------------|---------------------------|
| Black | SG200 | Geosynthetic | 23                        | 2                   | 3,000                  | Yes            | 1,863.4 lbf/ft            |

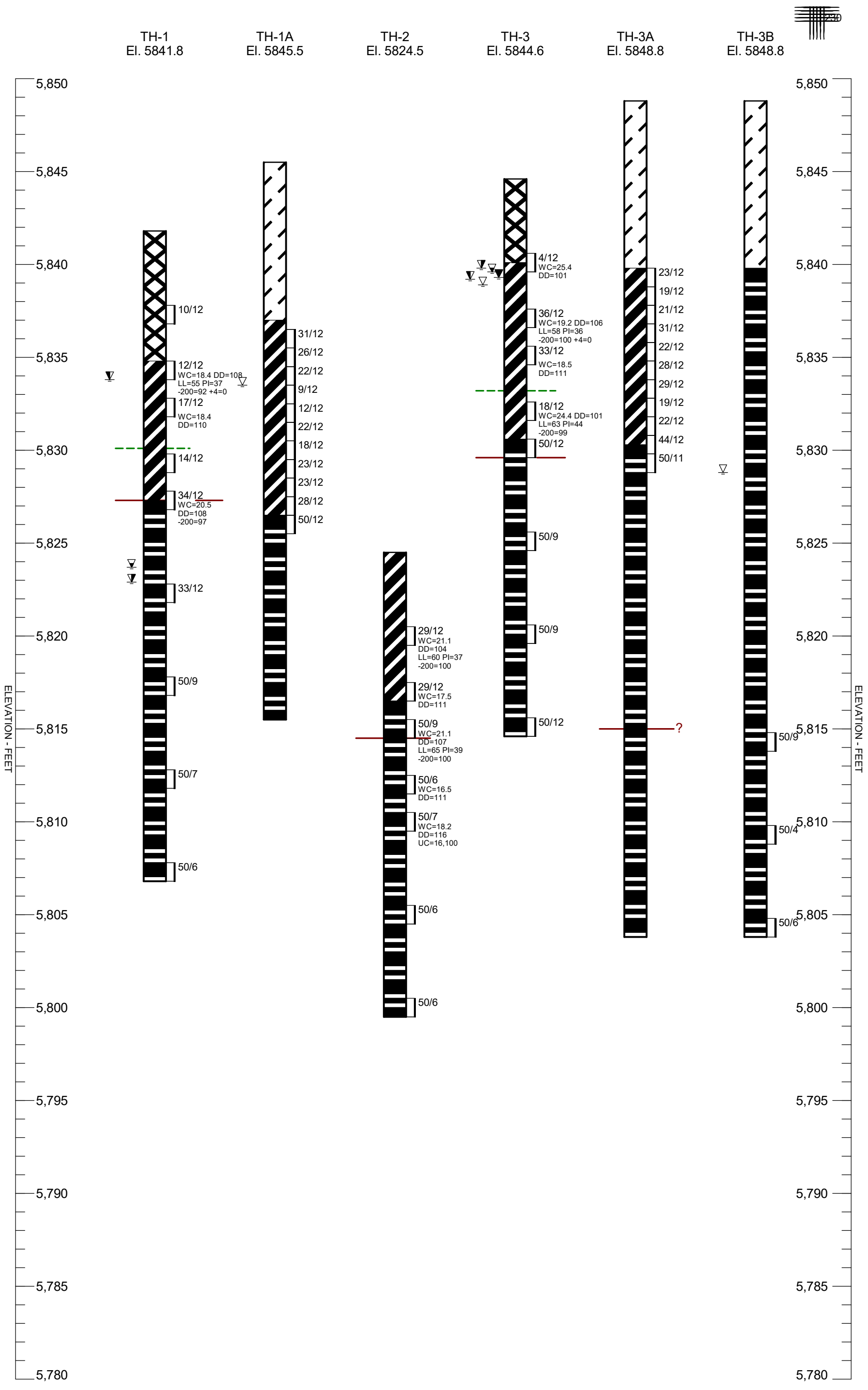


|  |
|--|
| Wall 22 and 23, Section D-D' Existing Topo w/ Lowered GW |
| Candelas Landslide Section D-D'.gsz                      |
| 08/23/2022   |
| 1:162.3007   |



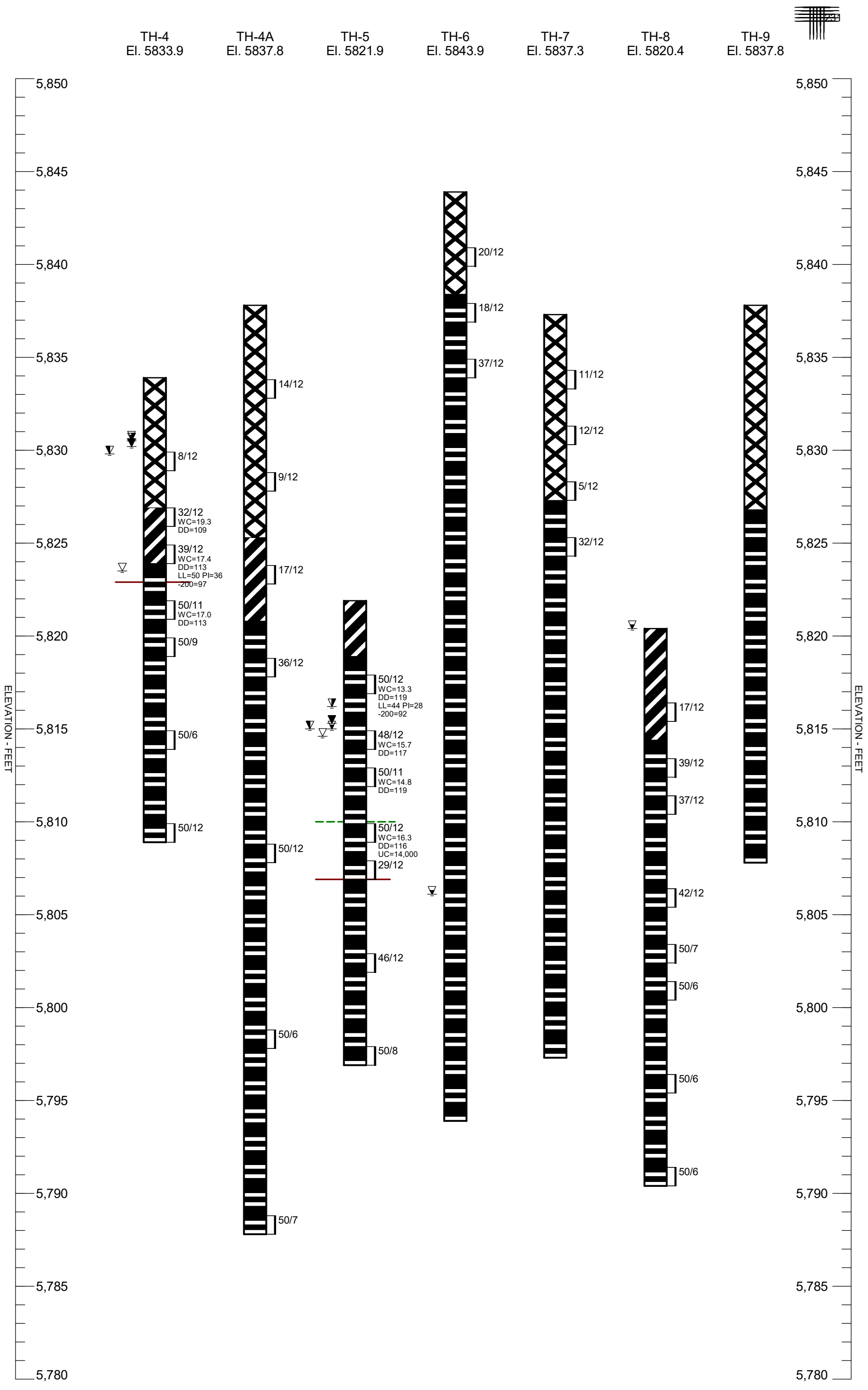


APPENDIX D  
SUMMARY LOGS OF EXPLORATORY BORINGS



**SUMMARY LOGS OF EXPLORATORY BORINGS**














FIG. D-1



**SUMMARY LOGS OF EXPLORATORY BORINGS**

**FIG. D-2**

**LEGEND:**

-  FILL, CLAY, SANDY OR SAND, SILTY, GRAVELLY, MEDIUM STIFF TO VERY STIFF OR LOOSE TO MEDIUM DENSE, SLIGHTLY MOIST TO VERY MOIST, BROWN, DARK BROWN, TAN.
-  CLAY, SANDY, GRAVELLY, MEDIUM STIFF TO STIFF, SLIGHTLY MOIST TO MOIST, BROWN, DARK BROWN (CL).
-  WEATHERED CLAYSTONE, MOIST, BROWN, GRAY, RUST, TAN.
-  BEDROCK, CLAYSTONE, MEDIUM HARD TO VERY HARD, SLIGHTLY MOIST TO MOIST, BROWN, GRAY, RUST.
-  DRIVE SAMPLE. THE SYMBOL 10/12 INDICATES 10 BLOWS OF A 140-POUND HAMMER FALLING 30 INCHES WERE REQUIRED TO DRIVE A 2.5-INCH O.D. SAMPLER 12 INCHES.
-  WATER LEVEL MEASURED AFTER DRILLING ON MARCH 5, 2022.
-  WATER LEVEL MEASURED AFTER DRILLING ON MARCH 12, 2022.
-  WATER LEVEL MEASURED AFTER DRILLING ON MARCH 19, 2022.
-  WATER LEVEL MEASURED AFTER DRILLING ON MARCH 26, 2022.
-  WATER LEVEL MEASURED AFTER DRILLING ON MAY 1, 2022.
-  INDICATES DEPTH OF FAILURE SURFACE BASED ON DEFLECTION OF INCLINOMETERS.
-  INDICATES DEPTH OF FAILURE SURFACE BASED ON SHEARING OF INCLINOMETERS.
-  SUSPICIOUS INSTALLATION

**NOTES:**

1. THE BORINGS WERE DRILLED BETWEEN FEBRUARY 23 AND AUGUST 17, 2022 USING 4-INCH DIAMETER, CONTINUOUS-FLIGHT SOLID-STEM AUGER AND TRUCK-MOUNTED CME-45 DRILL RIG.
2. BORING LOCATIONS AND ELEVATIONS ARE APPROXIMATE AND WERE DETERMINED BY A REPRESENTATIVE OF OUR FIRM USING A LEICA GS18 GPS UNIT REFERENCING THE NORTH AMERICAN DATUM OF 1983 (NAD 83).
3. WC - INDICATES MOISTURE CONTENT (%).  
 DD - INDICATES DRY DENSITY (PCF).  
 SW - INDICATES SWELL WHEN WETTED UNDER APPROXIMATE OVERBURDEN PRESSURE (%).  
 COM - INDICATES COMPRESSION WHEN WETTED UNDER APPROXIMATE OVERBURDEN PRESSURE (%).  
 LL - INDICATES LIQUID LIMIT.  
 PI - INDICATES PLASTICITY INDEX.  
 -200 - INDICATES PASSING NO. 200 SIEVE (%).  
 UC - INDICATES UNCONFINED COMPRESSIVE STRENGTH (psf).  
 SS - INDICATES WATER-SOLUBLE SULFATE CONTENT (%).  
 pF - INDICATES SOIL SUCTION VALUE (pF).

## **ADDENDA**

**ADDENDUM NO. 1**

**CIMARRON METROPOLITAN DISTRICT  
SLOPE FAILURE REPAIR STORM SEWER AND DRAINS**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Slope Failure Repair Storm Sewer and Drains** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and one (1) attachment.

**Attachment A – 20230522 Candelas Filing 1 SFR SS and Drains**

**BID & CONTRACT DOCUMENTS**

END OF ADDENDUM

Brandon Collins, PE  
\_\_\_\_\_  
IDES, LLC – Cimarron Metropolitan District  
Engineer

5/22/2023  
\_\_\_\_\_  
Date Issued

**Cimarron Metropolitan District  
 Candelas Filing 1  
 Slope Failure Repair Storm Sewer and Drains  
 Bid Schedule**

Contractor: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

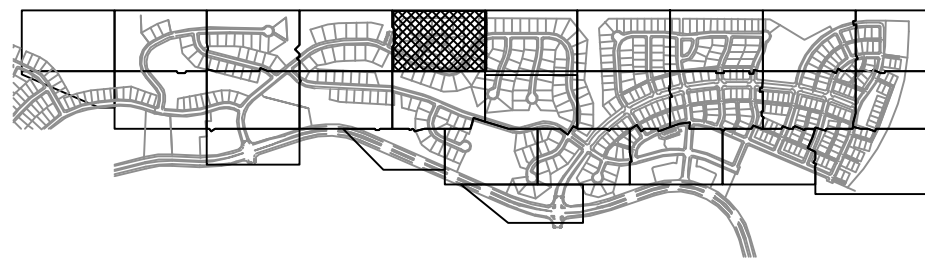
**Owner: Cimarron Metropolitan District**  
 c/o McGeady Becher  
 450 E. 17th Avenue, Suite 400  
 Denver, CO 80203

| Item Code                     | Item Description                             | Unit | Qty | Unit Price | Extension     |
|-------------------------------|--|------|-----|------------|---------------|
| <b>General Items</b>          |  |      |     |            |               |
| 1                             | Mobilization & Insurance                     | LS   | 1   |            | \$0.00        |
| 2                             | Bonds  | LS   | 1   |            | \$0.00        |
| 3                             | Traffic Control                              | LS   | 1   |            | \$0.00        |
| <b>Subtotal General Items</b> |  |      |     |            | <b>\$0.00</b> |
| <b>Storm Sewer</b>            |  |      |     |            |               |
| 4                             | 18" RCP Storm Sewer                          | LF   | 225 |            | \$0.00        |
| 5                             | Raise Existing Manhole 3'                    | EA   | 1   |            | \$0.00        |
| 6                             | Manhole lid                                  | EA   | 1   |            | \$0.00        |
| 7                             | 12" Nyloplast Drain Basin                    | EA   | 1   |            | \$0.00        |
| 8                             | 24" Nyloplast Drain Basin                    | EA   | 1   |            | \$0.00        |
| <b>Subtotal Storm Sewer</b>   |  |      |     |            | <b>\$0.00</b> |
| <b>Drains</b>                 |  |      |     |            |               |
| 9                             | 4" Perf PVC Shallow Trench/Interceptor Drain | LF   | 389 |            | \$0.00        |
| 10                            | 4" Solid PVC Gravel Interceptor Drain        | LF   | 45  |            | \$0.00        |
| 11                            | 4" Perf Underdrain                           | LF   | 582 |            | \$0.00        |
| 12                            | 4" Solid Underdrain                          | LF   | 80  |            | \$0.00        |
| 13                            | Cutoff Wall                                  | EA   | 1   |            | \$0.00        |
| <b>Subtotal Drains</b>        |  |      |     |            | <b>\$0.00</b> |
| <b>Water</b>                  |  |      |     |            |               |
| 14                            | Demo Irrigation Vault                        | EA   | 1   |            | \$0.00        |
| 15                            | Abandon 1.5" Irrigation Service Line at Main | EA   | 1   |            | \$0.00        |
| <b>Subtotal Water</b>         |  |      |     |            | <b>\$0.00</b> |
| <b>Total</b>                  |  |      |     |            | <b>\$0.00</b> |
| <b>Alternate</b>              |  |      |     |            |               |
| 1                             | 18" RCP Pipe Reuse                           | LF   | 1   |            | \$0.00        |
| 2                             | 4' Manhole (if existing is damaged)          | EA   | 1   |            | \$0.00        |
| <b>Subtotal Alternate</b>     |  |      |     |            | <b>\$0.00</b> |

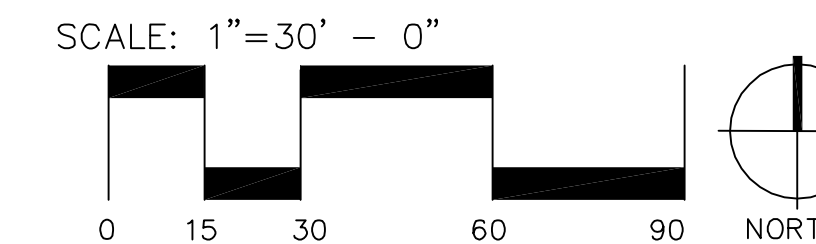
Contractor Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



KEYMAP



Arvada  
Residential  
Partners,  
LLC.

**CANDELAS**  
LIVE FORWARD

MARTIN / MARTIN  
CONSULTING ENGINEERS

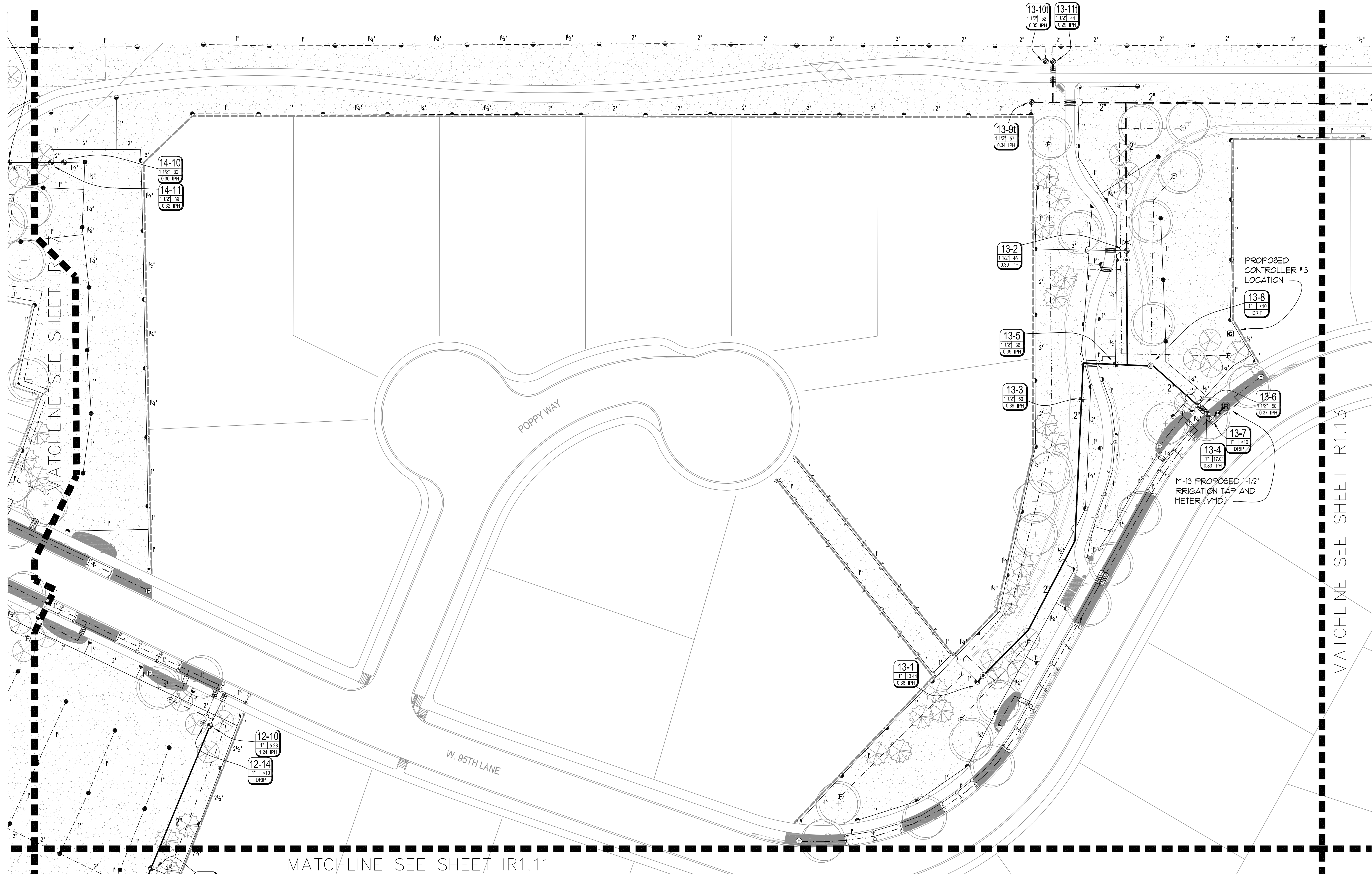
13499 WEST GOLFAR AVE.  
P.O. BOX 191900  
DENVER, CO 80219  
PHONE: 303.431.6100  
FAX: 303.431.4028

**Smith**  
IRRIGATION DESIGN, LLC

949 HIGHLOFFE STREET, HIGHLANDS RANCH, CO 80129  
PHONE: 303.417.1777 WWW.SMITHIRRIGATION.COM

**Stanley Consultants**

8000 S. Chester Street  
Suite 500  
Englewood, Colorado 80112  
phone 303.799.6806  
fax 303.799.8107  
www.stanleygroup.com



CANDELAS FILING  
NO. 1  
Construction Documents

IRRIGATION PLAN

| No. | Description of Revisions | Date     |
|-----|--------------------------|----------|
| 1   | City Comments            | 04-01-11 |
| 2   | City Comments            | 06-27-11 |

Stamp

Date: August 5, 2011  
Job Number: 092006  
Design By: DJS  
Drawn By: DJS  
Checked By: DJS

Sheet Number:  
IR1.10



**ADDENDUM NO. 1****CIMARRON METROPOLITAN DISTRICT  
CANDELAS SLOPE FAILURE**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Candelas Slope Failure** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and no (0) attachments.

**PRE BID MEETING DATE**

**The optional pre bid meeting will be held via Microsoft Teams June 2, 2023 at 2:00 P.M.**

---

## Microsoft Teams meeting

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 233 020 536 863

Passcode: eonCJZ

[Download Teams](#) | [Join on the web](#)

**Or call in (audio only)**

[+1 970-462-9413,,87273447#](#) United States, Grand Junction

Phone Conference ID: 872 734 47#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

---

<https://www.microsoft.com/microsoft-teams/join-a-meeting>

END OF ADDENDUM

Brandon Collins, PE

IDES, LLC – Cimarron Metropolitan District  
Engineer

5/24/2023

Date Issued

**ADDENDUM NO. 3****CIMARRON METROPOLITAN DISTRICT  
CANDELAS SLOPE FAILURE**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Candelas Slope Failure** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and no (0) attachments.

**BID CLOSING DATE**

The Bid Closing Date has been moved to **June 13, 2023 at 1:00 PM MST.**

**PRE BID MEETING DATE**

The optional pre bid meeting has been moved and will be held via Microsoft Teams **June 9, 2023 at 2:00 P.M.**

---

**Microsoft Teams meeting**

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 240 839 628 298

Passcode: q5sXpd

[Download Teams](#) | [Join on the web](#)

**Or call in (audio only)**

[+1 970-462-9413,749671427#](#) United States, Grand Junction

Phone Conference ID: 749 671 427#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

---

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MjczOGNIYWItYWE0Ni00MTAzLTg2OWMtNTEzMGU3YjUwZjJk%40thread.v2/0?context=%7b%22Tid%22%3a%22032f9c1e-0394-49e3-bea7-b65280499415%22%2c%22Oid%22%3a%229cf8415e-1e28-4901-b738-0140e3cbc537%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MjczOGNIYWItYWE0Ni00MTAzLTg2OWMtNTEzMGU3YjUwZjJk%40thread.v2/0?context=%7b%22Tid%22%3a%22032f9c1e-0394-49e3-bea7-b65280499415%22%2c%22Oid%22%3a%229cf8415e-1e28-4901-b738-0140e3cbc537%22%7d)

---

END OF ADDENDUM

Brandon Collins, PE

IDES, LLC – Cimarron Metropolitan District  
Engineer

5/31/2023

Date Issued

**ADDENDUM NO. 4****CIMARRON METROPOLITAN DISTRICT  
CANDELAS SLOPE FAILURE**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Candelas Slope Failure** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and one (1) attachment.

**Attachment A: Candelas Filing No.1 Slope Stability CDs**

END OF ADDENDUM

Brandon Collins, PE  
IDES, LLC – Cimarron Metropolitan District  
Engineer

6/05/2023  
Date Issued

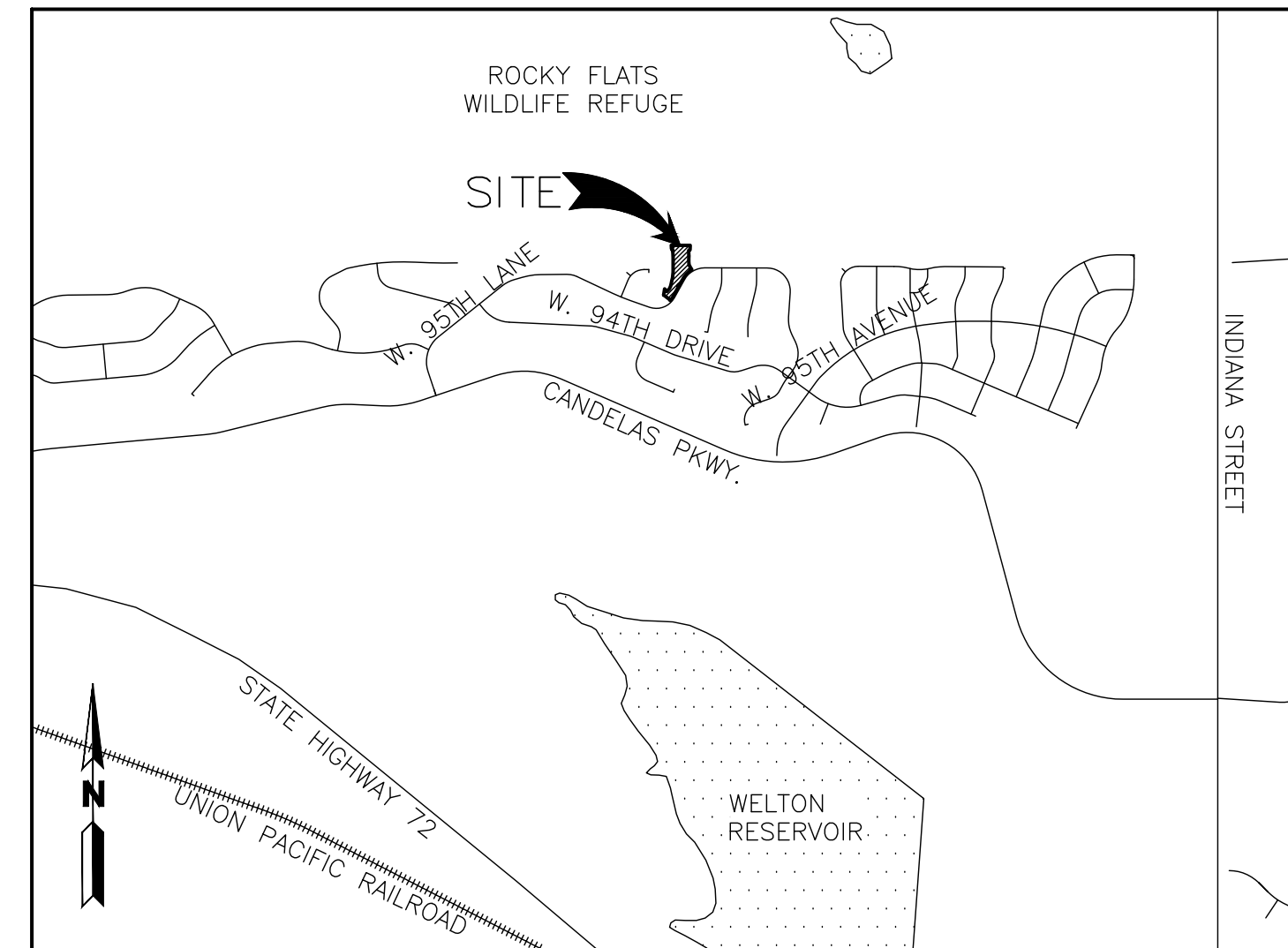
# CONSTRUCTION DOCUMENTS CANDELAS FILING NO. 1 SLOPE STABILITY

TRACT A6 OF CANDELAS FILING NO.1 RECORDED AT 2011039877, A PARCEL OF LAND  
LOCATED IN THE NORTHWEST SIXTEENTH OF SECTION 24,  
TOWNSHIP 2 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN,  
CITY OF ARVADA, COUNTY OF JEFFERSON  
STATE OF COLORADO

**MARTIN/MARTIN**  
CONSULTING ENGINEERS  
12499 WEST COLFAX AVENUE, LAKEWOOD, COLORADO 80215  
303.431.6100 MARTINMARTIN.COM

### LEGEND

| EXISTING |                               | PROPOSED |
|----------|-------------------------------|----------|
| ---      | PROPERTY LINE                 | ---      |
| ---      | RIGHT-OF-WAY LINE             | ---      |
| ---      | SECTION LINE                  | ---      |
| ---      | EASEMENT                      | ---      |
| ---      | RETAINING WALL                | ---      |
| ---      | CURB & GUTTER                 | ---      |
| ---      | TYPE I CURB & GUTTER (SPILL)  | ---      |
| ---      | TYPE II CURB & GUTTER (CATCH) | ---      |
| ---      | HEAVY DUTY DRIVE LANES        | ---      |
| ---      | CONCRETE/SIDEWALK             | ---      |
| ---      | HANDICAP RAMPS                | ---      |
| ---      | CONTOURS                      | ---      |
| ---      | UTILITY CROSSING              | ---      |
| ---      | STORM SEWER                   | ---      |
| ---      | STORM MANHOLE                 | ---      |
| ---      | ROOF DRAIN                    | ---      |
| ---      | STORM INLET                   | ---      |
| ---      | FLARED END SECTION            | ---      |
| ---      | SANITARY SEWER                | ---      |
| ---      | SANITARY MANHOLE              | ---      |
| ---      | CLEAN OUT                     | ---      |
| ---      | WATER LINE                    | ---      |
| ---      | WATER VALVE                   | ---      |
| ---      | FIRE HYDRANT                  | ---      |
| ---      | WATER METER                   | ---      |
| ---      | IRRIGATION LINE               | ---      |
| ---      | IRRIGATION CONTROL            | ---      |
| ---      | OVERHEAD ELECTRIC             | ---      |
| ---      | ELECTRIC LINE                 | ---      |
| ---      | LIGHT POLE                    | ---      |
| ---      | POWER POLE                    | ---      |
| ---      | ELECTRIC METER                | ---      |
| ---      | TELEPHONE LINE                | ---      |
| ---      | TELEPHONE PEDESTAL            | ---      |
| ---      | CABLE TV                      | ---      |
| ---      | SIGN                          | ---      |
| ---      | DIRECTION OF FLOW             | ---      |
| ---      | GRADING ARROW                 | ---      |
| ---      | DECIDUOUS TREE                | ---      |
| ---      | EVERGREEN TREE                | ---      |
| ---      | BUSH/SHRUB                    | ---      |
| ---      | MONITOR WELL                  | ---      |
| ---      | GAS LINE                      | ---      |
| ---      | DRIVE                         | ---      |
| ---      | SPOT ELEVATIONS               | ---      |



VICINITY MAP  
NOT TO SCALE

### CITY OF ARVADA STANDARD DRAWINGS

THE FOLLOWING CITY OF ARVADA STANDARD DRAWINGS ARE TO BE INCORPORATED INTO THE CONSTRUCTION OF THIS PROJECT:

| DESCRIPTION                                     | DRAWING NO. |
|---|-------------|
| CDOT TYPE 1 COMBINATION CURB RAMP DETAIL        | M-608-1     |
| SIDEWALK CHASE                                  | 800-13      |
| TYPICAL MANHOLE                                 | 500-3       |
| SANITARY AND STORM MANHOLE FRAME AND LID DETAIL | 500-9       |

### INDEX:

- COVER
- GRADING
- CROSS SECTION
- STORM PROFILE
- BACK OF LOT SLOPE INTERCEPTOR DRAIN
- GROUND ENGINEERING TYPICAL WALL SECTION

### OWNER

CIMARRON METROPOLITAN DISTRICT  
720-635-0778  
CONTACT: BRIAN DALY

### GEOTECHNICAL ENGINEER

CTL THOMPSON, INC  
1971 WEST 12TH AVENUE  
DENVER, CO 80204  
303-825-0777  
CONTACT: ALAN LISOWY, PE

### CIVIL ENGINEER

MARTIN/MARTIN CONSULTING ENGINEERS  
12499 WEST COLFAX AVENUE  
LAKEWOOD, CO 80215  
303.431.6100  
CONTACT: DAVID KUNTZ, PE

### WALL ENGINEER

GROUND ENGINEERING CONSULTANTS, LLC.  
41 INNERNESS DRIVE EAST  
ENGLEWOOD, CO 80112  
303-991-6938  
CONTACT: SEAN CHIANG, P.E., PH.D.

### RESPONSIBILITY:

THE CITY OF ARVADA IS NOT RESPONSIBLE FOR THE ACCURACY AND ADEQUACY OF THE DESIGN OR DIMENSIONS AND ELEVATIONS ON THE PLANS. THE CITY OF ARVADA'S REVIEW IS FOR GENERAL COMPLIANCE WITH THE CITY OF ARVADA ENGINEERING CODE OF STANDARDS AND SPECIFICATIONS FOR THE DESIGN AND CONSTRUCTION OF PUBLIC IMPROVEMENTS. THE CITY OF ARVADA, THROUGH THE ACCEPTANCE OF THE CONSTRUCTION PLAN OR DRAINAGE REPORT, ASSUMES NO RESPONSIBILITY FOR THE COMPLETENESS AND/OR ACCURACY OF THE CONSTRUCTION PLAN OR DRAINAGE REPORT. THE CITY DOES NOT ACCEPT LIABILITY FOR FACILITIES DESIGNED BY OTHERS.

### CERTIFICATION:

"THESE CONSTRUCTION PLANS FOR TRAILSTONE FILING NO. 1 WERE PREPARED BY ME (OR UNDER MY DIRECT SUPERVISION) IN ACCORDANCE WITH THE REQUIREMENTS OF THE CITY OF ARVADA ENGINEERING CODE OF STANDARDS AND SPECIFICATIONS FOR THE DESIGN AND CONSTRUCTION OF PUBLIC IMPROVEMENTS"

DAVID LOVATO, PE  
MARTIN/MARTIN CONSULTING ENGINEERS

CANDELAS FILING NO. 1  
SLOPE STABILITY

CITY OF ARVADA

COVER

NOT FOR CONSTRUCTION

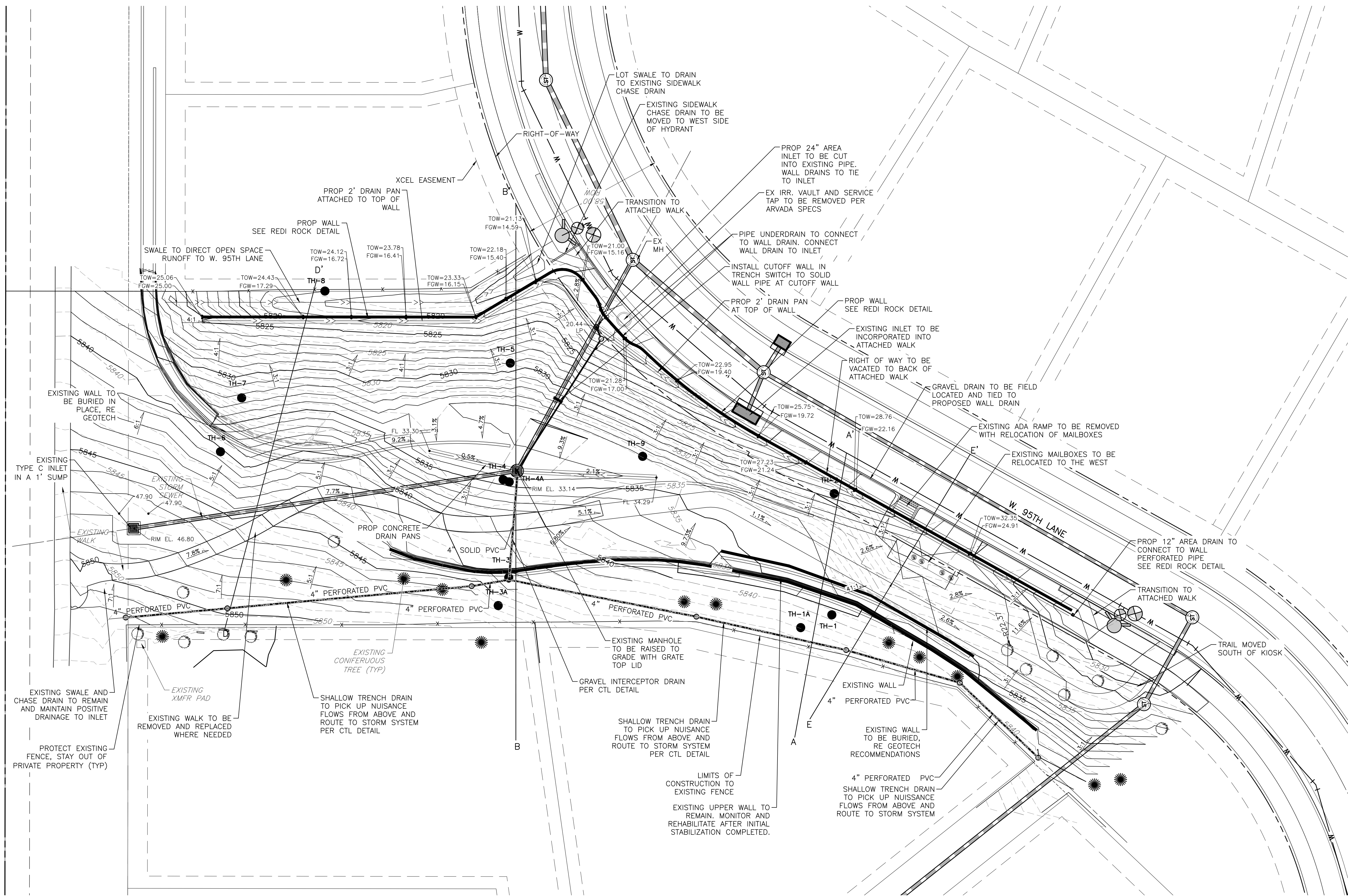
| No. | Issue / Revision | Date     | Name |
|-----|------------------|----------|------|
| 1   | FOR REVIEW       | 11/16/22 | DAK  |
| 2   | FOR REVIEW       | 04/18/23 | DAK  |
| 3   | FOR BID          | 05/31/23 | DAK  |

| Job Number          | CIMARRON  |
|---------------------|-----------|
| Project Manager     | D. KUNTZ  |
| Design By           | D. KUNTZ  |
| Drawn By            | J. CLAMP  |
| Principal In Charge | D. LOVATO |

THE DESIGNS SHOWN HEREIN INCLUDING ALL TECHNICAL DRAWINGS, SPECIFICATIONS, AND NOTES ARE THE PROPERTY OF MARTIN/MARTIN CONSULTING ENGINEERS AND SHALL BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED IN THIS CONTRACT. NO PART OF THESE DESIGNS OR DRAWINGS SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE SOLE AND EXPRESS WRITTEN PERMISSION FROM MARTIN/MARTIN, INC.

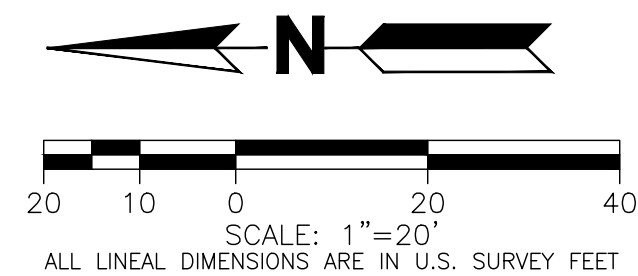
Sheet Number:

1  
OF 6



**NOTES:**

1. GRAVEL INTERCEPTOR DRAIN TO BE FIELD FIT BASED ON CTL OBSERVATIONS DURING CONSTRUCTION
2. ALL TRENCHES TO BE BACKFILLED AT THE END OF THE DAY



**CANDELAS FILING NO. 1  
 SLOPE STABILITY**

CITY OF ARVADA

GRADING

| No. | Issue / Revision | Date     | Name |
|-----|------------------|----------|------|
| 1   | FOR REVIEW       | 11/16/22 | DAK  |
| 2   | FOR REVIEW       | 04/18/23 | DAK  |
| 3   | FOR BID          | 05/31/23 | DAK  |

|                     |           |
|---------------------|-----------|
| Job Number          | CIMARRON  |
| Project Manager     | D. KUNTZ  |
| Design By           | D. KUNTZ  |
| Drawn By            | J. CLAMP  |
| Principal in Charge | D. LOVATO |

THE DESIGNS SHOWN HEREIN INCLUDING ALL TECHNICAL DRAWINGS, SPECIFICATIONS, NOTES, AND CONDITIONS ARE HEREBY OFFERED TO THE CITY OF ARVADA FOR CONSTRUCTION AND SHALL BE CONSIDERED AS PART OF THE CONTRACT DOCUMENTS. NO PART OF THESE DESIGNS SHALL BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION FROM MARTIN/MARTIN, INC.

Sheet Number:

**2**  
 OF 5



NOT FOR CONSTRUCTION

**CANDELAS FILING NO. 1**  
**SLOPE STABILITY**

**CITY OF ARVADA**  
CROSS SECTIONS

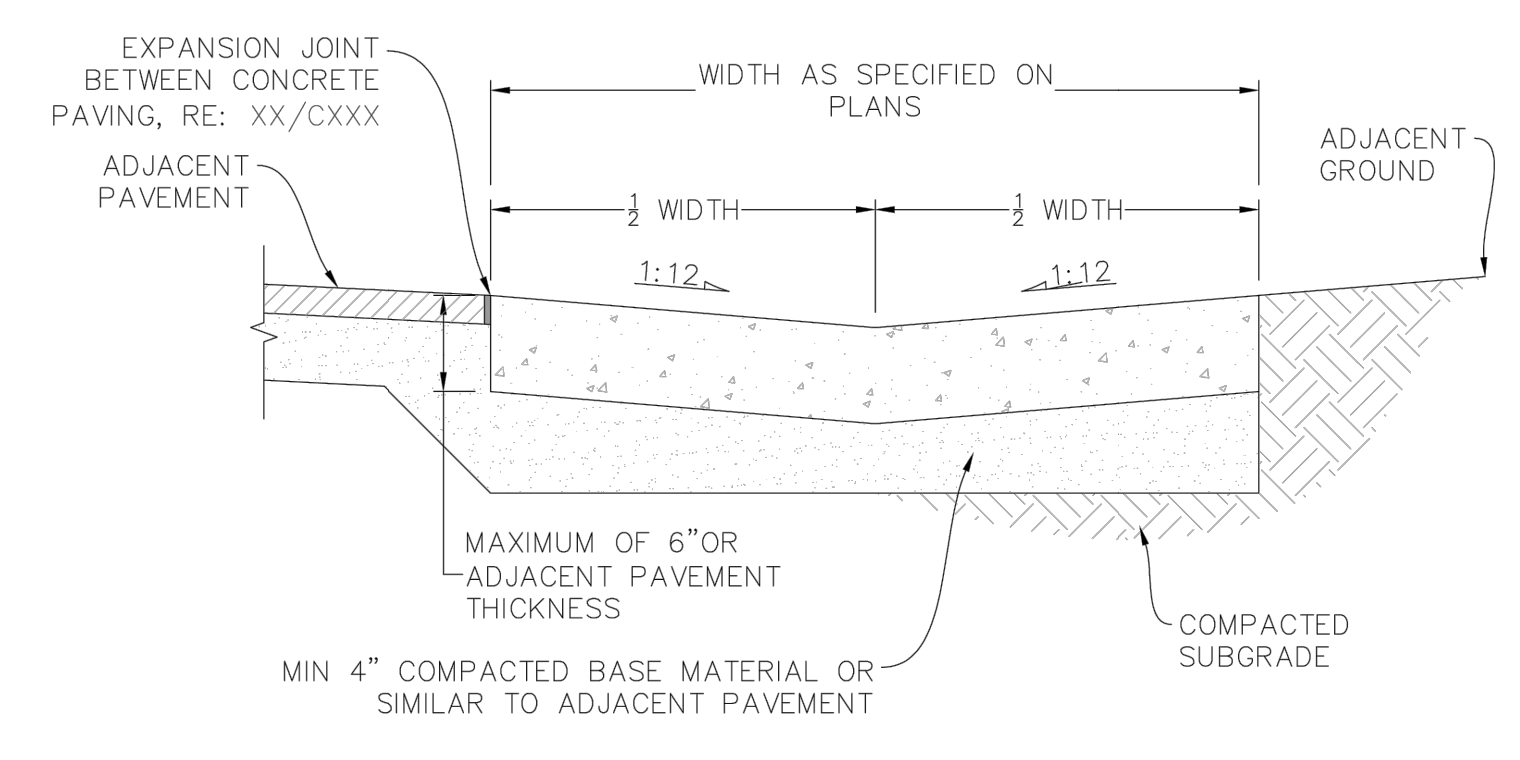
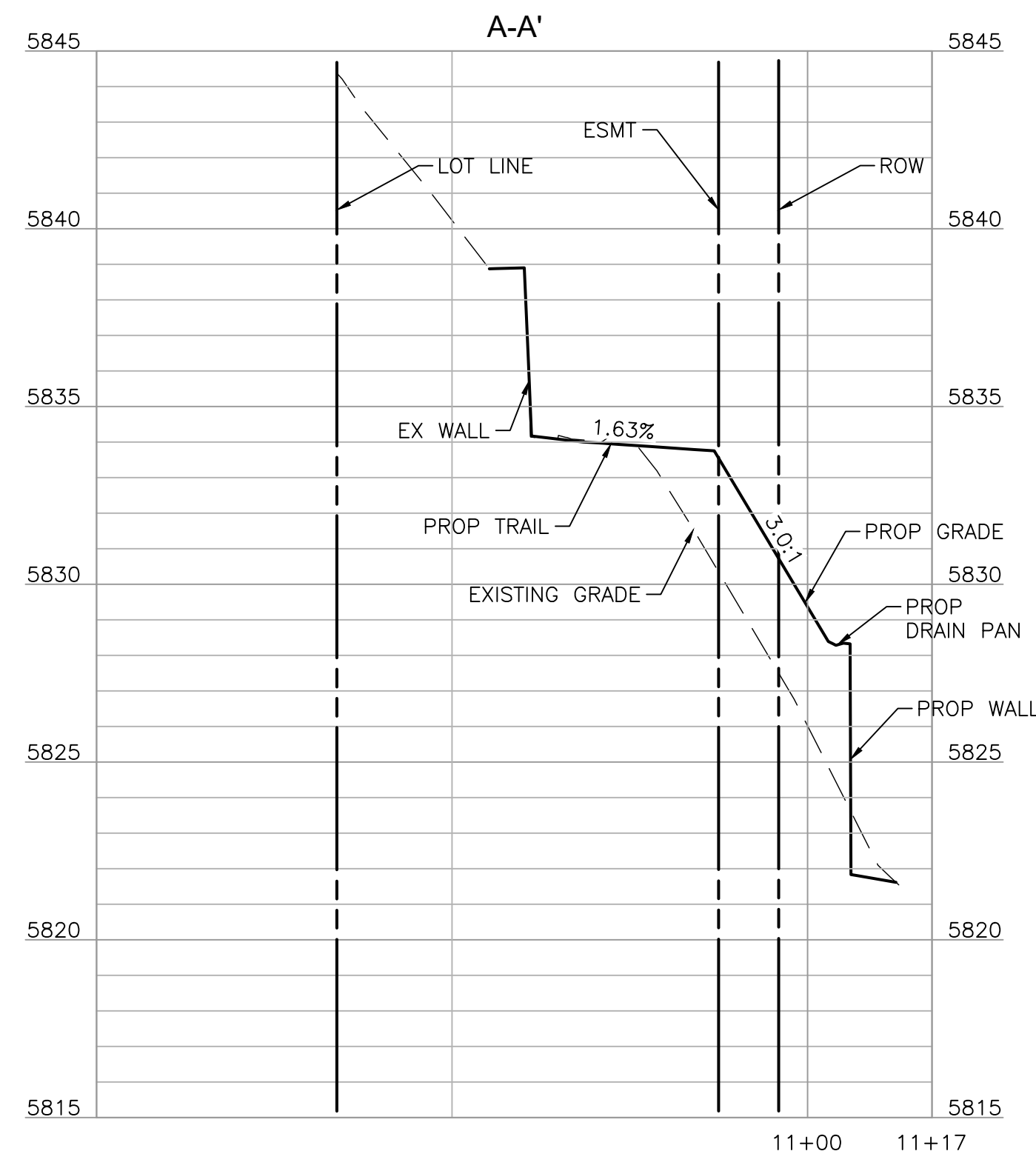
| No. | Issue / Revision | Date     | Name |
|-----|------------------|----------|------|
| 1   | FOR REVIEW       | 11/16/22 | DAK  |
| 2   | FOR REVIEW       | 04/18/23 | DAK  |
| 3   | FOR BID          | 05/31/23 | DAK  |

|                     |           |
|---------------------|-----------|
| Job Number          | CIMARRON  |
| Project Manager     | D. KUNTZ  |
| Design By           | D. KUNTZ  |
| Drawn By            | J. CLAMP  |
| Principal In Charge | D. LOVATO |

THE DESIGNS SHOWN HEREIN INCLUDING ALL TECHNICAL DRAWINGS, SPECIFICATIONS, NOTES, AND SCHEDULES OR COMMERCIALLY EXPLOITED IN WHOLE OR IN PART WITHOUT THE SOLE AND EXPRESS WRITTEN PERMISSION FROM MARTIN/MARTIN, INC.

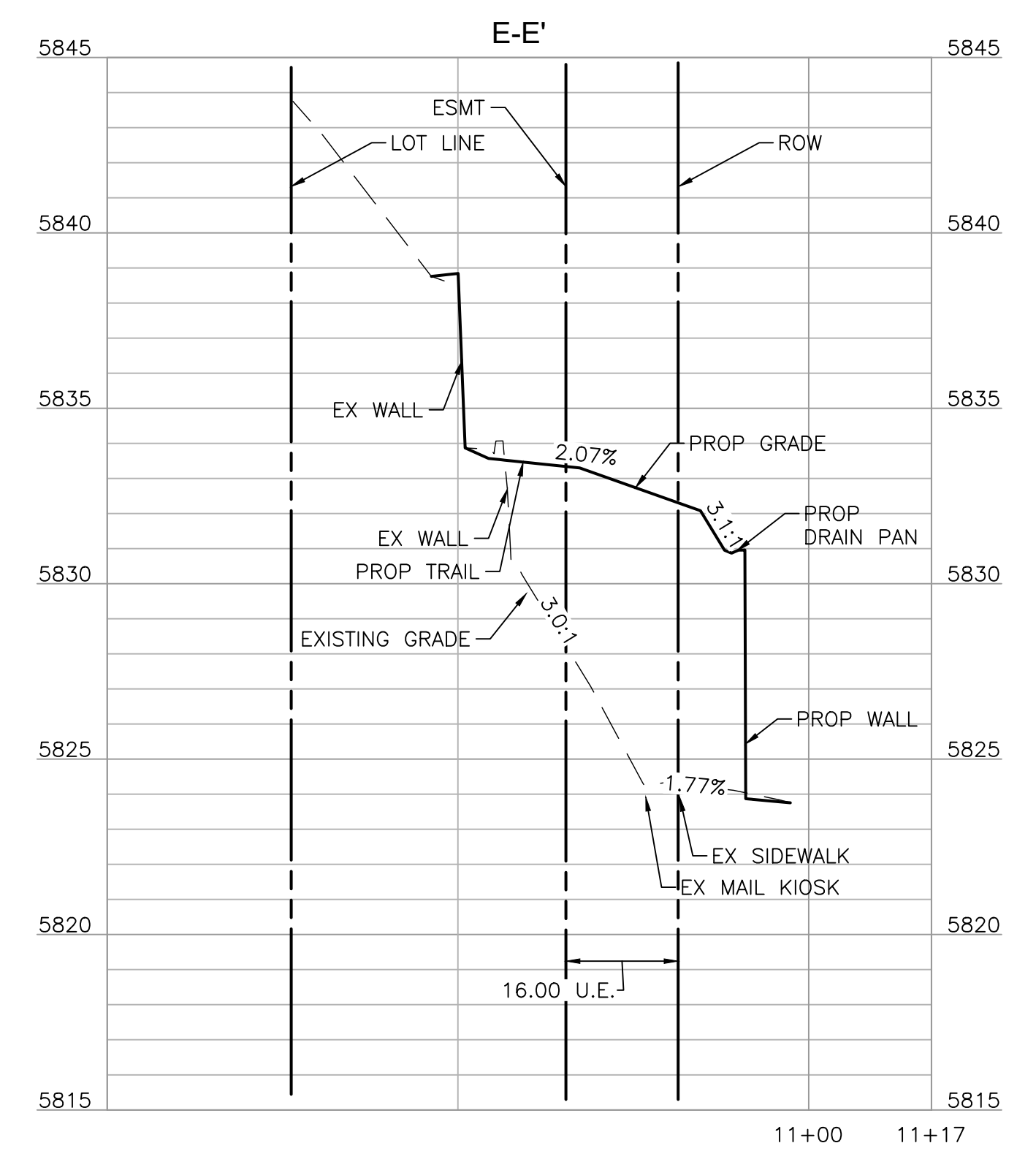
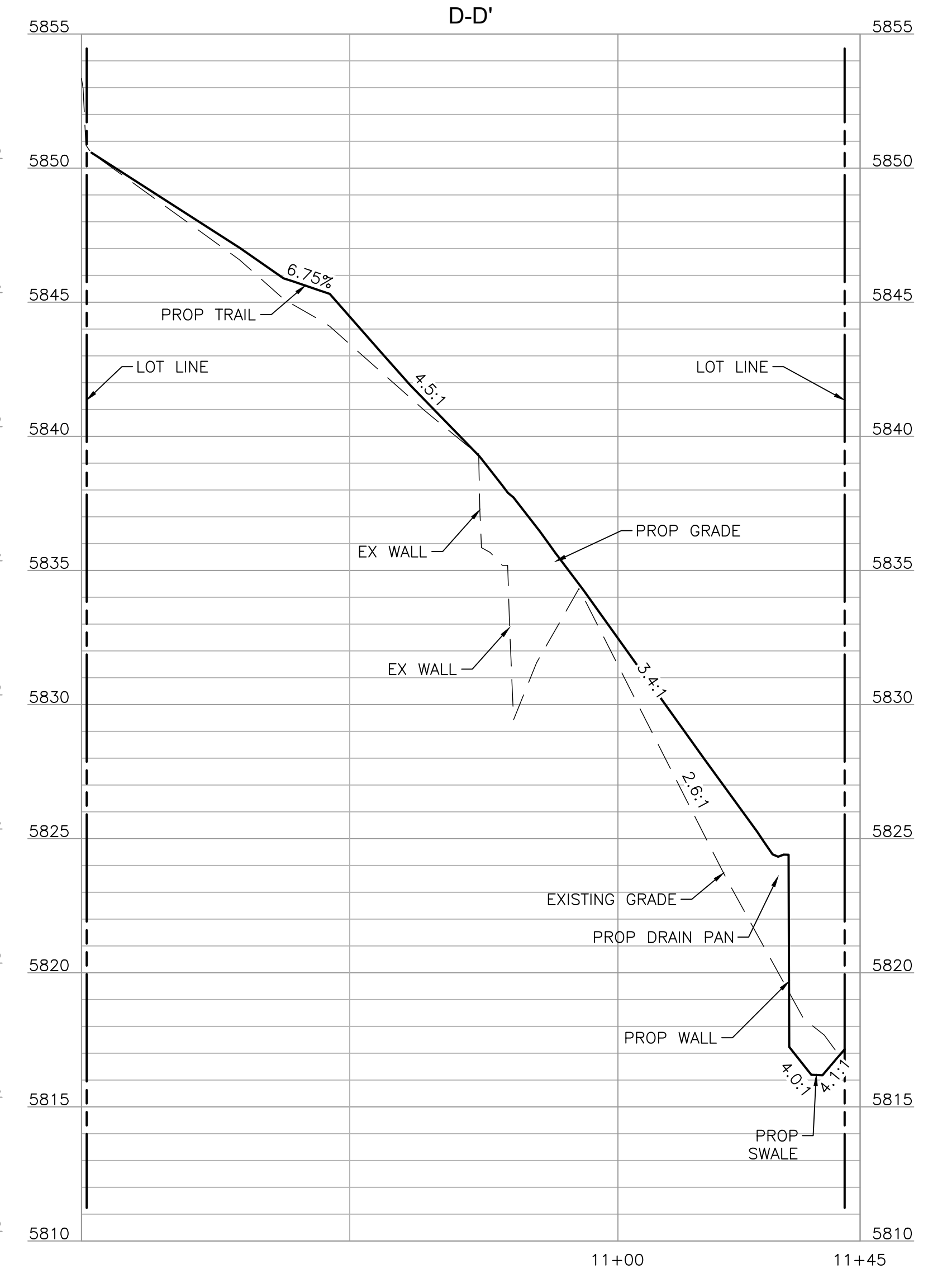
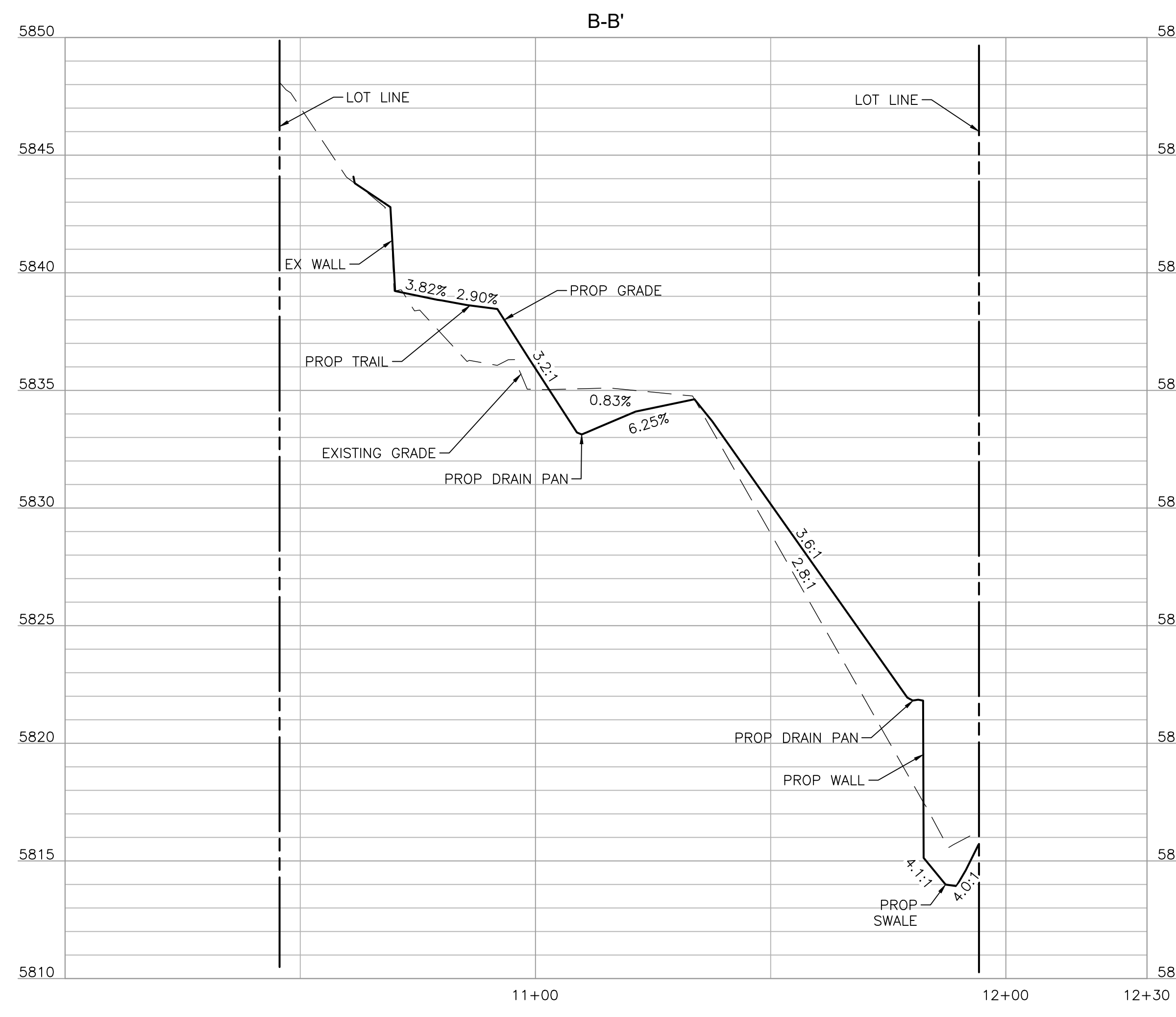
Sheet Number:

**3**  
**OF 5**



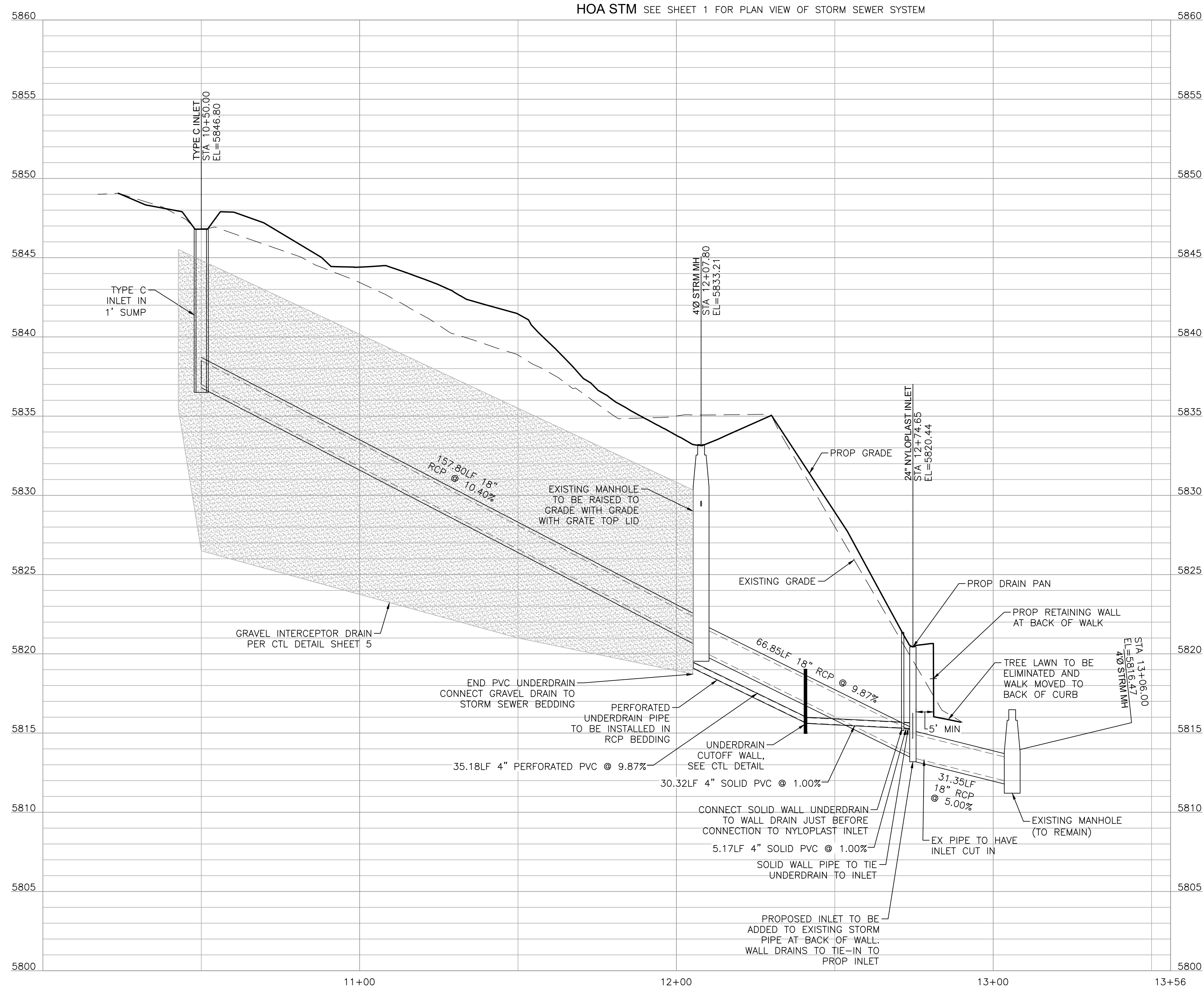
- NOTES:**
- CONTRACTION JOINT (XX/CXXX) TO BE SPACED MAXIMUM OF 10' AND EXPANSION JOINTS ARE TO BE EVERY 100' (XX/CXXX)
  - PAN THICKNESS TO BE MAXIMUM OF EITHER 6" OR ADJACENT PAVEMENT THICKNESS

**CONCRETE VALLEY PAN**  
N.T.S.



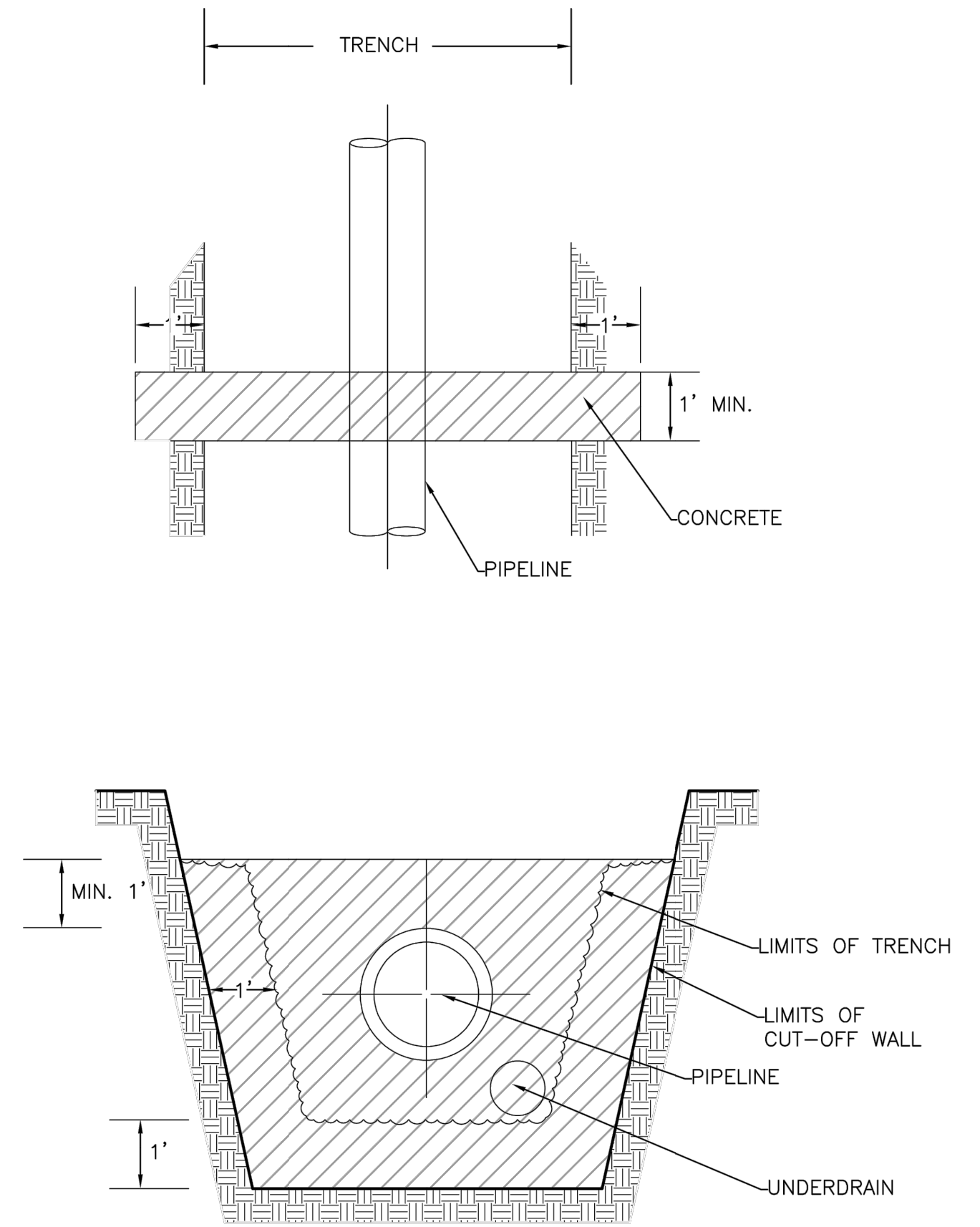
**NOTES:**

- GRAVEL INTERCEPTOR DRAIN TO BE FIELD FIT BASED ON CTL OBSERVATIONS DURING CONSTRUCTION
- ALL TRENCHES TO BE BACKFILLED AT THE END OF THE DAY



**QUANTITIES:**

1. EARTHWORK CUT TO FILL - 1538 CY FILL
2. REMOVE AND REPLACE DAMAGED WALL (PER CTL RECOMMENDATIONS)
3. SHALLOW SLOPE INTERCEPTOR DRAIN - 389.44 LF
4. 4" STORM CLEANOUT - 8 EA
5. GRAVEL INTERCEPTOR DRAIN - 45 LF
6. 18" RCP (REUSE IF ACCEPTABLE TO ARVADA INSPECTOR) - 224.65 LF
7. 48" DIA MANHOLE (REUSE IF ACCEPTABLE TO ARVADA INSPECTOR) - 1 EA
8. PROPOSED 4" PERF STORM SEWER BEDDING UNDERDRAIN - 582.30 LF
9. PROPOSED 4" SOLID STORM SEWER BEDDING UNDERDRAIN - 79.95 LF
10. PROPOSED 24" NYLOPLAST DRAIN BASIN - 1 EA
11. PROPOSED WALL 2352.24 FACE FOOT
12. PROPOSED WALL DRAIN (4" PERF) - 399 LF
13. PROPOSED WALL DRAIN (4" SOLID) - 399 LF
14. PROPOSED 2' CONCRETE DRAIN PAN - 488.63 LF
15. PROPOSED 12" NYLOPLAST DRAIN BASIN - 1 EA
16. RELOCATE EXISTING CHASE DRAIN - 1 EA
17. RELOCATE EXISTING MAILBOX KIOSK - 1 EA
18. PROPOSED ATTACHED 5' WIDEWALK - 278 LF
19. REMOVED EX ADA RAMP - 1 EA
20. IRRIGATION EXTENSION BEYOND PROPOSED WALL - 1 LS



**NOTES:**

1. GRAVEL INTERCEPTOR DRAIN TO BE FIELD FIT BASED ON CTL OBSERVATIONS DURING CONSTRUCTION
2. ALL TRENCHES TO BE BACKFILLED AT THE END OF THE DAY

| No. | Issue / Revision | Date     | Name |
|-----|------------------|----------|------|
| 1   | FOR REVIEW       | 11/16/22 | DAK  |
| 2   | FOR REVIEW       | 04/18/23 | DAK  |
| 3   | FOR BID          | 05/31/23 | DAK  |

|                     |           |
|---------------------|-----------|
| Job Number          | CIMARRON  |
| Project Manager     | D. KUNTZ  |
| Design By           | D. KUNTZ  |
| Drawn By            | J. CLAMP  |
| Principal In Charge | D. LOVATO |

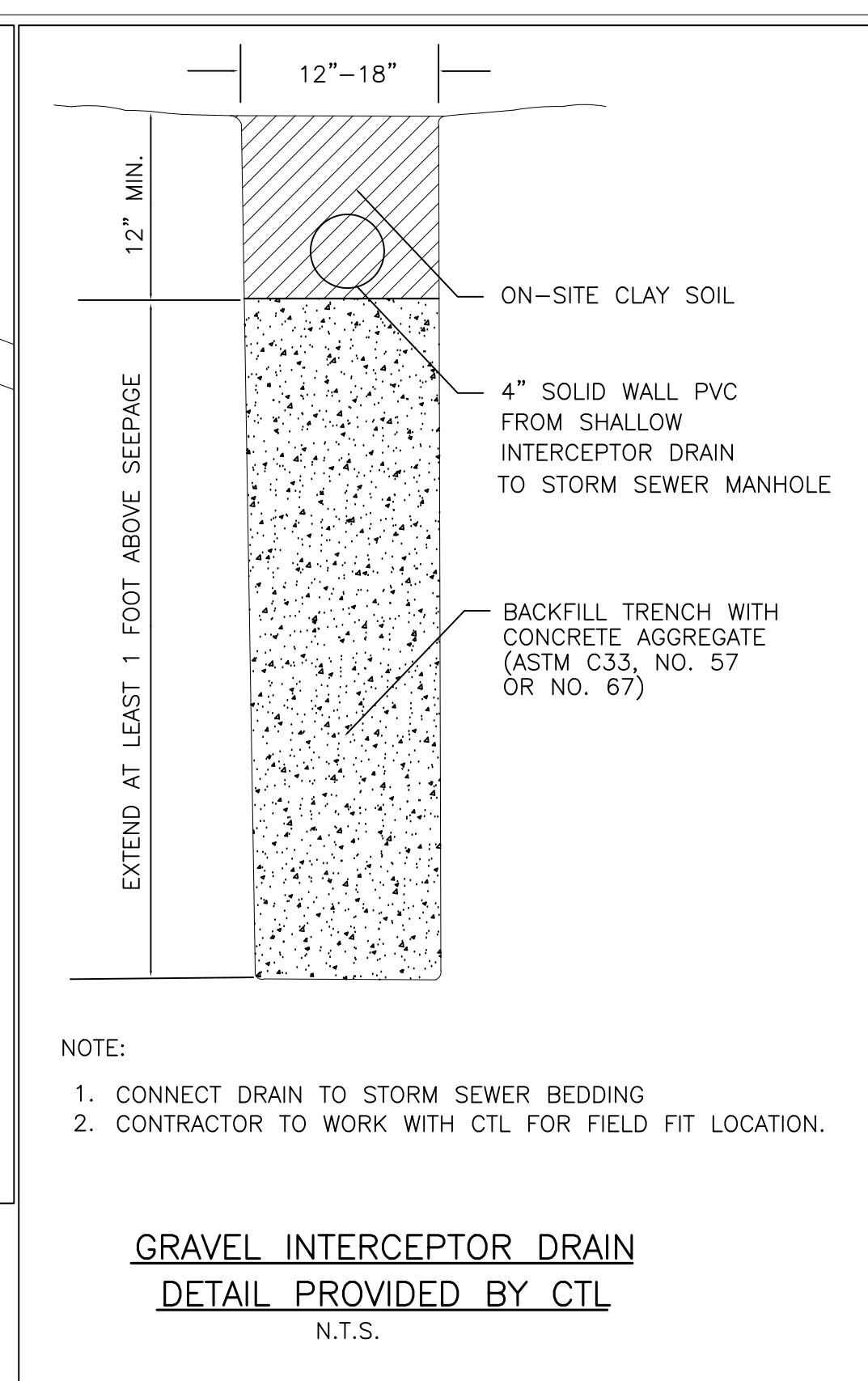
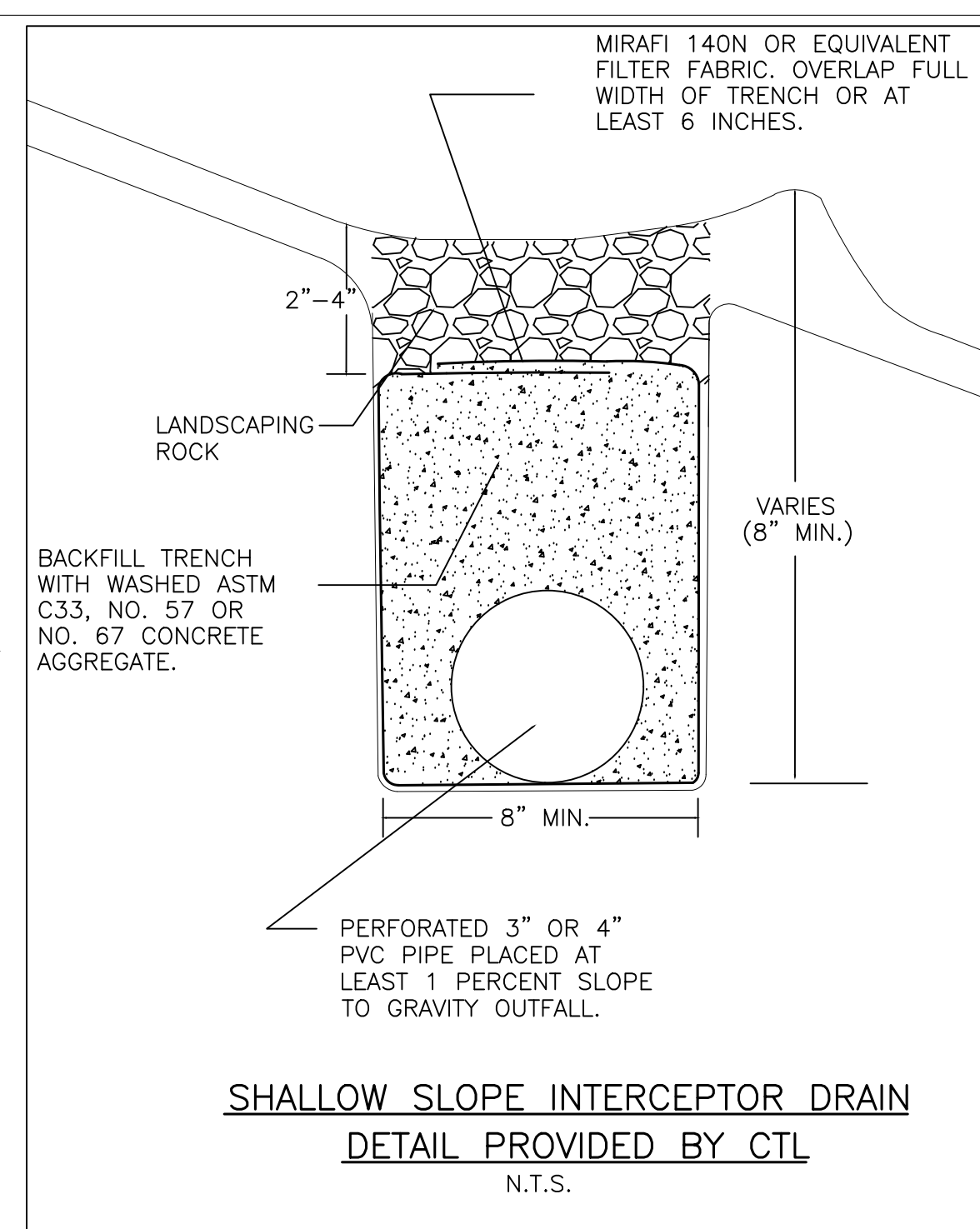
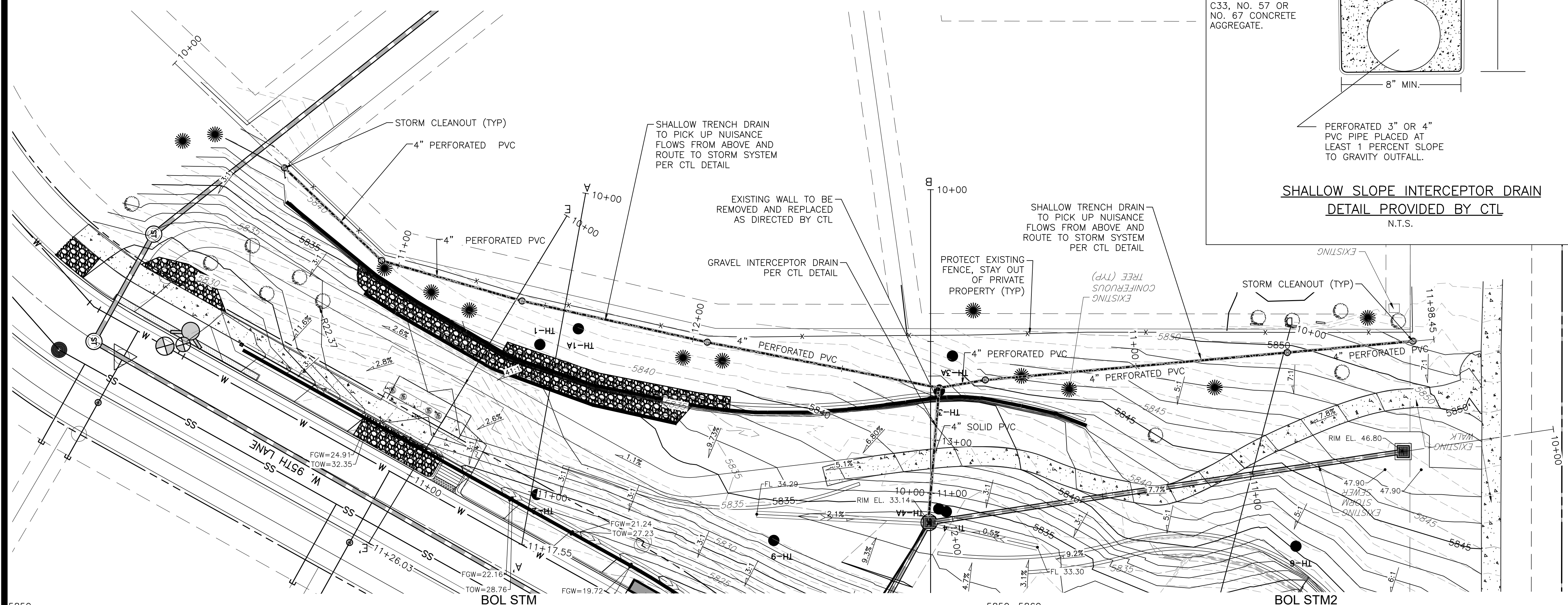
THE DESIGNS SHOWN HEREIN INCLUDING ALL TECHNICAL DRAWINGS, SPECIFICATIONS, NOTES, AND SCHEDULES OR OTHERWISE EXPLOITED IN WHOLE OR IN PART WITHOUT THE SOLE AND EXPRESS WRITTEN PERMISSION FROM MARTIN/MARTIN, INC.

Sheet Number:

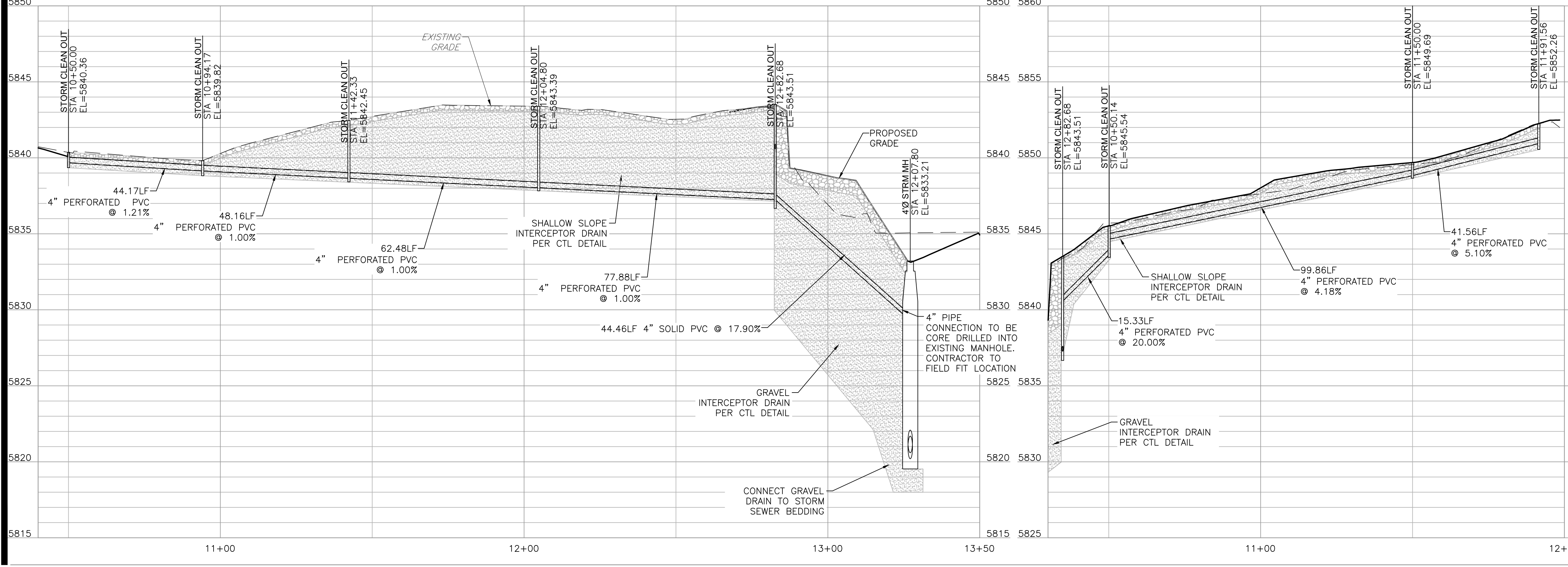
NOT FOR CONSTRUCTION



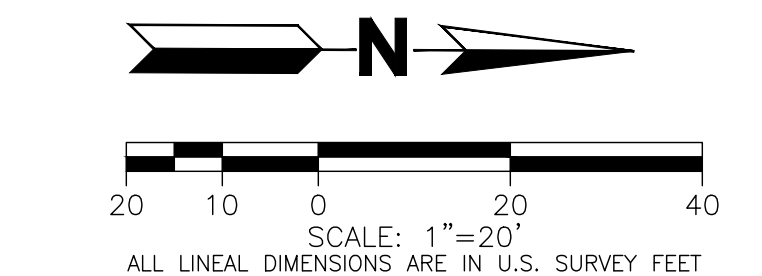
PLOT DATE: Wednesday, May 31, 2023 12:19 PM LAST SAVED BY: MWOOD  
 DRAWING LOCATION: G:\Tuttle\Cimarron\BASE\C3D\C-GRADE-2022.dwg



NOTE:  
 1. CONNECT DRAIN TO STORM SEWER BEDDING  
 2. CONTRACTOR TO WORK WITH CTL FOR FIELD FIT LOCATION.



NOTES:  
 1. GRAVEL INTERCEPTOR DRAIN TO BE FIELD FIT BASED ON CTL OBSERVATIONS DURING CONSTRUCTION  
 2. ALL TRENCHES TO BE BACKFILLED AT THE END OF THE DAY



244

**MARTIN/MARTIN**  
 CONSULTING ENGINEERS  
 12499 WEST COLFAX AVENUE, LAKEWOOD, COLORADO 80215  
 303.431.6100 MARTINMARTIN.COM

**CANDELAS FILING NO. 1**  
**SLOPE STABILITY**  
 CITY OF ARVADA  
 BACK OF LOT  
 SLOPE INTERCEPTOR DRAIN

| No. | Issue / Revision | Date     | Name |
|-----|------------------|----------|------|
| 1   | FOR REVIEW       | 11/16/22 | DAK  |
| 2   | FOR REVIEW       | 04/18/23 | DAK  |
| 3   | FOR BID          | 05/31/23 | DAK  |

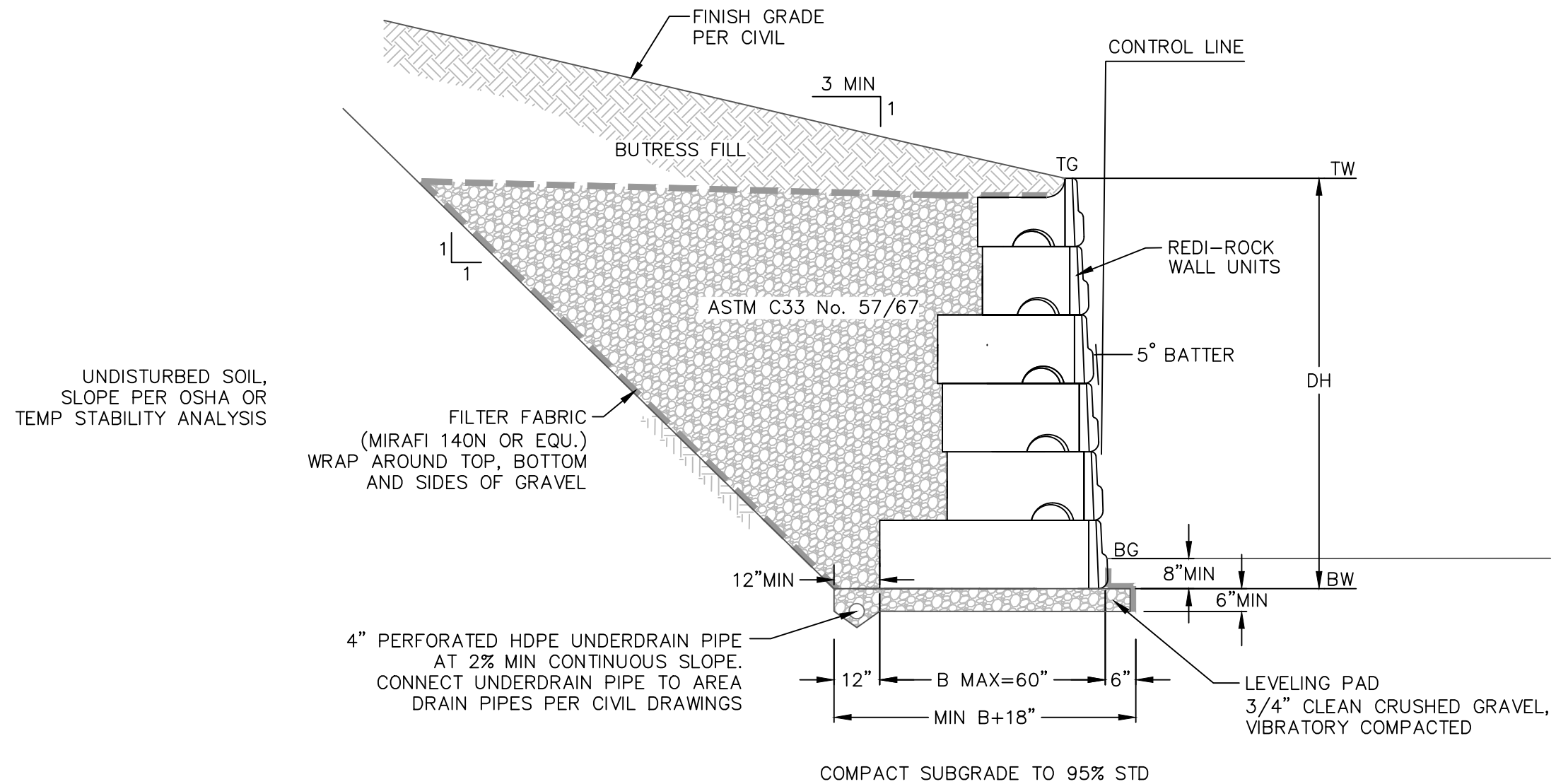
Job Number: CIMARRON  
 Project Manager: D. KUNTZ  
 Design By: D. KUNTZ  
 Drawn By: J. CLAMP  
 Principal in Charge: D. LOVATO

THE DESIGNS SHOWN HEREIN INCLUDING ALL TECHNICAL DRAWINGS, SPECIFICATIONS, NOTES, AND SCHEDULES OR COMMERCIALLY EXPLOITED IN WHOLE OR IN PART WITHOUT THE SOLE AND EXPRESS WRITTEN PERMISSION FROM MARTIN/MARTIN, INC.

Sheet Number: **5** OF 5

NOT FOR CONSTRUCTION





1 TYPICAL REDI-ROCK WALL SECTION  
A NTS

Initial Date: 4/14/23  
 File Name: WDETAILS - REDI-ROCK.DWG  
 Horiz. Scale: NTS | Vert. Scale: NTS

| Sheet Revisions |          |       |
|-----------------|----------|-------|
| Date:           | Comments | Init. |
|                 |          |       |
|                 |          |       |
|                 |          |       |

| CANDELAS 2B W19-23<br>TYPICAL REDI-ROCK WALL SECTION |         |              |        |
|--|---------|--------------|--------|
| Project No.:   | TBD     | Designed By: | CH     |
| Issue Date:  | 4/14/23 | Approved By: | CH     |
| SHEET NUMBER   |         |              | 1 OF 1 |

**ADDENDUM NO. 5****CIMARRON METROPOLITAN DISTRICT  
CANDELAS SLOPE FAILURE**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Candelas Slope Failure** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and one (1) attachment.

**Attachment A: 20230511 Invitation to Bid****QUESTIONS**

- Question 5.1. Is a bid bond required? if so, what is the rate, and does the contractor need a form?**
- a. A 10% Bid Bond is required. Information is included in the Bid Documents.
- Question 5.2. Is there an Instruction to Bidders?**
- a. See attached Invitation to Bid.
- Question 5.3. Is the project grading and construction of wall to be done by others? Is the intent for the contractor to install the wall underdrain?**
- a. The grading, concrete, and walls will be bid separately. There are no final plans for the wall at this time and having the drains installed immediately is necessary.
- Question 5.4. Please clarify if Line Item #4 18" RCP storm pipe is intended to be a remove and replace with new price and the alternate Line Item #1 18" RCP storm pipe reuse is a unit price to excavate and relay existing pipe?**
- a. Correct. Please see contract document specifications.
- Question 5.5. Addendum 4 shows a gravel interceptor drain added to the 18" RCP from the manhole to the Type C Inlet without pipe. Is the intent to simply catch water at the RCP alignment and direct it to the proposed perforated underdrain at the manhole without the use of the perforated pipe? If that is correct will the 157.68 LF be removed from this scope?**
- a. Refer to plan detail for the gravel interceptor drain. No pipe is planned to be removed from the scope.

END OF ADDENDUM

Brandon Collins, PE  
IDES, LLC – Cimarron Metropolitan District  
Engineer

6/08/2023  
Date Issued



**ADDENDUM NO. 6**

**CIMARRON METROPOLITAN DISTRICT  
CANDELAS SLOPE FAILURE**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Candelas Slope Failure** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and no (0) attachments.

**BID CLOSING DATE**

The Bid Closing Date has been moved to June 27<sup>th</sup>, 2023 at 1:00 PM MST.

END OF ADDENDUM

Brandon Collins, PE  
\_\_\_\_\_  
IDES, LLC – Cimarron Metropolitan District  
Engineer

6/20/2023  
\_\_\_\_\_  
Date Issued

**ADDENDUM NO. 7****CIMARRON METROPOLITAN DISTRICT  
CANDELAS SLOPE FAILURE**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Candelas Slope Failure** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and no (0) attachments.

**BID CLOSING DATE**

The Bid Closing Date has been moved to July 18<sup>th</sup>, 2023 at 1:00 PM MST.

END OF ADDENDUM

Brandon Collins, PE  
\_\_\_\_\_  
IDES, LLC – Cimarron Metropolitan District  
Engineer

6/27/2023  
\_\_\_\_\_  
Date Issued

**ADDENDUM NO. 8**

**CIMARRON METROPOLITAN DISTRICT  
CANDELAS SLOPE FAILURE**

This Addendum modifies the Bid and Contract Documents for **Cimarron Metropolitan District Candelas Slope Failure** as if originally contained therein. Bidders shall acknowledge receipt of the Addendum in the Bid Form. Failure to do so may result in rejection of the Bid.

This addendum consists of one (1) page and two (2) attachments.

**Attachment A: 20230705 Bid Bond**

**Attachment B: 20230705 Bid Form**

END OF ADDENDUM

Brandon Collins, PE  
\_\_\_\_\_  
IDES, LLC – Cimarron Metropolitan District  
Engineer

7/6/2023

\_\_\_\_\_  
Date Issued

**ATTACHMENT 1 TO THE BID FORM  
BID BOND**

### BID BOND

THE STATE OF \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )  
 \_\_\_\_\_

#### KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned,  
 \_\_\_\_\_, of the City of  
 \_\_\_\_\_, County of \_\_\_\_\_ and State of  
 \_\_\_\_\_ (hereinafter called "Principal") as Principal, and  
 \_\_\_\_\_ (hereinafter called "Surety") as surety, a corporation organized  
 and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to  
 do business within the State of Colorado and to act as surety on bonds for principals, are held  
 and firmly bound unto Cimarron Metropolitan District (hereinafter called "Owner") as obligee, in  
 the sum of \_\_\_\_\_  
 Dollars (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which  
 sum, well and truly to be made, the Principal and Surety, bind ourselves, our heirs, executors,  
 administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Principal has submitted a Bid Form (Proposal) to enter into a certain written  
 agreement with Owner for Construction of the Candelas Community Filing 4A Warranty Repairs  
 Project, hereinafter referred to as "Agreement."

**NOW, THEREFORE**, the condition of this obligation is such that if (1) Owner shall  
 accept the Bid Form (Proposal) of the Principal and Principal shall faithfully enter into  
 Agreement with the Owner in accordance with the terms of such Bid and give such Bonds as  
 are specified in the Bidding or Contract Documents, or (2) in the event of the failure of Principal  
 to enter such Agreement and give such Bond or Bonds, Principal or Surety shall pay to Owner  
 the difference not to exceed the sum hereof between the amount specified in said Bid and such  
 larger amount for which Owner may in good faith contract with another party to perform the work  
 covered by said Bid, then (3) this obligation shall be null and void, otherwise to remain in full  
 force and effect. The sum of this Bid Bond is not less than ten percent (10%) of the Principal's  
 Bid.

The sum of this Bid Bond is **LIQUIDATED DAMAGES**, and subject to the conditions  
 stated above, shall be forfeited to Owner upon failure of Principal to perform as contemplated in  
 clause (1) or (2) herein.

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 any extension of the time within  
 which the Owner may accept such Bid; and said Surety does hereby waive notice of any such  
 extension.



Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL:

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Address)

SURETY:

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Address)

Surety's No. \_\_\_\_\_

END OF SECTION

**BID FORM**

## BID FORM

TO: Owner: Cimarron Metropolitan District  
 c/o IDES, District Engineer  
 1626 Cole Blvd, Suite 125  
 Lakewood, CO 80401

PROJECT: Candelas Slope Failure Repairs Storm Sewer and Drains

THE UNDERSIGNED BIDDER, having familiarized itself with the work required by the Contract Documents, the Site where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the Work, and having satisfied itself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES and agrees, if this Bid is accepted, to enter into the Agreement in the form attached, to perform all work, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Agreement and the furnishing of materials and equipment required to be incorporated into and form a permanent part of the work, tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the Work; and Bond, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor in accordance with the following Bid prices (Contractor must submit on Base Bid and Bid Alternates, if any, to be considered).

### COMPUTER OUTPUT BID FORMS ATTACHED

**A. BASE BID PRICE:** \_\_\_\_\_  
 Dollars (\$\_\_\_\_\_).

**B. BID FORM DISCREPANCIES:** Add/deduct the following to/from above base bid for Bid Form Discrepancies: \_\_\_\_\_ Dollars  
 (\$\_\_\_\_\_). Bidder shall attach a list of all Bid Form Discrepancies.

The undersigned Bidder agrees to furnish the required Bonds, certificates of insurance on ACORD Form 27, and copies of applicable insurance policies and enter into the Agreement within ten (10) days after acceptance of this Bid, and further agrees to complete all work covered by the Bid, in accordance with specified requirements, as listed in the Special Provisions.

**C. BID ALTERNATE 1:** \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

**D. LIQUIDATED DAMAGES.** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not substantially completed within the time specified in the Special Conditions, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the Owner if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner in accordance with the following:

- 1. Late Startup of all Major Equipment \$2,000 Per Day
- 2. Late Substantial completion (ready for punchlist) \$2,000 Per Day
- 3. Late Punchlist Completion \$2,000 Per Day

**E. ADDENDA.** Receipt of copies of the following addenda is hereby acknowledged.

| <u>Addendum No.</u> | <u>Bidder's Signature</u> | <u>Date Acknowledged</u> |
|---------------------|---------------------------|--------------------------|
| 1                   | _____                     | _____                    |
| 2                   | _____                     | _____                    |
| 3                   | _____                     | _____                    |
| 4                   | _____                     | _____                    |
| 5                   | _____                     | _____                    |
| 6                   | _____                     | _____                    |
| 7                   | _____                     | _____                    |

**E. BID SECURITY.** Enclosed herewith is the required Bid Security, in the form of Cashier's Check/Bid Bond (strike one), in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) which the undersigned Bidder agrees is to be forfeited to and become the property of Owner, as liquidated damages, in connection with the Bid Security, should this Bid be accepted and Bidder fails to enter into the Agreement in the form prescribed and to furnish the required Bonds within ten (10) days, or should Bidder fail to enter such agreement and give such bond or bonds, if Bidder fails to pay to Owner the difference between the amount specified in this Bid and such larger amount for which Owner may in good faith contract with another party to perform the Work covered by this Bid, but otherwise the Bid Security will be returned upon Bidder signing the Agreement and delivering the Performance Bond, Labor and Materials Payment Bond certificates of insurance on ACORD Form 27 and copies of applicable insurance policies.

**F. BID REJECTION.** In submitting this Bid it is understood that Owner reserves the right to reject any and all Bids, to waive any informality, technicality or irregularity in any Bid, to disregard all non-conforming, non-responsive, conditional or alternate Bids, to clarify contract terms with the Successful Bidder, to require statements or evidence of Bidder's qualifications, including financial statements, and to accept the proposal that in the opinion of the Owner is in its best interest. It is understood that this Bid may not be withdrawn during a period of ninety (90) days after the scheduled time for the receipt of Bids.

**G. BID IS GENUINE.** The undersigned Bidder hereby certifies (a) that this Bid is genuine and is not made in the interest of, or in the behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham Bid; (c) that Bidder has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the Owner.



### **SIGNATURE OF BIDDER**

Date: \_\_\_\_\_

If an Individual: (Signature) \_\_\_\_\_  
print or type name: \_\_\_\_\_  
doing business as: \_\_\_\_\_

If a Partnership: \_\_\_\_\_  
by: (Signature) \_\_\_\_\_ General Partner  
print or type name: \_\_\_\_\_

If a Corporation: \_\_\_\_\_  
(a \_\_\_\_\_ Corporation)  
by: (Signature) \_\_\_\_\_  
print or type name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

If Bidder is a joint venturer, all venturers or their authorized agents must sign below.

Name of Joint Venture: \_\_\_\_\_  
If Joint Venture is \_\_\_\_\_

If an Individual: (Signature) \_\_\_\_\_  
print or type name: \_\_\_\_\_  
doing business as: \_\_\_\_\_

If a Partnership: \_\_\_\_\_  
by: (Signature) \_\_\_\_\_ General Partner  
print or type name: \_\_\_\_\_

If a Corporation: \_\_\_\_\_  
(a \_\_\_\_\_ Corporation)  
by: (Signature) \_\_\_\_\_  
print or type name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

END OF SECTION

## **GENERAL CONDITIONS**

**GENERAL CONDITIONS  
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## PART 1 DEFINITIONS

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

**Addendum** – Written or graphic instrument which clarifies, corrects or changes the bidding documents or the Contract Documents.

**Agreement** – The written agreement between Owner and Contractor covering the Work to be performed.

**Agreement Price** – The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement for the Work or discrete portions thereof.

**Application for Payment** – The form designated by Engineer which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

**Bid Form** – The offer or proposal of the Bidder attached to the Agreement as **Exhibit A**.

**Change Order** – A written order to Contractor signed by Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Agreement Price or the Contract Time issued after the effective date of the Agreement.

**Contract Documents** – As defined in the Agreement.

**Contract Time** – The number of days stated in the Agreement for the Completion of the Work.

**Contractor** – The person or entity with whom Owner has entered into the Agreement to perform field construction.

**Day** – A calendar day of twenty-four hours measured from midnight to the next midnight.

**Defective** – An adjective which when modifying the word “**Work**” refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer’s recommendation for final payment.

**Drawings** – The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.

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

**Engineer** – The person or entity named as “**Engineer**” in the Agreement.

**Field Order** – A written order issued by Engineer which orders minor changes in the Work in accordance with Paragraph 10.01.B but which does not involve a change in the Agreement Price or the Contract Time.

**Modification** – (a) a written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A modification may only be issued after the effective date of the Agreement.

**Notice of Award** – The written notice by Owner to the apparent Successful Bidder stating that upon compliance by the apparent Successful Bidder with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.

**Notice to Proceed** – A written notice given by the Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform its obligations under the Contract Documents.

**Owner** – Cimarron Metropolitan District, with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

**Project** – The total construction required under the Contract Documents, of which the Work to be provided under the Contract Documents may be the whole or part.

**Part** – Section(s) of these General Conditions.

**Plans** – The official plans, working drawings, or supplemental drawings or exact reproductions thereof, prepared by or approved in concept by the Engineer which show the location, character, dimensions, and details of the Work to be done and which are to be considered as part of the Contract Documents, supplemental to these Specifications.

**Shop Drawings** – All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work.

**Site** – Any area or areas where Work is to be performed on the Project.

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

**Subcontractor** – A person or entity, including a supplier, having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

**Substantial Completion** – The date when Work has progressed to the point where, in the opinion of Engineer as evidenced by its definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended and it is ready for punch listing.

**Supplementary Conditions** – The specific clauses setting forth conditions or requirements peculiar to the Project, covering work or materials involved in the Bid which are not thoroughly or satisfactorily stipulated in the General Conditions or Specifications.

**Work** – The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. The term “**Work**” shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the Project in accordance with the design intent conveyed in the Contractor Documents, and the carrying out of all duties and obligations imposed by the Contract Documents to achieve the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

## **PART 2      PRELIMINARY MATTERS**

### **2.01            DELIVERY OF BONDS AND CERTIFICATE OF INSURANCE**

A.      When Contractor delivers the executed Agreement to Owner’s Representative, Contractor shall also deliver to Owner’s Representative the Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies.

### **2.02            EXECUTION AND TRANSMISSION OF DOCUMENTS**

A.      At least four (4) copies of the Contract Documents will be prepared by Owner’s Representative. All copies will be submitted to Contractor and Contractor shall execute the Agreement, insert all Certificates of Insurance on ACORD Form 27 and copies of all applicable insurance policies, and submit all copies to Owner’s Representative within ten days of Notice of Award. The date on the Agreement shall be left blank for completion by Owner. The date on the Bonds and the certification date on the Power of Attorney must not be prior to the date of the Agreement.

B.      Owner will execute all copies, insert the date on the Agreement and Bond forms and the Certification Date on the Power of Attorney, and transmit all copies to Owner’s Representative within ten (10) days for review and distribution. Distribution of signed copies will be one copy each to Owner, Contractor, and Engineer. Contractor shall be responsible for distribution of copies to the Surety.

### **2.03            COPIES OF DOCUMENTS**

A. Owner shall furnish to Contractor three (3) complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction.

**2.04 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED**

A. The Contract Time shall commence to run on the day indicated in the Notice to Proceed.

**2.05 STARTING THE PROJECT**

A. Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the Site prior to the date on which the Contract Time commences to run.

**2.06 BEFORE STARTING CONSTRUCTION**

A. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements.

Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

B. If not delivered previously, before any Work under this Agreement is started, Contractor shall deliver to Owner's Representative, with a copy to Engineer, certificates of insurance on ACORD Form 27 and copies of the applicable insurance policies (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Part 5.

**2.07 PRECONSTRUCTION CONFERENCE**

A. Within ten (10) days after the effective date of the Agreement, but before Contractor starts the Work at the Site, a conference will be held for review and acceptance of the schedules referred to in Paragraph 6.13 to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

**PART 3 CONTRACT DOCUMENTS: INTENT AND REUSE**

**3.01 INTENT**

A. The Contract Documents comprise the entire Agreement between Owner and Contractor concerning the Work. They may be altered only by a Modification.

B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall report it to Engineer as a request for information in writing at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Specifications or Drawings unless Contractor had actual knowledge thereof or should reasonably have known thereof.

C. It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of Bids (or, on the effective date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided for in Paragraph 9.03.A.

D. The Contract Documents have been made, executed, and delivered in the State of Colorado and shall be governed and construed for all purposes under and in accordance with the laws of the State of Colorado.

E. The Project Manual consists of Bid Form, Agreement, Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplementary Conditions, if any, and Specifications. Should any construction or conditions which are not thoroughly or satisfactorily stipulated or set forth by the Specifications be anticipated on any proposed project, Supplementary Conditions for such Work may be prepared and attached to the Bid Proposal Form and Agreement, and shall be considered as part of the Specifications, the same as though contained fully therein.



Should any Supplementary Condition conflict with the General Conditions, the Supplementary Condition will govern.

### **3.02 REUSE OF DOCUMENTS**

A. Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer; and they shall not reuse any of them on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adoption by Engineer.

## **PART 4 AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

### **4.01 AVAILABILITY OF LANDS**

A. Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. In acquiring easements or rights-of-way, the Owner shall proceed as expeditiously as possible, but in the event all easements or rights-of-way are not acquired prior to the beginning of construction, the Contractor shall begin Work on such easements and rights-of-way that have been acquired. In the event a delay in the acquisition of rights-of-way causes unavoidable delay in Contractor's prosecution of the Work, then Contractor may make a claim for an extension of Contract Time, as provided in Part 12.

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

### **4.02 PHYSICAL CONDITIONS – INVESTIGATIONS AND REPORTS**

A. Owner shall identify and make available to Contractor, upon request by Contractor, copies of those reports of investigations and tests of subsurface and latent physical conditions at the Site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness.

### **4.03 UNFORESEEN PHYSICAL CONDITIONS**

A. Contractor shall promptly notify Owner and Engineer in writing of any latent physical conditions at the Site or in an existing structure differing materially from those indicated or referred to in the Contract Documents which could not have been discovered upon a reasonable inspection of the Site, or conditions of an unusual nature which differ materially from those ordinarily found to exist and recognized in an area such as the Site. Engineer will promptly review those conditions and advise Owner in writing if further investigation or tests are necessary. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Engineer and Contractor. If Engineer finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

B. In addition to the exceptions set forth in the above paragraph, rock encountered during excavation, and dewatering of soils, shall not constitute unforeseen physical conditions pursuant to Paragraph 4.03.A. Contractor shall not be entitled to a Change Order for expense and delay resulting from greater than anticipated rock excavation or dewatering.

#### **4.04 REFERENCE POINTS**

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

### **PART 5 BONDS AND INSURANCE**

#### **5.01 PERFORMANCE AND OTHER BONDS**

A. Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond in an amount at least equal to the Agreement Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Bond shall meet all requirements of C.R.S. 38-26-101, et. seq. The Bond shall remain in effect at least until **one (1) year** after the date when final payment becomes due, or until the **two-year** correction period in Paragraph 13.07 is over, except as otherwise provided by law or regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required herein by the Supplementary Conditions. All Bonds shall be on the forms prescribed by

the Contract Documents and be executed by such Sureties authorized to do business in the State of Colorado as are named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each Bond shall be accompanied by a “Power of Attorney” authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond.

B. If the Surety on any bond furnished by Contractor is declared as bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.A Contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to Owner.

C. The Performance Bond and Labor and Materials Payment Bond shall be in an amount equal to one hundred percent (100%) of the Agreement Price, as indicated by Change Orders and all Modifications, as security for payment of all wages and bills contracted for materials, supplies, and equipment used in the performance of the contract.

## 5.02

### CONTRACTOR’S INSURANCE REQUIREMENTS

A. Contractor shall purchase and maintain during the entire term of this Agreement, including any extensions of the Contract Time through Change Orders, and as provided in Paragraph 5.02.B., such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor’s performance of the Work and Contractor’s other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers’ or workmen’s compensation, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor’s employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (i) by any person directly or indirectly resulting from the employment of such person by Contractor, or (ii) by any person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
7. Claims involving contractual liability insurance applicable to the Contractor's obligations.

B. The insurance required of Contractor shall include the specific coverages and corresponding limits of liability provided in Paragraph 5.02.C., or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least "A:XIII" by A.M. Best Company. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to Owner. All such insurance shall contain a provision that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to Owner and Engineer. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Paragraph 13.07.A. In addition, Contractor shall maintain the Products/Completed Operations insurance as shown in Paragraph 5.02.C for at least **two (2) years** after final payment and furnish Owner with evidence of continuation of such insurance at final payment and **one (1) year** thereafter.

C. Contractor shall obtain and maintain insurance coverage as provided herein, including the following:

1. Worker's Compensation and Employers' Liability
  - (a) State: Statutory
  - (b) Employers' Liability
    - \$500,000 Each Accident
    - \$500,000 Disease, Policy Limit
    - \$500,000 Disease, Each Employee
  - (c) A Waiver of Subrogation in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.
2. General Liability (Occurrence Form):

- (a) Combined Bodily Injury and Property Damage:
- \$1,000,000 each occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$1,000,000 Products/Completed Operations Aggregate
- (b) The following coverages must be included:
- (i) Premises Operations
  - (ii) Independent Contractor's Protective
  - (iii) Explosion, Collapse
  - (iv) Underground
  - (v) Contractual (including the contract obligations specified in Paragraphs 5.05, 6.05, 6.07, 6.11B, 6.11D, 13.01A, 13.06A, 13.07A, and 14.03A)
  - (vi) Broad Form Property Damage
  - (vii) Personal/Advertising Injury
  - (viii) General Aggregate Limit (applies to each project)
  - (ix) Products and Completed Operations Insurance shall be maintained by the Contractor for a minimum of **2 years** after final payment, and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.
  - (x) Subcontractors shall comply with all provisions of this Part.
  - (xi) A waiver of subrogation endorsement in favor or the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

3. Automobile Liability:

Combined Bodily Injury and Property Damage:

\$1,000,000 per person

\$1,000,000 each Accident

The following coverages must be included:

Owned automobiles

Non-owned and hired automobiles

4. Umbrella Excess Liability

\$5,000,000 each Occurrence/\$5,000,000 Aggregate

5. Builders' "All-Risk" Insurance

D. Builder's Risk Insurance.

1. Builder's Risk Insurance will not be required to be provided by the Contractor and will be supplied by the Owner.

**NOTE: (THE SPECIFIED LIMITS FOR THE LIABILITY POLICIES CAN BE SATISFIED THROUGH THE COMBINATION OF PRIMARY POLICIES AND EXCESS OR UMBRELLA LIABILITY POLICIES.)**

E. To the extent that Contractor's work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

F. Insured losses under policies of insurance which include Owner's interests shall be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause, and any direction by arbitrators. Owner as trustee shall have the right to adjust and settle losses with the insurers unless one of the parties in interest shall object in writing within 5 days after the occurrence of loss to Owner's exercise of this power and, if such objection be made, arbitrators shall be chosen as provided in the General Conditions. Owner as trustee shall, in that case, make settlement with the insurers in accordance with the direction of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Owner waives all rights against Contractor and Engineer for damage caused by fire or other perils but only to the extent that such damage is covered by insurance and only to the extent that such damage does not fall within the indemnification given by Contractor in Paragraph 5.05. Owner shall have no liability for damages caused by fire or other perils.

### 5.03 INSURANCE CERTIFICATES/POLICY

A. Prior to the commencement of any Work under these Contract Documents, the Contractor shall furnish to the Owner's Representative certificates of insurance on ACORD Form 27, copies of the applicable insurance policies and policy endorsements to prove that all required insurance is in force. Insurance obtained by the Contractor shall be subject to approval by the Owner for adequacy of protection. Neither approval by the Owner of any insurance supplied by Contractor, nor failure to disapprove such insurance shall relieve the Contractor of its obligation to maintain in full force during the life of the Contract Documents all required insurance as set forth herein.

### 5.04 ADDITIONAL REQUIREMENTS

A. No insurance coverages required to be obtained by Contractor pursuant to this Part 5 shall have a deductible greater than \$1,000 or as reasonably approved by Owner. The Contractor is solely responsible for the payment of any deductible(s).

B. If any policy required under this Part 5 is a claims made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than **one year**. The Contractor agrees to purchase such an extended reporting period. The Contractor's failure to purchase such an extended reporting period as required by this Paragraph 5.04 shall not relieve it of any liability under this Agreement. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Contractor purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the Parties hereto.

C. The Owner and its directors, officers, agents and employees and the Owner's Representative shall be designated as additional insureds on the Contractor's commercial general liability insurance and the automobile liability insurance and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with the requirements of this Part 5.

D. For any claims related to the provision of services by the Contractor, Contractor's insurance shall be primary insurance with respect to the Owner, and its directors, officers, employees and agents. Any insurance maintained by the Owner (or its directors, officers, employees and agents) shall be excess of Contractor's insurance and shall not contribute with it.

E. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

F. Each commercial general liability policy and, though not a general liability policy, any worker's compensation policy, shall waive any right of subrogation against the Owner and its directors, officers, employees and agents through a separate policy endorsement.

G. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the Owner and its directors, officers, employees and agents. If the Contractor fails to obtain or maintain the required coverage, the Owner may obtain such coverage. The Contractor shall be liable to the Owner for any costs associated in procuring and maintaining in force any such insurance coverage.

## 5.05

### INDEMNIFICATION

A. To the maximum amount allowed by Colorado law, Contractor shall indemnify and hold harmless the Owner, the Owner's Representative, the Engineer, and all of their respective consultants, board members, directors, officers, agents and employees (hereinafter the "Indemnified Parties"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees) caused by either: (i) the Contractor's breach of this Agreement; or (ii) the negligent, criminal, or tortious act or omission of the Contractor or any of its employees, agents, Subcontractors (at any tier) or any person for whom Contractor is legally responsible, in connection with the Project, this Agreement, or the scope of services hereunder, whether any such negligence or any criminal or tortious act or omission is within or beyond the scope of its duties or authority. Contractor agrees that the existence and policy limits of the coverage which the Contractor is required to maintain pursuant to the Contract Documents, including property damage insurance and excess coverages, shall not negate or limit in any way the Contractor's obligation to indemnify the Indemnified Parties.

B. In any and all claims against the Indemnified Parties by any employee of Contractor, any Subcontractor, anyone directly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.05.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.



C. In the event that any Subcontractor, laborer, supplier, or any other person for whom Contractor is responsible in connection with this Agreement records a mechanic's lien against the Project or the real property underlying the Project, any such lien rights being expressly waived pursuant to Part 6, Subparagraph C of this Agreement, then Contractor shall indemnify, save harmless, and defend the Owner and all of its consultants, directors, officers, agents and employees from and against any and all claims, demands, losses, liens, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees), to the extent arising directly or indirectly in any manner whatsoever out of such lien. In addition, the Owner may withhold from payment to Contractor a sum that the Owner, in its sole discretion, considers sufficient to defend, discharge, satisfy, or bond over any such liens pursuant to C.R.S. § 38-22-131, as Owner may decide in its sole discretion, plus the reasonable fees and costs (including attorney's fees) incurred by the Owner in the course of defending, discharging, satisfying, or bonding over such lien or lawsuit. The provisions of this Section 5.05(C) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **PART 6 CONTRACTOR'S RESPONSIBILITIES**

### **6.01 SUPERVISION AND SUPERINTENDENT**

A. The Contractor is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Contractor or any of its employees, agents, Subcontractors or suppliers as employees of the Owner. The Work to be performed by the Contractor shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Owner, except the payments to be made by the Owner to the Contractor for the Work performed as provided herein. Neither Owner, Engineer, nor Owner's Representative shall be responsible for Contractor's means, methods, techniques, sequences or procedures of construction nor for safety precautions and programs incident thereto. **The Contractor is not entitled to worker's compensation benefits and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Contract.**

B. Contractor shall supervise and direct the Work competently and efficiently giving the Work the constant attention necessary to facilitate its progress and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

C. Contractor shall employ at all times during its work progress a competent resident superintendent, who shall not be replaced without written notice to Owner or Owner's Representative except under extraordinary circumstances. Such superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions, suggestions and communications from the Engineer, or its authorized representative. The superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and to promptly supply materials, tools, plant equipment and labor as may be required to perform such Work. Such superintendent shall be furnished irrespective of the amount of Work sublet. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

D. The Contractor shall employ such superintendent and foremen, as are careful and competent, and the Owner or Owner's Representative may request the dismissal of any person or persons employed by the Contractor in, about, or upon the Work who is incompetent or negligent in the proper performance of its or their duties, or neglects or refuses to comply with the Contract Documents given or whose conduct is inappropriate and such person or persons shall not be employed again thereon without the written consent of the Owner.. Should the Contractor continue to employ, or again employ, such person or persons, the Engineer may withhold all pay estimates which are or may become due, or the Engineer may suspend the Work until such orders are complied with.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. The Contractor shall notify the Owner's Representative at least forty-eight (48) hours in advance of the time it intends to start Work on the Site. The Contractor shall operate at such points as the Owner through the Owner's Representative may direct. The Contractor shall conduct the Work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time limit set forth in the Agreement. Should the prosecution of Work for any reason be discontinued by the Contractor, it shall notify the Owner's Representative at least forty-eight (48) hours in advance of resuming operations.

## **6.02**

### **LABOR, MATERIALS, AND EQUIPMENT**

A. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline

and order at the Site. Except in connection with the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without Owner's written consent given after prior written notice to Owner's Representative.

B. Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no damage to the Work, roadways, adjacent property, or other objects will result from its use. The Agreement may be terminated if the Contractor fails to provide adequate equipment for the Work.

C. The source of supply of each of the materials required shall be reviewed and accepted by the Engineer before delivery is started. Representative preliminary samples of the character and quality specified may be submitted by the Contractor or producer for examination and testing. The results obtained from testing such samples may be used for preliminary review but will not be used as a final acceptance of the materials. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after testing, it is found that sources of supply which have been reviewed and accepted do not furnish a uniform product, or of the product from any source proves unacceptable at any time, the Contractor shall furnish acceptable material from other sources acceptable to Engineer.

Samples of all materials for testing upon which is to be based the acceptance or rejection, shall be taken by the Engineer or its authorized representative at the discretion of the Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed. The Contractor shall provide such facilities as the Engineer or its representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the Work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials confirming to the requirements of these specifications and which

have been accepted by the Engineer or its authorized agents shall be used in the Work. Any material which, after acceptance, has for any reason become unfit for use shall not be incorporated into the Work. Additionally, Contractor and Engineer shall be subject to the procedures and responsibilities set forth in Paragraph 6.13 as it pertains to samples.

Except as otherwise provided herein, sampling and testing of all materials, and the laboratory methods and testing equipment required under these Specifications, shall be in accordance with the most current edition of the standards set forth in Technical Specifications. The testing of all samples shall be done at the expense of the Contractor at an independent laboratory accepted by the Engineer. Laboratory sieves shall have square openings of the sizes specified. The Contractor shall furnish the required samples without charge. All samples shall have been checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended. The Contractor shall give sufficient notification to the Engineer of the placing of orders for materials to permit testing.

D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. Materials shall be stored so as to insure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover or otherwise protected when requested by the Engineer. Stored materials shall be located so as to facilitate prompt inspection. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the Site, and for protection of the Project and shall hold Owner and Owner's authorized representative harmless for any damages or loss incurred thereto.

F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Site by Contractor without the prior written approval of Owner's Representative.

G. All materials not conforming to the requirements of these Specifications shall be considered defective. Whether in place or not, such material shall be removed immediately from the Site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure of the Contractor to comply promptly with any order of the Engineer or Owner's Representative made under the provisions of this article, the Engineer or Owner's Representative shall have authority

to remove defective materials and to deduct the cost of removal and replacement with specified materials from any moneys due or to become due the Contractor.

### **6.03 EQUIVALENT MATERIALS AND EQUIPMENT**

A. Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that a substitution is not permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent to that named. The procedure for review by Engineer will be as set forth in Paragraphs 6.03.A.1 and 6.03.A.2 below as supplemented in the other Contract Documents.

1. Requests for review of substitute items of material and equipment will not be accepted by Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment Contractor shall make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application shall state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Engineer in evaluating the proposed substitute. Engineer will be the sole judge of acceptability, and no substitute will be ordered or installed without Engineer's prior written acceptance. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other Surety with respect to any substitute.

2. Engineer will record time required by Engineer and Engineer's consultants in evaluating substitutions proposed by Contractor and in making changes in the Drawings or Specifications occasioned thereby. Whether or not Engineer accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Engineer and Engineer's consultants for evaluating any proposed substitute.

3. In case of a difference in price, the Owner shall receive all benefit of the difference for any substitutions, and the Agreement Price shall be altered by Change Order to credit the Owner with any savings so obtained.

#### **6.04 CONCERNING SUBCONTRACTORS**

A. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner and Engineer by Contractor prior to the Notice of Award and not objected to in writing by Owner or Engineer prior to the Notice of Award will be deemed acceptable to Owner and Engineer. Acceptance of any Subcontractor, other person or organization by Owner or Engineer shall not constitute a waiver of any right of Owner or Engineer to reject defective Work. If Owner or Engineer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the Agreement Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contact with Contractor, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

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

D. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer and contains waiver provisions as required by the Contract Documents. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to the Contract Documents.

E. Contractor shall fully cooperate with Owner and such other contractors or Subcontractors as may be performing work or supplying materials in connection with the Project and shall carefully fit its work in with that of all such other persons or entities. Contractor shall neither commit nor permit any act which will interfere with the performance of the Project by any such person or entity.

F. Contractor shall promptly pay in full for any and all damages caused to the Site or the Project by Contractor or by any Subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions the Contractor is responsible hereunder.

## **6.05 PATENT FEES AND ROYALTIES**

A. If the Contractor is required or desires to use any design, device, invention, product, materials, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and assume all costs incident to said use in performance of the Work or incorporation of the Work. The Contractor and the surety shall indemnify and hold harmless the Owner and Engineer from any and all claims for infringement by reason of the use of any such patented design, device, invention, product, material, or process or any trademark or copyright in connection with the Work agreed to be performed under this contract, and shall indemnify the Owner and Engineer for any costs, expense, and damages, including attorney's fees, which they may be obliged to pay for reason of any such infringement at any time during the prosecution, or after the completion of the Work. The provisions of this Section 6.05(A) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **6.06 PERMITS**

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Owner and Engineer shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all charges of utility service companies for connections to the Work, and Owner shall pay all charges of such companies for capital costs related thereto. A copy of all permits and licenses procured by Contractor shall be supplied to Engineer within a reasonable period of time. With respect to permits obtained by Contractor as necessary for the performance of the Work, Contractor shall be reimbursed for the face value of the permits.

## 6.07

### LAWS AND REGULATIONS

A. Contractor shall be familiar with all federal, state and local laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or on the Site, or in any way affect the conduct of the Work, including rules and regulations that Owner may promulgate at any time for the safe, orderly and efficient conduct of all Work on the Project (the “applicable regulations”). If Contractor observes that the Specifications or Drawings are at variance therewith, Contractor shall give Engineer or Owner’s Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. The Contractor, at all times, shall observe and comply with all applicable regulations and the Contract Documents and its surety shall indemnify and hold harmless the Owner, the Engineer and their consultants, agents and employees, against any claim or liability arising from or based on the violation of any applicable regulations, by anyone for whom Contractor is responsible.

B. Contractor shall comply with all applicable codes, laws, and ordinances pertaining to Small Business Enterprise (SBE), Small Business Enterprise Concession (SBEC), Disadvantaged Business Enterprise (DBE), Airport Concessionaire Disadvantaged Business Enterprise (ACDBE), Women Business Enterprise (WBE), Minority Business Enterprise (MBE), or Emerging Business Enterprise (EBE) in the location where the Work is being performed. Without limiting the foregoing, to the extent the Work is performed in the City and County of Denver, the Contractor shall comply with: (i) the MBE and WBE participation requirements set forth in Division 1 and Division 3 of Article III, Title 28, of the Denver Revised Municipal Code, as the same may be amended or recodified from time to time (the “DRMC”); (ii) SBE participation requirements set forth in Article VII, Title 28 of the DRMC; and (iii) any other ordinances that are currently, or may be subsequently, adopted by the City and County of Denver with respect to construction work or construction services.



C. Contractor shall comply with all applicable all applicable codes, laws, and ordinances pertaining to payment of prevailing wages in the location where the Work is being performed.

## **6.08 TAXES**

A. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it.

B. Owner is exempt from Colorado State sales and use taxes. Accordingly, taxes from which Owner is exempt shall not be included in the Agreement Price. Owner shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and Subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to Subsection 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and Subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

## **6.09 USE OF PREMISES**

A. Contractor shall confine construction, equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and the requirements of the Contract Documents.

B. During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, temporary structures, stumps or portions of trees and surplus materials, and shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. Materials cleared from the Site and deposited on adjacent property will not be considered as having been disposed of satisfactorily.

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

D. All structures or obstructions found on the Site and shown on the Contract Drawings which are not to remain in place or which are not to be used in the new construction shall be removed to the satisfaction of the Engineer. Unless specified in the Bid Proposal, this Work will not be paid for separately but will be included in the price bid for that portion of the Work requiring the removal of the obstruction. All material found on the Site or

removed therefrom shall remain the property of the Owner unless otherwise indicated.

E. The Contractor, with the consent of the Engineer, may use in the proposed construction any stone, sand, or gravel found on the Site. The Contractor will not be paid for such excavation unless specifically stated in the Bid Proposal, and it shall replace with other suitable material, without compensation, all of that portion of the material so removed and used. If it was intended by the Engineer and indicated in the Specifications that any or all of the material so excavated and used was to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate outside of the proposed slope and grade lines as indicated on the Drawings, without prior consent by the Engineer.

F. Contractor shall protect all existing erosion control measures installed by others and shall promptly replace all items disturbed during his work.

#### **6.10 AS-BUILT DOCUMENTS**

A. Contractor shall keep one set of as-built records of all Plans, Specifications, drawings, Addenda, Modifications, Shop Drawings and samples at the Site, in good order and annotated and updated weekly to show all changes made during the construction process. These shall not be used for construction purposes, shall be available to Engineer or Owner's Representative at all times for examination and shall be delivered to Engineer or Owner's Representative for Owner upon completion of the Work. All changes or drawings from the original drawings shall be neatly marked thereon in brightly contrasting color.

#### **6.11 SAFETY AND PROTECTION**

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

1. All employees on the Work or other persons who may be affected thereby.
2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall be required to assume sole and complete responsibility for Site conditions during the course of construction of the project, including the safety of all persons who may enter on the Site for any reason and the security of all property located on the Site. This requirement shall apply at all times during the course of the contract and not only to normal work hours.

B. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Paragraphs 6.11.A.2 or 6.11.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable solely to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable). Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and final payment has been made.

C. Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

D. Contractor has the affirmative duty of ensuring compliance with all Occupational Safety and Health Administration (OSHA) regulations, of designating a representative who is a competent person for purposes of identifying existing or predictable hazards at the Site, of providing required safety instruction for Contractor's Subcontractors and employees, and of immediately taking precautionary measures when necessary and remedying all identified OSHA violations. Daily, and other, inspections of the Site, including of excavations, adjacent areas and protective systems, shall be the sole responsibility of Contractor. Contractor's obligation to indemnify Owner pursuant to Paragraph 5.05 shall include failure of Contractor to effect full compliance with OSHA regulations.

E. The Contractor shall at all times conduct the Work in such manner as will incur the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service except after permission has been granted by the Engineer or Owner's Representative. Each item of Work shall be prosecuted to completion without delay and in no instance will the

Contractor be permitted to transfer its forces from uncompleted Work to new Work without prior written notification of the Contractor to the Engineer or Owner's Representative. Except as otherwise required by Owner or Engineer, the Contractor shall not open up Work to the prejudice of Work already started.

Unless the Contract Documents specifically provide for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highway. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Work to be done under this Contract, and of constructing and maintaining such approaches, crossing, intersections and any necessary features without direct compensation, except as otherwise provided.

The Contractor shall not close any road to the public except by express permission of the appropriate engineering authority. When the road under construction is being used by the traveling public, special attention shall be paid to keeping the subgrade and surfacing in such condition that the public can travel over same in comfort and safety. The Contractor shall cooperate with the appropriate officials in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights to protect the Work and the safety of the public. Contractor shall comply with the provisions of any and all applicable Traffic Safety Manuals which may be published by a governmental entity having jurisdiction over the project area. All barricades, signs and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept burning from sunset to sunrise. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence of such damage is found prior to acceptance, the Engineer or Owner's Representative may order the damaged portion immediately removed and replaced by the Contractor without cost to the Owner if, in its opinion, such action is justified. The Contractor's responsibility for necessary barricades, signs and lights shall not cease until the Project shall have been accepted.

F. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other authorities having jurisdiction thereover.

G. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed, the number and size of the charges shall be reduced. The Contractor shall notify the proper representative of any public service corporation, any company, or any individual, at least 8 hours in advance of any blasting which may damage its or their property, on, along, or adjacent to the Site. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "DANGEROUS EXPLOSIVES," and shall be in care of competent watchmen at all times.

## 6.12 EMERGENCIES

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

## 6.13 PLANS AND SHOP DRAWINGS

A. The approved Plans will show details of all structures; lines and grade of roadways and utility systems, typical cross-sections of roadways; character of foundation; location and designation of all structures; and the general arrangement of circuits and outlets, location of switches, panels and other Work.

B. Drawings and Specifications are complementary each to the other, and what is called for by one shall be as binding as if called for by both. Data presented on Drawings are as accurate as planning can determine, but accuracy is not guaranteed. As such, Contractor shall not rely upon such data. Instead, Contractor shall perform field verification of all dimensions, locations, levels, etc., to suit field conditions. The Contractor shall review all structural and mechanical plans and adjust all Work to conform to all conditions shown therein. The mechanical Drawings shall take precedence over all other Drawings.

C. Discrepancies between different Plans, or between Plans and Specifications, or regulations and codes governing the installation shall be brought to the attention of the Engineer in writing as soon as said discrepancies are noticed. In the event such discrepancies exist and the Engineer is not so notified, the Engineer shall reserve the right to exercise sole authority in making final decisions in resolution of such a conflict. It is mutually agreed that all authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the Engineer. When at any time reference is made to the "**Plans**", the interpretation shall be the Plans as affected by all authorized alterations

then in effect. Plans will be supplemented by such Shop Drawings to be prepared by Contractor as are necessary to adequately control the Work.

D. After checking and verifying all field measurements and approving of Shop Drawings, Contractor shall submit to Engineer for review, in accordance with the accepted schedule of Shop Drawing submissions, six copies (unless otherwise specified in the Supplementary Conditions) of all Shop Drawings, which shall have been checked by and stamped with the approval of Contractor and identified as Engineer may require. The date shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Engineer to review the information as required.

E. At the time of each submission, Contractor shall in writing call Engineer's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

F. Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to satisfy precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make any corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for Engineer's review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved in writing by the Engineer.

H. Engineer's review of Shop Drawings or samples shall not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings.

I. The cost of furnishing all Shop Drawings shall be borne by the Contractor.

J. Finished surfaces in all cases shall conform with lines, grade, cross-sections and dimensions shown on the Plans. Any deviations from the Plans and working Drawings, as may be required by the demands of construction, will in all cases be determined by the Engineer and authorized in writing.

K. The Plan and Specifications, and all supplementary plans and documents, are essential parts of the Contract, and a requirement occurring in one is just as binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. The Contractor shall not take advantage of any apparent error or omission in the Plans or Specifications. In the event the Contractor discovers any apparent conflict, error or discrepancy, it shall immediately submit a written request for information to the Engineer for its interpretation and the Engineer's decision shall be final. Any apparent error or discrepancy must be resolved before Contractor proceeds with the Work affected thereby.

#### **6.14 CONSTRUCTION STAKES**

A. Unless otherwise directed in the Supplementary Conditions, the Owner will furnish and set construction stakes establishing all lines, grades, and measurements necessary for the proper execution of the Work contracted for under these Specifications. The Contractor shall request that Engineer provide engineering surveys and placement of construction stakes no less than 48 hours prior to the time such service is needed. The Contractor shall satisfy itself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors which may have been made in laying out the Work. The Contractor shall be held responsible for the proper preservation of all marks and stakes. Stakes provided by the Owner, which must be reset after initial placement, will be replaced at Contractor's expense at the current billable rate for a three-person survey crew unless the stakes were removed or destroyed by causes beyond the Contractor's control. Said cost may be deducted from any funds due the Contractor.

B. The Engineer and Owner's Representative shall be authorized to inspect Work done and material furnished. Such observation may extend to any part of the Work and to preparation, fabrication, or manufacture of the materials to be used. The Engineer and Owner's Representative is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. The Engineer and Owner's Representative shall have the authority to reject materials or suspend the Work not conforming to Contract Documents until any questions at issue can be referred to and decided between the Engineer

and the Owner. If the Contractor refuses to suspend operations on verbal order, the Engineer or Owner's Representative may issue a written order giving the reason for shutting down the Work. Work done during such a suspension will not be accepted nor paid for. A subsequent written order from the Owner or Owner's Representative is necessary to release a written suspension order. The Engineer and Owner's Representative shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the Contractor. Any advice which the Engineer or Owner's Representative may give the Contractor shall in no way be construed as releasing the Contractor from fulfilling all of the terms of the Contract, nor as modifying the requirements of the Contract Documents.

## **6.15 PRIVATE PROPERTY AND EXCAVATION**

A. The Contractor shall not enter upon private property for any purpose without first obtaining permission, and it shall be responsible for the preservation of all public and private property, trees, fences, monuments, underground structures, etc., on and adjacent to the Site and shall use every precaution necessary to prevent damage or injury thereto. It shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. It shall be responsible for all damage or injury to property or any character resulting from any act, omission, neglect or misconduct in its or any Subcontractor's manner, or method of executing said Work, or due to its or any Subcontractor's non-execution of said Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the Work has been completed and accepted. The Contractor's attention is directed to the importance of protecting all public utilities encountered on all projects. These may include telephone, telegraph and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities. Before any excavation is begun in the vicinity of water lines, railroad tracks or structures, sewer lines, gas lines, or telephone conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility company concerned is on the ground and has designated the location of their facilities. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor or Subcontractor, Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed, or it shall make good



such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or to have started action to make good such damage or injury, the Engineer or Owner's Representative may, upon forty-eight (48) hours' notice, proceed to direct the repair, rebuilding of or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted for any moneys due or which may become due the Contractor under the Contract. The cost of damages due to Contractor's operation or cost of protecting utilities where required to permit construction under these Contract Documents shall be included in the original Agreement Prices for the Project.

## **PART 7 COORDINATION OF WORK**

### **7.01 OWNER'S RIGHT TO PERFORM**

A. Owner may perform additional Work related to the Project by itself, or have additional Work performed by utility service companies, or let other direct contracts therefor which shall contain general conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or Owner, if Owner is performing the additional Work with Owner's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs, and shall conduct its operations as to minimize the interference with theirs, as directed by Engineer.

### **7.02 CONTRACTOR TO COORDINATE**

A. If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility service company (or Owner), Contractor shall inspect and promptly report to Engineer in writing any patent or apparent defects or deficiencies in such work that renders it unsuitable for such proper execution and results. Contractor's failure so to report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work. Such acceptance by Contractor shall render him responsible for subsequent correction of any such work.

B. Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected.

C. If the performance of additional work by other contractors or utility service companies or Owner was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work. If the performance of such additional work not noted in the Contract Documents causes unavoidable additional expense to Contractor or causes unavoidable delay in Contractor's prosecution of the Work, Contractor may make a claim therefore as provided in Parts 11 and 12 respectively.

## **PART 8 OWNER'S RESPONSIBILITIES**

### **8.01 COMMUNICATIONS**

A. Except as otherwise provided expressly herein, Owner shall issue all communications to Contractor through Engineer or the Owner's Representative.

B. Nothing herein or otherwise shall prevent Owner from communicating directly with Contractor's subcontractors (at any tier) concerning issues affecting the Work or payment for the Work.

## **PART 9 STATUS OF ENGINEER DURING CONSTRUCTION**

### **9.01 DUTIES OF ENGINEER**

A. The duties and responsibilities and the limitations of authority of Engineer during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

### **9.02 VISITS TO SITE**

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

### **9.03 CLARIFICATIONS AND INTERPRETATIONS**

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall

be consistent with or reasonably inferable from the overall intent of the Contract Documents.

#### **9.04 REJECTING DEFECTIVE WORK**

A. Engineer will have authority to disapprove or reject Work, which is defective, and will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04.B, whether or not the Work is fabricated, installed or completed.

#### **9.05 DECISIONS ON DISAGREEMENTS**

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render in writing within a reasonable time. Written Notice of each such claim, dispute and other matter shall be delivered by the claimant to Engineer and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within forty-five (45) days of such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In its capacity as interpreter and judge Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith and in accord with professional standards in such capacity.

B. Notwithstanding Paragraph E of Part 10 of the Owner-Contractor Agreement, the rendering of a decision by Engineer pursuant to Paragraph 9.06.A with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 14.11.A) or the determination by Engineer that it shall not render a decision with respect thereto, will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under Part 21 hereof.

#### **9.06 LIMITATIONS ON ENGINEER'S AND OWNER'S RESPONSIBILITIES**

A. Neither Engineer's nor Owner's authority to act under this Part 9 or elsewhere in the Contract Documents nor any decision made by Engineer or Owner in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer or Owner to Contractor, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or

any of their agents or employees or any other person performing any of the Work.

B. Whenever in the Contract Documents the terms “as ordered,” “as directed,” “as required,” “as allowed” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper” or “satisfactory” or adjectives of like effect or import are used, to describe requirements, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that Engineer shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Paragraphs 9.07.C or 9.07.D.

C. Engineer will not be responsible for Contractor’s means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

D. Neither Engineer, nor Owner, nor Owner’s Representative will be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor or Subcontractor, or of any other persons at the Site or otherwise performing any of the Work.

## **PART 10 CHANGES IN THE WORK**

### **10.01 OWNER MAY ORDER CHANGES**

A. Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Orders or Change Orders. Upon receipt of a Field Order or Change Order, Contractor shall promptly proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Agreement Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Part 11 or Part 12. Only changes authorized by a Change Order or Field Order shall be binding on the Owner.

B. The Engineer, by Field Order only, may authorize minor changes in the Work which do not require an adjustment in the Agreement Price or the Contract Time and which are consistent with the overall intent of the Contract Documents. The Contractor shall perform changes authorized by a Field Order in a timely fashion and as specified in the Field Order.

C. Additional Work performed without authorization of a Change Order will not entitle Contractor to an increase in the Agreement Price or an extension of the Contract Time, except in the case of an emergency, as provided in Paragraph 6.12.A.

D. If Notice of any change affecting the general scope of the Work or change in the Agreement Price is required by the provisions of any Bond to be given to the Surety, it will be Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to Owner.

E. If Owner and Contractor are unable to agree to an adjustment in the Agreement Price or Contract Time of a Change Order, as provided in Parts 11 and 12 herein, the Owner may issue the Change Order without an adjustment and the Parties may proceed to Dispute Resolution pursuant to Part 21. The Contractor shall promptly perform any such Change Order. Alternatively, the Owner reserves the right to perform the Work described in the Change Order directly or to hire other contractor(s) to perform said Work. In this case, the Contractor shall not be entitled to any increase in the Agreement Price, nor to any additional cost or fees, nor to any extension of the Contract Time, and the Contractor shall permit free access to the Site by the Owner or any other contractor engaged by Owner to perform said Work.

## **PART 11 AGREEMENT PRICE AND CHANGES**

### **11.01 AGREEMENT PRICE CHANGED ONLY BY CHANGE ORDER**

A. The Agreement Price constitutes the total compensation (subject to authorized adjustments by Change Order) payable to Contractor for performing the Work and is based on unit prices. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Agreement Price.

B. The Agreement Price may only be changed by a Change Order signed and approved by Contractor and Owner. When Contractor and Owner agree upon a price for extra or changed Work by way of a Change Order, Contractor and Owner agree that the price set forth in the Change Order shall be based on unit prices set forth in the Agreement, unless the parties otherwise agree.

C. The Owner, through the Engineer or Owner's Representative, may request changes to the Agreement for additional Work or a reduction in the Work or in response to claims by Contractor not quantifiable by unit prices set forth in the Agreement. In such case, Change Order pricing and time extension analysis shall be in accordance with the following:

1. The Engineer or Owner's Representative shall submit to the Contractor a "**Request for Proposal**" outlining the scope of Work contemplated for said construction changes.

2. The Contractor shall submit within fourteen (14) days of receipt of a "**Request for Proposal**" (or within such shorter period of time as may be reasonably designated by the Owner) a complete cost and fee and time extension analysis for the proposed change which shall include detailed supporting documentation to the satisfaction of the Owner and Engineer.

D. If the Contractor believes extra compensation is due for Work or materials not clearly covered in the Agreement, or not ordered in writing by the Owner or Engineer, it must, prior to beginning the Work on which it bases the claim, submit in writing to the Engineer and the Owner its intention to make a claim for such extra compensation and must afford the Engineer every facility for keeping track of the actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by Contractor and the keeping account of costs by the Engineer shall not in any way be construed to prove the validity of the claim. When such Work has been completed, the Contractor shall within fifteen days file its claim for extra compensation with the Engineer, including an itemization of all items for which extra compensation is requested and documentation reasonably satisfactory to Owner. Engineer shall present the claim to Owner with Engineer's recommendations.

E. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price shall be determined in one of the following ways:

1. On a unit price basis stated in the Contract Documents and subsequently agreed upon;

2. On the basis of the estimated Cost of the Work (determined as provided in Paragraph 11.02) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraph 11.03.B);

3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or

4. In any other manner agreed upon by the parties.

F. Notwithstanding anything in the Contract Documents to the contrary, 29 (representing overhead and profits) on any Work covered by a Change

Order or of any claim for an increase or decrease in the Agreement Price, shall be limited in the following ways:

1. For Work performed by subcontractors and/or suppliers (of any tier), such subcontractors and/or suppliers may apply markup of not more than 7% of the Cost of the Work covered by a Change Order or claim;
2. For Work performed by subcontractors and/or suppliers (of any tier), Contractor may apply markup of not more than 7% of the Cost of the Work covered by a Change Order or claim;
3. For self-performed Work, Contractor may apply markup of not more than 5% of the Cost of the Work covered by a Change Order or claim; and
4. Except as specifically permitted by Sections 1 thru 3 of this Part 11.01 (F), there shall be no other markup, profit, or fee of any kind on Work covered by a Change Order or any claim for an increase or decrease in the Agreement Price. Contractor and its subcontractors and/or suppliers shall provide reasonable documentation (including receipts or other supporting documentation) of the Cost of the Work covered by a Change Order or claim to ensure that markup has been applied appropriately in accordance with the Contract Documents.

## 11.02 COST OF THE WORK

A. The term “**Cost of the Work**” means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.02.B. Whenever the cost of any Work is to be determined pursuant to Paragraphs 11.02.A and 11.02.B, Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Payroll cost for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but shall not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers’ or workmen’s compensation.

Such employees shall include superintendents and foremen at the Site. The expenses of performing Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

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

3. Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

5. Supplementary costs include the following:

(a) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.

(b) Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – all in accordance with terms of said rental agreements. The rental of any such equipment,



machinery or parts shall cease when the use thereof is no longer necessary for the Work.

(c) Any sales, use or similar taxes related to the Work, if applicable, and for which Contractor is liable, imposed by any governmental authority.

(d) Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.

(e) Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor or in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated in Paragraph 11.03.A.

(f) Cost of premiums for additional Bonds and insurance required because of changes in the Work.

(g) The proportion of necessary, transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

(h) The cost of utilities, fuel and sanitary facilities at the Site.

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

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Site or in its principal or a branch office

for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in subparagraph 11.02.A.1—all of which are to be considered administrative costs covered by the Contractor's Fee as defined in Paragraph 11.03.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).
5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.02.A.

### **11.03 CONTRACTOR'S FEE**

A. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:
  - (a) For costs incurred under Paragraphs 11.02.A.1 and 11.02.A.2, the Contractor's Fee shall be 3%; and
  - (b) For costs incurred under Paragraph 11.02.A.3, the Contractor's Fee shall be 3%; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be 1% as set forth in Paragraph 11.03.A.1.a; and
  - (c) No fee shall be payable on the basis of costs itemized under Paragraphs 11.02.A.4, 11.02.A.5, and 11.02.B.

B. The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined fee shall be figured on the basis of the next increase if any.

## **PART 12 CONTRACT TIME AND CHANGES**

### **12.01 DETERMINATION AND EXTENSION OF CONTRACT TIME**

A. The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work contracted, within the number of calendar days stipulated in the Agreement. Time will be assessed against the Contractor in accordance with the Notice to Proceed. If the Contractor does not begin the Work within the limit designated in the Notice to Proceed, the calendar days shall start on the first calendar day after the last permissible starting date as set forth in the Notice to Proceed. If the satisfactory execution and completion of the Work shall require Work or materials in greater amounts or quantities than those set forth in the Contract Documents, then the Contract Time may be increased as negotiated between Contractor and Engineer or Owner's Representative and accepted by Owner as set forth in a Change Order. In general, extensions to the completion period for the Contract Documents will not be approved, regardless of cause for claim.

No allowances will be made for delays or suspensions of the prosecution of the Work due to the fault of the Contractor.

### **12.02 CONTRACT TIME CHANGED ONLY BY CHANGE ORDER**

A. The Contract Time may only be changed by a Change Order. If Contractor desires to make any claim for an extension in the Contract Time, as a result of any alleged delays, it shall give immediate verbal notification to Engineer followed by written notice delivered to Owner's Representative and Engineer within five days of the occurrence of the event giving rise to the Claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days of such occurrence unless Engineer or Owner's Representative allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by Engineer if Owner and Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

B. Where, due to delays beyond the control of Contractor, such as acts or omissions of the Owner or others performing work as contemplated by Part 7 or to fires, floods, labor disputes, epidemics, acts of God, or to abnormally inclement weather conditions, which allegedly cause

unavoidable delay to the Contractor's prosecution of the Work and the Contractor is prevented from completing any part of the Work within the Contract Time or within scheduled milestones, Contractor may be entitled to request an extension of time equal to the time unavoidably lost and/or an increase in the Agreement Price equal to the general conditions costs unavoidably incurred by Contractor; provided, however, that Contractor shall not be entitled to an increase in the Agreement Price to the extent that any of the delays described by this Part 12.02 (B) occur concurrently with any delays caused (in whole or in part) due to the fault of the Contractor or those for whom Contractor is responsible. Weather conditions shall only be considered abnormally inclement if there was greater than normal inclement weather considering the term of the contract and the ten-year average of accumulated record mean values from data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale of the Work.

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

**PART 13      WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS;  
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**13.01      WARRANTY AND GUARANTEE**

A. Contractor warrants and guarantees to Owner and Engineer that, without exception, all Work will be in accordance with the Contract Documents and will not be defective. Four copies of all manufacturer's warranties or certificates that are required by the Contract Documents shall be submitted to Owner through Engineer prior to acceptance of the Work. No exceptions to Contract Documents and guarantee or warranty requirements are permitted. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Part 13.

**13.02      ACCESS TO WORK**

A. Engineer and Engineer's representatives, other representatives of Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

**13.03      TESTS AND INSPECTION**

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.

B. If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) specifically to be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with Owner's or Engineer's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by Owner (unless otherwise specified), except that the cost of re-testing of materials and equipment as a direct result of a failure to pass a specified test shall be paid by Contractor.

C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to Owner and Contractor (or by Engineer, if so specified).

D. If any Work that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.

E. Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

F. Any Work outside the normal five (5) day, forty (40) hour week may require that the Engineer be on the job. All inspection so required shall be done at the Engineer's expense at the Engineer's current billable rates and the cost thereof shall be deducted from any funds due Contractor. The Contractor shall notify the Engineer at least 24 hours in advance of starting any such overtime Work.

#### **13.04 UNCOVERING WORK**

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

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Engineer shall issue a Field Order so directing and Contractor shall thereupon uncover, expose

or otherwise make available for observation, inspection or testing, as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing, and all expenses for satisfactory correction or reconstruction of the defective Work, including, for all of the foregoing tasks, compensation for additional professional services required. Contractor shall not request payment for, nor shall Contractor be entitled to compensation for such expenses. If the Work is found not to be defective, Contractor shall be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, for any expense or delay directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, provided that Contractor submits a verified claim as provided in Parts 11 and 12 within 20 days of performing any such tasks.

### 13.05 OWNER MAY STOP THE WORK

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

### 13.06 CORRECTION OR REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

A. If required by Engineer, Contractor shall promptly, without cost to Owner and as specified by Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the Site and replace it with non-defective Work. Work done without lines and grades having been given, Work done beyond the lines and grades shown on the Plans, or as given, except as herein provided, Work done without proper inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to prices, will be done at the Contractor's risk and will be considered unauthorized and, at the option of the Engineer, may not be measured and paid for and may be ordered removed and replaced at the Contractor's expense.

### 13.07 TWO YEAR CORRECTION PERIOD

A. If within **two (2) years** after the date of final acceptance by Owner or another entity as might be appropriate, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the

Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions within seven (7) days after Owner's issuance of written instructions, correct the defective Work at Contractor's cost. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. Contractor shall also pay for any damage done to other Work, other property or persons which occurred as a result of the defective Work within the correction period.

### **13.08 ACCEPTANCE OF DEFECTIVE WORK**

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. In such case, if acceptance occurs prior to Engineer's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Agreement Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to Owner.

### **13.09 OWNER MAY CORRECT DEFECTIVE WORK**

A. If Contractor fails within a reasonable time after written notice to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer or Owner's Representative in accordance with Paragraph 13.06.A, or in accordance with Paragraph 13.07.A, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), Owner may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph Owner shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees such access to the Site as may be necessary to enable Owner to exercise its rights under this paragraph. All direct and indirect costs of Owner in exercising such rights shall be charged against Contractor in an amount verified by Engineer, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Agreement Price. Such direct and indirect costs shall

include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights hereunder.

B. If it becomes necessary for Owner to take over the completion of the Work, all of the amounts owing to Contractor, including the withheld retainage, shall be applied: (i) first, toward the cost of completion of the Work; (ii) second, toward performance of Owner's withholding requirement set forth in section 38-26-107, C.R.S.; (iii) third, to the surety furnishing bonds for the contract work, to the extent such surety has incurred liability or expense in completing the contract work or made payments pursuant to section 38-26-106, C.R.S.; then, (iv) to Contractor. Such retained amounts as may be due Contractor shall be due and payable at the expiration of thirty days from the date of final acceptance by Owner of the Work.

## **PART 14 CONSTRUCTION SCHEDULE, PAYMENTS TO CONTRACTORS AND COMPLETION**

### **14.01 SCHEDULES**

A. Within ten (10) days after issuance of the Notice to Proceed and at least ten days prior to submitting the first application for a progress payment, the Contractor shall prepare and submit to Owner the progress schedule listing all Work tasks required, duration of tasks, sequence of Work, significant milestone events; and a schedule for Shop Drawing submission. These schedules shall be satisfactory in form and substance to the Owner and the Engineer and shall employ the CPM or PERT method if so directed in the Supplementary Conditions. The progress schedule shall be an accurate reflection of the Work to be performed by Contractor. The progress schedule shall be subject to the review and concurrence of Owner, but Owner's concurrence shall not constitute any guarantee or warranty by Owner that the Work can be performed as scheduled. Notwithstanding Owner's review and concurrence of the progress schedule, Contractor shall be paid only according to its completion of the items contained in the Bid Form and not according to the progress schedule. The Contractor shall provide updated written progress reports to Owner on a weekly basis.

B. The schedules contained in the Bid Form shall be incorporated into the form for Application for Payment. The Contractor shall revise the schedule contained in the Bid Form if requested by Owner. The Contractor may include on its Application for Payment, payment for materials stored at the Site, provided that title to such materials will pass to the Owner at the time of payment free and clear of all claims, security interests and encumbrances, are insured and properly stored and protected.



## 14.02 APPLICATION FOR PROGRESS PAYMENTS

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit to Engineer and Owner's Representative for review an Application for Payment for the previous month, completed and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as Owner's Representative may reasonably require. Each subsequent Application for Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor's obligations reflected in prior Applications for Payment. A waiver of claim for partial payments also will be required to be executed by Contractor prior to payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. The determination of quantities of Work acceptable completed under the terms of the Contract Documents, will be made by the Engineer and based on measurements taken by Engineer or its assistants and/or observations in the field. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on plans or specified. Structures shall be measured as shown on the plans. When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly marked on said vehicle and the capacity or marking shall not be changed without permission of the Engineer. The Engineer may require all vehicles to have uniform capacity.

C. No progress payment except final payment will be made for a sum of less than \$1,000.00. The estimates will be approximate only, and all partial or monthly estimates and payments shall be subject to correction in

the estimate rendered following discovery of an error in any previous estimates. Should any defective Work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the Work completed previous to the final payment, there will be deducted from the first estimate rendered after the discovery of such Work an amount equal in value to the defective or questioned Work, and this Work will not be included in a subsequent estimate until the defects have been remedied or the causes for doubt removed.

#### **14.03** CONTRACTOR'S WARRANTY OF TITLE

A. Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner at the time of payment free and clear of all claims, security interests and encumbrances (hereafter in these General Conditions referred to as "**Claims**").

#### **14.04** REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

A. Owner's Representative will, within ten (10) days after receipt of each Application for Payment either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Owner's Representative reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

B. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative to Owner, based on Owner's Representative's on-site observations of the Work in progress as an experienced and qualified design professional, and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; and that, to the best of Owner's Representative's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation.) However, by recommending any such payment, Owner's Representative will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to Contractor on account of the Agreement Price, or that title to any Work, materials or equipment has passed to Owner free and clear of any Claims.

C. Owner's Representative may refuse to recommend, and Owner may refuse to pay, the whole or any part of any payment if, in their opinion, it would be incorrect to make such payment. They may also refuse to recommend to make any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Engineer's or Owner's opinion to protect Owner from loss because:

1. The Work is defective, or completed Work has been damaged requiring correction or replacement,
2. Written claims have been made against Owner or claims have been filed in connection with the Work,
3. The Agreement Price has been reduced because of modifications,
4. Owner has been required to correct defective Work or complete the Work in accordance with Paragraph 13.09.A.,
5. Of Contractor's unsatisfactory prosecution of the Work in accordance with the Contract Documents, or
6. Of Contractor's failure to make payment to Subcontractors for labor, materials, or equipment.

#### **14.05 SUBSTANTIAL COMPLETION**

A. When Contractor considers the entire Work ready for its intended use, Contractor shall, in writing to Owner and Engineer, certify that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving its reasons therefor. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Owner a tentative certificate of Substantial Completion. There shall be attached to the certificate a punch list of items to be completed or corrected before Project completion and final payment.

#### **14.06 PARTIAL UTILIZATION**

A. Use by Owner of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. Owner at any time may request Contractor in writing to permit Owner to use any part of the Work which Owner believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If Contractor agrees, Contractor will certify to Owner and Engineer that said part of the Work is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of that part of the Work to determine its status of completion. Prior to Owner's use, Engineer will deliver to Owner and Contractor a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance and correction periods for that part of the Work which is binding upon Owner and Contractor as to that part of the Work, unless Owner and Contractor shall have otherwise agreed in writing or shall object to the Engineer in writing within (15) days of receiving Engineer's recommendations. Owner shall have the right to exclude Contractor from any part of the Work which Owner uses, but Owner shall allow Contractor reasonable access to complete or correct items on the punchlist.

2. In lieu of the provisions of Paragraph 14.06.A.1., Owner may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately useable; provided that prior to any such takeover, Owner and Contractor have agreed as to the division of responsibilities between Owner and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

3. No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to acknowledgment from the insurers providing the property insurance on the Work that notice of such occupancy has been received and that said insurers, in writing have effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

## **14.07 FINAL INSPECTION**

A. Upon written notice from Contractor to the Engineer that the Work is complete and that all items on the punch list have been completed, Engineer will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals

that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

#### **14.08 FINAL APPLICATION FOR PAYMENT**

A. After Contractor has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents—all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions of Paragraph 14.11.A), Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as Engineer may reasonably require, together with complete and legally effective releases or waivers (satisfactory to Owner) of all claims arising out of or filed in connection with the Work. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. In lieu thereof and as approved by Owner, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any claim.

#### **14.09 FINAL PAYMENT AND ACCEPTANCE**

A. If, on the basis of Engineer's observation of the Work, during construction and final inspection, and Owner's Representative's review of the final Application of Payment and accompanying documentation—all as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, Owner's Representative will, within ten (10) days after receipt of the final Application for Payment, indicate in writing its recommendation of payment and present the Application to Owner for payment. Thereupon, Engineer will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.10.A. Otherwise, Engineer will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, and acceptable to Owner, Owner shall, within thirty (30) days after receipt thereof, cause publication to commence of Notice of Final Settlement in accordance with statutory requirements applicable to Owner. In the event no claims are made against Contractor in response to said publication, Owner shall pay Contractor the amount of final payment recommended by the engineer in accordance with the Notice of Final Settlement. In the event any claim(s) is made against Contractor, Owner shall withhold from all payments to such contractor sufficient funds to insure the payment of said claims until the same have been paid or withdrawn, such payment to be evidenced by filing with the Owner a receipt in full or an order for withdrawal in writing from claimant.

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

#### **14.10 CONTRACTOR'S CONTINUING OBLIGATION**

A. The Contract Documents will be considered complete when all Work has been finished, the final inspection made and the Work finally accepted by the Engineer, all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled by the

Contractor or its Surety and final payment has been made by Owner. The Surety Bond executed from performance of the Contract Documents shall be in full effect for a period equal to the warranty correction period following the date of initial acceptance by Owner or another public entity as might be appropriate.

B. Notwithstanding the provisions of Paragraph 14.10.A., Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor the issuance of a Notice of Acceptability by Engineer pursuant to Paragraph 14.09.A., nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

## **PART 15      SUSPENSION OF WORK AND TERMINATION**

### **15.01      ENGINEER OR OWNER MAY SUSPEND WORK**

A. The Engineer, in consultation with Owner when time permits, shall have the authority to suspend the Work wholly or in part because of unfavorable weather or other essential conditions, or because of the failure on the part of the Contractor to properly prosecute the Work in accordance with the Contract, to carry out orders or to remove defective material or Work. The Contractor shall not suspend the Work without written authority from Owner or Engineer. Prior to resuming Work, Contractor shall give the Engineer adequate notice to afford opportunity to re-establish observation and inspection of Work being performed.

B. In the event the Contractor is ordered by the Engineer, in writing, to suspend Work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of suspension. No allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in the written order for Work to cease until the date of the order for Work to resume. Claims for such reimbursement shall be filed with the Engineer within ten (10) days after date of the order to resume Work or such claims will not be considered. The Contractor shall submit with its claims, substantiating papers covering the entire amount shown on the claim. After receiving relevant information from the Engineer, the Owner shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim

and such decision shall be final. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the Specifications.

C. Owner may at any time suspend the Work or any portion thereof without cause for a period of not more than ninety (90) days by notice in writing to the Contractor and Engineer which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, directly attributable to such suspension if it makes a claim therefor as provided in Parts 11 and 12.

## **15.02 OWNER MAY TERMINATE**

A. Upon the occurrence of any one or more the following events, Owner may terminate the Agreement:

1. If Contractor is adjudged a bankrupt or insolvent,
2. If Contractor makes a general assignment for the benefit of creditors,
3. If a trustee or receiver is appointed for Contractor or for any of Contractor's property,
4. If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
5. If Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
6. If Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials or equipment,
7. If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,
8. If Contractor disregards the authority of Engineer,
9. If Contractor fails to commence Work as prescribed in the Notice to Proceed,
10. If Owner secures substantial evidence that progress of the Work by the Contractor is insufficient to complete the Work within the Contract Time,



11. If Contractor repeatedly fails to observe any requirement of these Specifications,
12. If Contractor fails to promptly make good any defects in materials or Work or any defects of any other nature, the correction of which has been directed in writing by the Engineer,
13. If Contractor fails to promptly disburse payment or retainage to subcontractors upon its receipt of such payment from Owner;
14. If Contractor fails to remedy any default under the Contract Documents within seven (7) days of receipt of Notice of such default from Owner, or
15. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents.

B. Before the Agreement is terminated, the Contractor and its Surety will first be notified in writing by the Engineer of the conditions which make termination of the Agreement imminent. Seven (7) days after this notice is given, if efforts satisfactory to the Owner have not been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Agreement terminated and notify the Contractor and its Surety accordingly. Upon receipt of notice from the Owner that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The Owner may then proceed with the Work in any lawful manner that it may elect until the Work is finally completed. Owner may exclude Contractor from the Site and take possession of the Work and all Contractor's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Agreement Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, including but not limited to fees and charges of engineers and attorneys and any court or arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Engineer and incorporated in a Change Order, but in finishing the Work, Owner shall not be required to obtain the lowest figure for the Work performed.

C. Where Contractor's services have been so terminated by Owner, the termination shall not affect any rights of Owner against Contractor then

existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

### **15.03 CONTRACTOR MAY STOP WORK OR TERMINATE**

A. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or Owner fails for forty-five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to Owner and Engineer, terminate the Agreement and recover from Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if Engineer has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven (7) days' notice to Owner and Engineer stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of its obligations under Paragraph 21.01.B. to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with Owner.

### **15.04 OWNER MAY TERMINATE FOR CONVENIENCE**

A. The Owner may terminate the performance of Work under the Contract Documents in accordance with this section without cause and in the Owner's sole and absolute discretion. Such termination may be in whole, or from time to time, in part. Any such termination shall be effected by delivery of a written notice of termination to the Contractor specifying the extent to which performance of Work under the Contract Documents is terminated and the date upon which termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the Contract Documents on the date and to the extent specified in the notice of termination.
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract Documents which is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
4. Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of

the Contractor under the orders and subcontracts so terminated. The Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent it may require. Its approval or ratification shall be final for all purposes of this clause.

6. Transfer to the Owner and deliver in the manner, at the times, and to the extent, if any directed by the Owner:

(a) The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

(b) The completed or partially completed plans, drawings, information, and other property which, if the Project had been completed would have been required to be furnished to the Owner.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the Owner directs or authorizes, any property of the types referred to in Paragraph 15.04.B.6., but the Contractor:

(a) shall not be required to extend credit to any purchaser; and

(b) may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract Documents or shall otherwise be credited to the Agreement Price or cost of the Work covered by the Contract Documents or paid in such other manner as the Owner may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.

9. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Project which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

C. After receipt of a notice of termination, the Contractor shall submit to the Owner its termination claim (calculated in accordance with the provisions of paragraph 15.04.E.), in the form and with the certification the Owner prescribes. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such sixty (60) day period or authorized extension. However, if the Owner determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such sixty (60) day period or extension. If the Contractor fails to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to Owner, the amount, if any, due to Contractor because of the termination. The Owner shall then pay to the Contractor the amount so determined.

D. Subject to the provisions of this paragraph, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of Work under this subsection. The amount or amounts may include a reasonable allowance for profit on Work done if acceptable to Owner. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of the portion of the Work not terminated. The Contract Documents shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in this paragraph prescribing the amount to be paid to the Contractor in the event of the failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor because of termination of Work under this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. If the Contractor and the Owner fail to agree on the whole amount to be paid to the Contractor because of the termination of Work under this section, the Owner shall determine, on the basis of information available to Owner, the amount, if any, due to the Contractor by reason of the termination and shall pay the Contractor the amounts determined as follows:

1. For all Contract Work performed before the effective date of the notice of termination the total (without duplication of any items) of:

- (a) The reasonable costs actually incurred by Contractor for work performed prior to termination. Reasonable costs shall not include any overhead expenses, including but not limited to, rent, insurance, supervision, superintendents,

timekeepers, clerks, expeditors, watchmen, small tools, incidental job burdens and general office expenses.

(b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as Paragraph 15.04.B.3. above provides. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made.

2. The total sum to be paid to the Contractor shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Owner, of property to the extent that it is undeliverable to the Owner, or to a buyer under Paragraph 15.04.B.7. of this Part 15. **If the parties do not reach agreement under Paragraph 15.04.D. and the Owner utilizes this Paragraph 15.04.E., no allowance for profit shall be included in the calculation of the sum to be paid to Contractor.**

F. The Contractor shall have the right to dispute under the Disputes provision hereof any determination the Owner makes under this Part 15. But, if the Contractor has failed to calculate and submit its claim according to the provisions provided in Paragraph 15.04.C. and has failed to request an extension of time, it shall have no such right of appeal. In any case, where the Owner has determined the amount due, the Owner shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been made, the amounts so determined by the Owner; or
2. If a dispute proceeding is initiated, the amount finally determined in such dispute proceeding.

G. In arriving at the amount due to the Contractor under this clause there shall be deducted:

1. All unliquidated advance or other payments on account therefor made to the Contractor, applicable to the terminated portion of the Work.
2. Any claim which the Owner may have against the Contractor in connection with the Contract Documents.

3. The agreed price for, or the proceeds of the sale of, any materials, supplies or other things kept by the Contractor or sold, under the provisions of this section, and not otherwise recovered by or credited to the Owner.

H. If the termination hereunder is partial, before the settlement of the terminated portion of the Contract Documents, the Contractor may file with the Owner or request in writing for an equitable adjustment of the price or prices specified in the Contract Documents relating to the continuing portion of the Work (the portion not terminated by the Notice of Termination). Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Work when the Contract Documents do not contain an established price for the continued portion.

## **PART 16 MISCELLANEOUS**

### **16.01 GIVING NOTICE**

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

Notice may also be given by facsimile, providing the notice is also immediately sent by first class mail, except in those cases which require an original to confirm the validity of a signature or other element of the document.

### **16.02 COMPUTATION OF TIME**

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

### **16.03 CORRECTION PERIOD**

A. Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time period relates only to the specific obligations under the Contract Documents which may be sought to be enforced, not to the time within

which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work.

#### **16.04 GENERAL**

A. Should Owner or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is responsible, the injured party shall notify the other party within a reasonable time of the first observance of such injury or damage.

B. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by Paragraphs 5.05, 6.05, 6.07, 6.11.B, 6.11D, 13.01.A, 13.06.A, 13.07.A, and 14.03.A and all of the rights and remedies available to Owner and Engineer under the Contract Documents, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any of or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

C. Should Owner determine that Contractor is performing in such a fashion that Contractor will not complete the Project timely, Owner shall give Contractor notice of Owner's determination and Contractor shall have fifteen (15) days from the issuance of Owner's notice within which to correct its performance and to furnish evidence satisfactory to Owner that the Project will be completed timely. In the event that Contractor does not within said fifteen (15) days correct its performance and furnish evidence satisfactory to Owner that the Project will be completed timely, Owner shall have the right to remove the Contractor and retain a replacement contractor to complete the Project. Owner may thereupon withhold all payments to Contractor until the replacement contractor has completed the Project and then determine what amounts, if any, are due Contractor.

### **PART 17 ADDRESSES**

#### **17.01 OWNER**

A. Owner is the quasi-municipal corporation and political subdivision of the State of Colorado named in the Agreement acting through its duly authorized agents. All notices, letters and communications directed to

Owner shall be addressed and delivered to Owner, with one (1) copy to Engineer, at the addresses listed below:

Owner Address: Cimarron Metropolitan District  
370 Interlocken Blvd Suite 500  
Broomfield, CO 80021  
Phone: (303) 439-6029  
Email: l.johnson@claconnect.com  
Attn: Lisa Johnson

with a copy to: McGeady Becher P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203  
Phone: 303-592-4380  
Email: mbecher@specialdistrictlaw.com  
Attn: Megan Becher

## **17.02 ENGINEER**

A. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by the Engineer named in the Agreement and its duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to Engineer at the address set forth in Paragraph 17.01.D. in the Agreement.

## **17.03 CONTRACTOR/SURETY**

A. The business addresses of Contractor given in the Bid Form and Contractor's office at the Site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered. The business address of the Sureties as stated on the Bid Bond, the Performance Bond, and the Labor and Materials Payment Bond are hereby designated as the places to which all notices, letters, and other communications to such Sureties will be delivered.

## **17.04 CHANGE OF ADDRESS**

A. Either Owner, Contractor, Engineer, or Surety may change its address at any time by an instrument in writing delivered to the other parties.

## **PART 18 LIQUIDATED DAMAGES**

A. Time is an essential condition of the Contract. In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Contract Documents within the specified time limits set forth in Part 5 of the Agreement for such performance and



completion or within such further time as, in accordance with the provisions of this Contract, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the Owner for each and every day of the additional time in excess of the specified time limits and any granted extension thereof, the sum set forth in Part 5 of the Agreement as liquidated damages and not as a penalty. The parties agree that Owner will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The Owner shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due to the Contractor, or in manner set forth in Paragraph 21.01 or by either or both of these methods. Should the entire completion and final acceptance of the Work herein embraced, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that aside from any other penalty or damage, all costs of the engineering, observation and inspection on behalf of the Owner which are incurred after the specified time limits have elapsed may be charged to the Contractor and be deducted from any estimate or payment otherwise due and payable to him.

B. In case of joint responsibility for delay in the final completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one contractor for the delay shall be determined by, and in the judgment of, Engineer.

## **PART 19      EXISTING UNDERGROUND INSTALLATIONS**

A. Existing underground installations such as water lines, gas lines, sewers, telephone lines, power lines, or similar concealed structures in the vicinity of the Work are indicated on the Drawings only to the extent such information was made available to or discovered by Engineer in preparing the Drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. The Contractor acknowledges the inherent risk associated with the location of such installations, and it shall not seek to hold the Owner or Engineer responsible for any damages or delays in the event of any discrepancies associated with such installations. Generally, service connections are not indicated on the Drawings.

B. Contractor shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the Owners thereof and prospecting. Contractor shall use its own information and shall not rely upon any information indicated on the Drawings concerning existing underground

installations. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity.

C. The General Conditions provisions regarding Unforeseen Physical Conditions do not apply to the existing underground installations indicated in the preceding paragraphs. Any delay, additional Work, or extra cost to Contractor caused by underground existing installations shall not constitute a claim for extra Work, additional payment, or damages.

## **PART 20 STREAMLINED SPECIFICATIONS**

A. These Specifications are written in the streamlined or declarative style, utilizing incomplete sentences. Omissions of such words and phrases “The Contractor shall,” “in conformity therewith,” “shall be,” “as shown on the Drawings,” “a,” “an,” “the,” and “all” are intentional in streamlined sections. Omitted words shall be supplied by inference in the same manner as when a note appears on the Drawings. The omission of such words shall not relieve the Contractor from providing all items and work described herein or indicated on the Drawings.

## **PART 21 HANDLING OF DISPUTES**

### **21.01 DISPUTES**

A. Unless otherwise mutually agreed in writing by Owner and the Contractor, all claims, disputes and controversies arising out of or relating to this Owner-Contractor Agreement or the breach thereof (collectively “**Dispute**”) shall be resolved as follows:

Owner and Contractor shall, upon either party’s written request sent certified mail, attempt to resolve the Dispute by non-binding mediation which will be conducted in accordance with the then effective Construction Industry Mediation Rules of the American Arbitration Association (“**AAA**”) subject to modifications set forth herein. The parties shall jointly appoint a mutually acceptable mediator, but if they have not so appointed a mediator within ten (10) days after the written request for mediation is received by the recipient party, the AAA shall, upon written request of either party, appoint the mediator. The parties shall share equally in the costs of the mediator’s fees and expenses and the AAA’s fees and expenses.

In the event the Dispute is not resolved by such mediation within thirty (30) days after the date the written request for mediation is received by the recipient party, the Dispute shall be decided by arbitration in accordance within the then effective Construction Industry Arbitration Rules of the AAA, subject to the modifications set forth herein. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable

statutes of limitation. Any arbitration arising out of or relating to this Owner-Contractor Agreement, the Project, the Work, the Contract Documents, or the breach thereof may include by consolidation, joinder or in any other manner, at the Owner's option, any other entities or persons whom the Owner believes to be substantially involved in a common question of fact or law. In addition to any other damages or relief due, the arbitrator shall award to the prevailing party its reasonable attorney's fees, costs, and expenses payable by and from the non-prevailing party.

All mediation and arbitration proceedings shall be held in Jefferson County, Colorado, or such other place as the Owner may designate, and shall be conducted, and final dispositions shall be made, in accord with the laws of the State of Colorado.

B. The Contractor shall continue to perform the Work and adhere to the Contractor's construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

C. Engineer shall not be deemed or considered a third party beneficiary of the Agreement or Contract Documents, nor a party thereto.

## **PART 22 DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE AUTHORITY OF THE OWNER'S REPRESENTATIVE**

### **22.01 DESCRIPTION**

A. The Owner's Representative is the Owner's agent only for those purposes expressly authorized under the Contract Documents, and shall act as directed by and under the supervision of Owner. It shall confer with Owner regarding its actions. Its dealings in matters pertaining to the on-site work will in general be only with Engineer and Contractor. Its dealings with Subcontractors will only be through Contractor or its superintendent.

B. Owner shall provide Contractor with written notice of any change in the Owner's Representative.

### **22.02 DUTIES AND RESPONSIBILITIES**

#### **A. CONFERENCES:**

1. Attend Preconstruction Conferences and regular project meetings. Arrange a schedule of progress meetings and other job conferences as required and notify in advance those expected to attend. Conduct meetings and maintain and circulate copies of minutes thereof.

**B. LIAISON:**

1. Serve as Owner's liaison with Contractor and Engineer, working to help expedite the project to assure the scheduling requirements are met.

**C. MODIFICATIONS:**

1. Consider Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.

**D. REPORTS:**

1. Furnish Owner with periodic reports of progress of work and of Contractor's compliance with the approved progress schedule, schedule of Shop Drawing submissions, and other schedules.
2. Consult with Owner in advance of scheduled major tests, inspections, or start of important phases of work.

**E. PAYMENT REQUISITIONS:**

1. In cooperation with Engineer, review Application for Payment with the Contractor for compliance with the established procedure for its submission and forward it with recommendation to the Owner for payment.

**22.03 LIMITATIONS OF AUTHORITY**

A. Owner's Representative shall be limited in authority except upon written instructions of Owner as follows:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment, modifications or Change Orders.
2. Shall not undertake any of the responsibilities of Contractor, Subcontractor or Contractor's superintendent.
3. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.

**PART 23 SECTION 01200 SUSPENSION AND DEBARMENT PROCEDURE****23.01 PURPOSE AND APPLICABILITY**

A. The purpose of this Section is to set forth standards and procedures to be followed by the Owner for debarring or suspending persons or entities who are or may become a Bidder, Successful Bidder, or Contractor.

B. It shall be the responsibility of the Owner to administer the rules.

C. The rules shall govern the debarment or suspension of persons from performing any work for, submitting bids for, or otherwise in any manner participating in public projects under contract with the Owner.

## **23.02 CAUSES FOR SUSPENSION**

A. When the Owner has reasonable grounds to believe that the public health, safety, and welfare imperatively requires such action, the Owner may immediately suspend a Bidder, Successful Bidder, or Contractor prior to debarment proceedings from performing work or otherwise participating in public projects not already under contract and from submitting bids on public projects upon adequate evidence that a cause for debarment under Section 01200 may exist. Indictment on criminal charges shall constitute *per se* adequate evidence for purposes of suspension actions.

## **23.03 CAUSES FOR DEBARMENT**

A. Debarment may be imposed by the Owner for:

1. Conviction of or civil judgment for:

(a) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public project;

(b) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft;

(c) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging or any other violation of federal or state antitrust laws that relates to the submission of bid or proposals; or

(d) Commission of any other offense indicating a lack of business integrity or honesty.

2. A serious violation of the terms of a contract on a public project, such as:

- (a) A willful or material failure to perform in accordance with the terms of a contract on a public project;
  - (b) A history of substantial noncompliance with the terms of contracts on public projects; or
  - (c) A willful and material violation of a statutory or regulatory provision or requirement applicable to a contract on a public project.
3. Any of the following causes:
- (a) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for in Section 01200;
  - (b) Knowingly employing or doing business with a debarred, suspended or otherwise ineligible person, in connection with a public project;
  - (c) Conduct indicating a lack of business integrity or honesty in bidding or performing public projects;
  - (d) Submission of false or deceptive information or statements in connection with prequalification, bidding or performance of a public project;
  - (e) Failure to pay a substantial debt (including disallowed costs and overpayments) owed to any federal or state agency or instrumentality, but not including amounts owed under the Internal Revenue Code, provided the debt is uncontested by the debtor or, if contested, that the debtor's legal and administrative remedies have been exhausted;
  - (f) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action; or
  - (g) Any other cause so serious in nature that Owner has reasonable grounds to believe that the public health, welfare, or safety imperatively requires debarment.

## **23.04 PROCEDURES FOR SUSPENSION AND DEBARMENT**

A. Anyone may contact the Owner, Owner's Representative, or Engineer concerning the existence of a cause for Debarment. If the Owner, Owner's Representative, or Engineer becomes aware of information warranting Suspension or Debarment, as set forth in this

Section 01200, then Suspension or Debarment or both may be initiated by the Owner sending a Notice of intent to suspend or debar to the affected Bidder, Successful Bidder, or Contractor (upon such Notice, referred to as the "Respondent"). A Notice of intent to suspend or debar, or both, shall be sent to the Respondent by certified mail, return receipt requested. The Notice shall include a written statement of reasons for and the effect of the Suspension or proposed Debarment and inform the Respondent of the right of appeal to the Owner.

B. The Respondent may appeal the Notice of intent to suspend or debar, or both. Any such appeal must be written and must be received by the Owner within fourteen calendar days of the date the Respondent received the Notice. If no appeal is received as provided herein, the Respondent shall be suspended and/or debarred in accordance with the Notice.

C. A hearing before the Owner shall be commenced within thirty calendar days of receipt of an appeal. At the hearing the Respondent shall present any information it feels is sufficient to prevent Suspension or Debarment. The Owner shall consider this information and render a decision within ten (10) calendar days after the hearing, and such decision shall be final. The appeal procedures described in this Section are the exclusive procedures for determining the outcome and remedy of an appeal. The Administrative Procedure Act (Title 24, Article 4, C.R.S.) shall not apply to this Section 01200, including any protests, appeals, or hearings conducted thereunder.

### **23.05** DECISION ON DEBARMENT

A. Following reasonable inquiry to determine whether a Respondent has engaged in activities which are cause for debarment, the Owner may debar the Respondent. A Respondent may be suspended or debarred for a period of time commensurate with the seriousness of the offense, subject to the limitations set forth under Sub-Section VII of Section 01200.

### **23.06** SETTLEMENT AND VOLUNTARY EXCLUSION

A. A Respondent and the Owner may enter into a settlement of a Debarment action, pursuant to which Respondent may agree not to participate in public projects with the Owner for a stipulated period of time.

### **23.07** LENGTH OF DEBARMENT

A. Debarment may be for a term of up to three (3) calendar years. Credit may be given for any periods of suspension. The following criteria may be considered in making any decision as to length of debarment:

1. Degree of culpability;

2. Seriousness of the offense or conduct;
3. Restitution of damages to the Owner;
4. Cooperation in the investigation of other bidding or performance violations;
5. Disassociation with those involved in bidding or performance violations;
6. Whether a lengthy debarment is required for the protection of the Owner.

B. If the Respondent submits no appeal, the debarment shall automatically be for three years.

### **23.08 SCOPE OF DEBARMENT AND SUSPENSION**

A. Suspension or debarment of a person constitutes suspension or debarment of all their divisions and other organizational elements from bidding or performing work on all public projects with the Owner unless the suspension or debarment decision is limited by its terms to one or more specifically identified individuals, organizational elements, or to specific types of public projects. The suspension or debarment may include any affiliate of the Respondent that is (1) specifically named, and (2) given Notice of the proposed debarment and an opportunity to respond.

B. For purposes of determining the scope of suspension or debarment, conduct may be imputed as follows:

1. Conduct imputed to a Respondent. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other Individual associated with a Respondent may be imputed to the Respondent when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Respondent, or with the Respondent's knowledge, approval, or acquiescence. The Respondent's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

2. Conduct imputed to individuals associated with the Respondent. The fraudulent, criminal, or other seriously improper conduct of a Respondent maybe imputed to any officer, director, shareholder, partner, employee, or other Individual associated with the Respondent who participated in, knew of, or had reason to know of the Respondent's conduct.



3. Conduct of one Respondent imputed to other members in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one Respondent in a joint venture or similar arrangement may be imputed to other members if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of the members. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

**END OF SECTION**

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## **SUPPLEMENTARY CONDITIONS**

## **SUPPLEMENTARY CONDITIONS**

### **PART 2 SCHEDULES**

L. Schedules required by Part 14.01 A may be handwritten, in graphic or text form.

### **WARRANTY START DATE**

The effective start date of the **two year** warranty period is the date that Owner or another public entity as may be appropriate finally accepts improvements for the required warranty period. (See General Conditions Part 14.10 A).

**END OF SECTION**

**MODIFICATIONS, CHANGE ORDERS AND FIELD  
ORDERS**

### CHANGE ORDER

**Project:** \_\_\_\_\_ **Date of Issuance:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **METROPOLITAN DISTRICT** **Change Order No.:** \_\_\_\_\_  
**Address:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Owner's Representative:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

You are directed to make the following changes in the Contract Documents:

**Description:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Purpose of Change Order:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attachments (List Documents Supporting Change):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**CHANGE IN CONTRACT PRICE:**

**CHANGE IN CONTRACT TIME:**

Original Contract Price:

Original Contract Time:

\$

(days or dates)

Previous Change Orders:

Net Change from Previous Change Order:

No. \_\_\_\_ to No. \_\_\_\_

(days)

\$

Contract Price Prior to this Change Order:

Contract Time Prior to this Change Order:

\$

(days or date)

Net Increase of this Change Order:

Net Increase of this Change Order:

\$

(days)

Net Decrease of this Change Order:

\$

Net Change of this Change Order:

\$

Contract Price with All Approved Change Orders:

\$

Net Decrease of this Change Order:

(days)

Net Change of this Change Order:

(days)

Contract Time with all Approved Change Orders:

(days or date)

---

RECOMMENDED:

APPROVED:

APPROVED:

BY: \_\_\_\_\_  
Engineer

By: \_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Contractor

**END OF SECTION**

**CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PROGRESS PAYMENT**

TO WHOM IT MAY CONCERN: **CJB’s Excavation** (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Slope Failure Repair Storm Sewer and Drains (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of partial payment in the sum of \$ \_\_\_\_\_ (the “**Partial Payment**”), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the partial payment received. This waiver and release shall only be effective as of the date the Partial Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Progress Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: CJB’s Excavation

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**UNCONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PAYMENT RECEIVED**

TO WHOM IT MAY CONCERN: The undersigned **CJB’s Excavation** (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Slope Failure Repair Storm Sewer and Drains (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a partial payment in the sum of \$\_\_\_\_\_ (the “**Partial Payment**”), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the Partial Payment.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Partial Waiver of Claims for Payment Received. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: CJB’s Excavation

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



**CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR FINAL PAYMENT**

TO WHOM IT MAY CONCERN: The undersigned **CJB’s Excavation** (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Slope Failure Repair Storm Sewer and Drains (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of final payment in the sum of \$\_\_\_\_\_ (the “**Final Payment**”), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the final payment received. This waiver and release shall only be effective as of the date the Final Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: CJB’s Excavation

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**UNCONDITIONAL WAIVER OF CLAIMS FOR FINAL PAYMENT**

TO WHOM IT MAY CONCERN: The undersigned **CJB’s Excavation** (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Slope Failure Repair Storm Sewer and Drains (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a final payment in the sum of \$\_\_\_\_\_ (the “**Final Payment**”), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: CJB’s Excavation  
Signed: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**END OF SECTION**

## NOTICE OF FINAL PAYMENT

**NOTICE** is hereby given that the **CIMARRON METROPOLITAN DISTRICT** of Jefferson County, Colorado, will make final payment at \_\_\_\_\_, Colorado, on \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_.m. to \_\_\_\_\_ of \_\_\_\_\_, of \_\_\_\_\_, Colorado for all work done by said Contractor(s) in construction or work on ([project description], performed within \_\_\_\_\_, County of \_\_\_\_\_, State of Colorado.

Any person, co-partnership, association of persons, company or corporation that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractors or their subcontractors, in or about the performance of the work contracted to be done or that supplies rental machinery, tools, or equipment to the extent used in the prosecution of the work, and whose claim therefor has not been paid by the contractors or their subcontractors, at any time up to and including the time of final settlement for the work contracted to be done, is required to file a verified statement of the amount due and unpaid, and an account of such claim, to Cimarron Metropolitan District, \_\_\_\_\_ on or before the date and time hereinabove shown for final payment. Failure on the part of any claimant to file such verified statement of claim prior to such final settlement will release Cimarron Metropolitan District, its directors, officers, agents, and employees, of and from any and all liability for such claim.

### BY ORDER OF THE BOARD OF DIRECTORS CIMARRON METROPOLITAN DISTRICT

By:  /s/ \_\_\_\_\_  
Secretary

First Publication: \_\_\_\_\_, 20\_\_\_\_

Last Publication: \_\_\_\_\_, 20\_\_\_\_

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(Name of Newspaper)

**END OF SECTION**

**BID FORM – EXHIBIT A**

**BID FORM**

## BID FORM

TO: Owner: Cimarron Metropolitan District  
 c/o IDES, District Engineer  
 1626 Cole Blvd, Suite 125  
 Lakewood, CO 80401

PROJECT: Candelas Slope Failure Repairs Storm Sewer and Drains

THE UNDERSIGNED BIDDER, having familiarized itself with the work required by the Contract Documents, the Site where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the Work, and having satisfied itself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES and agrees, if this Bid is accepted, to enter into the Agreement in the form attached, to perform all work, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Agreement and the furnishing of materials and equipment required to be incorporated into and form a permanent part of the work, tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the Work; and Bond, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor in accordance with the following Bid prices (Contractor must submit on Base Bid and Bid Alternates, if any, to be considered).

### COMPUTER OUTPUT BID FORMS ATTACHED

**A. BASE BID PRICE:** Two Hundred Fifty Nine Thousand, Three Dollars and Eighty Three Cents (\$259,003.83).

**B. BID FORM DISCREPANCIES:** Add/deduct the following to/from above base bid for Bid Form Discrepancies: \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Bidder shall attach a list of all Bid Form Discrepancies.

The undersigned Bidder agrees to furnish the required Bonds, certificates of insurance on ACORD Form 27, and copies of applicable insurance policies and enter into the Agreement within ten (10) days after acceptance of this Bid, and further agrees to complete all work covered by the Bid, in accordance with specified requirements, as listed in the Special Provisions.

**C. BID ALTERNATE 1:** Two Thousand, Seven Hundred, Eighty-Eight Dollars and Eighty-Nine Cents (\$2,788.89)

**D. LIQUIDATED DAMAGES.** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not substantially completed within the time specified in the Special Conditions, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the Owner if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner in accordance with the following:

- 1. Late Startup of all Major Equipment \$1,000 Per Day
- 2. Late Substantial completion (ready for punchlist) \$1,000 Per Day
- 3. Late Punchlist Completion \$1,000 Per Day

**E. ADDENDA.** Receipt of copies of the following addenda is hereby acknowledged.

| <u>Addendum No.</u> | <u>Bidder's Signature</u> | <u>Date Acknowledged</u> |
|---------------------|---------------------------|--------------------------|
| 1                   | _____                     | _____                    |
| 2                   | _____                     | _____                    |
| 3                   | _____                     | _____                    |
| 4                   | _____                     | _____                    |
| 5                   | _____                     | _____                    |
| 5                   | _____                     | _____                    |
| 6                   | _____                     | _____                    |
| 7                   | _____                     | _____                    |
| 8                   | _____                     | _____                    |
| _____               | _____                     | _____                    |

**E. BID SECURITY.** Enclosed herewith is the required Bid Security, in the form of Cashier's Check/Bid Bond (strike one), in the amount of Zero Dollars (\$0.00) which the undersigned Bidder agrees is to be forfeited to and become the property of Owner, as liquidated damages, in connection with the Bid Security, should this Bid be accepted and Bidder fails to enter into the Agreement in the form prescribed and to furnish the required Bonds within ten (10) days, or should Bidder fail to enter such agreement and give such bond or bonds, if Bidder fails to pay to Owner the difference between the amount specified in this Bid and such larger amount for which Owner may in good faith contract with another party to perform the Work covered by this Bid, but otherwise the Bid Security will be returned upon Bidder signing the Agreement and delivering the Performance Bond, Labor and Materials Payment Bond certificates of insurance on ACORD Form 27 and copies of applicable insurance policies.

**F. BID REJECTION.** In submitting this Bid it is understood that Owner reserves the right to reject any and all Bids, to waive any informality, technicality or irregularity in any Bid, to disregard all non-conforming, non-responsive, conditional or alternate Bids, to clarify contract terms with the Successful Bidder, to require statements or evidence of Bidder's qualifications, including financial statements, and to accept the proposal that in the opinion of the Owner is in its best interest. It is understood that this Bid may not be withdrawn during a period of ninety (90) days after the scheduled time for the receipt of Bids.

**G. BID IS GENUINE.** The undersigned Bidder hereby certifies (a) that this Bid is genuine and is not made in the interest of, or in the behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham Bid; (c) that Bidder has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the Owner.





### **SIGNATURE OF BIDDER**

Date: \_\_\_\_\_

If an Individual: (Signature)  
print or type name: \_\_\_\_\_  
doing business as: \_\_\_\_\_

If a Partnership: \_\_\_\_\_  
by: (Signature) \_\_\_\_\_ General Partner  
print or type name: \_\_\_\_\_

If a Corporation: \_\_\_\_\_  
(a \_\_\_\_\_ Corporation)  
by: (Signature) \_\_\_\_\_ print or type  
name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

If Bidder is a joint venturer, all venturers or their authorized agents must sign below.

Name of Joint Venture: \_\_\_\_\_  
If Joint Venture is

If an Individual: (Signature)  
print or type name: \_\_\_\_\_  
doing business as: \_\_\_\_\_

If a Partnership: \_\_\_\_\_  
by: (Signature) \_\_\_\_\_ General Partner  
print or type name: \_\_\_\_\_

If a Corporation: \_\_\_\_\_  
(a \_\_\_\_\_ Corporation)  
by: (Signature) \_\_\_\_\_ print or type  
name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

END OF SECTION

**ATTACHMENT 1 TO THE BID FORM  
UNIT PRICE SUMMARY**

**Cimarron Metropolitan District  
Candelas Filing 1  
Slope Failure Repair Storm Sewer and Drains  
Bid Schedule**

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Owner: **Cimarron Metropolitan District**  
\_\_\_\_\_  
c/o McGeady Becher  
\_\_\_\_\_  
450 E. 17th Avenue, Suite 400  
\_\_\_\_\_  
Denver, CO 80203

| Item Code                     | Item Description                             | Unit | Qty | Unit Price | Extension           |
|-------------------------------|--|------|-----|------------|---------------------|
| <b>General Items</b>          |  |      |     |            |                     |
| 1                             | Mobilization & Insurance                     | LS   | 1   | \$3,500.00 | \$3,500.00          |
| 2                             | Bonds  | LS   | 1   | TBD        | \$0.00              |
| 3                             | Traffic Control                              | LS   | 1   | \$5,000.00 | \$5,000.00          |
| <b>Subtotal General Items</b> |  |      |     |            | <b>\$8,500.00</b>   |
| <b>Storm Sewer</b>            |  |      |     |            |                     |
| 4                             | 18" RCP Storm Sewer                          | LF   | 225 | \$132.44   | \$29,752.65         |
| 5                             | Raise Existing Manhole 3'                    | EA   | 1   | \$2,370.00 | \$2,370.00          |
| 6                             | Manhole lid                                  | EA   | 1   | \$1,450.00 | \$1,450.00          |
| 7                             | 12" Nyloplast Drain Basin                    | EA   | 1   | \$4,070.00 | \$4,070.00          |
| 8                             | 24" Nyloplast Drain Basin                    | EA   | 1   | \$5,466.00 | \$5,466.00          |
| <b>Subtotal Storm Sewer</b>   |  |      |     |            | <b>\$43,108.65</b>  |
| <b>Drains</b>                 |  |      |     |            |                     |
| 9                             | 4" Perf PVC Shallow Trench/Interceptor Drain | LF   | 389 | \$95.97    | \$37,374.56         |
| 10                            | 4" Solid PVC Gravel Interceptor Drain        | LF   | 45  | \$437.50   | \$19,687.50         |
| 11                            | 4" Perf Underdrain                           | LF   | 582 | \$225.46   | \$131,285.36        |
| 12                            | 4" Solid Underdrain                          | LF   | 80  | \$180.71   | \$14,447.76         |
| 13                            | Cutoff Wall                                  | EA   | 1   | \$2,000.00 | \$2,000.00          |
| <b>Subtotal Drains</b>        |  |      |     |            | <b>\$204,795.18</b> |
| <b>Water</b>                  |  |      |     |            |                     |
| 14                            | Demo Irrigation Vault                        | EA   | 1   | \$1,700.00 | \$1,700.00          |
| 15                            | Abandon 1.5" Irrigation Service Line at Main | EA   | 1   | \$900.00   | \$900.00            |
| <b>Subtotal Water</b>         |  |      |     |            | <b>\$2,600.00</b>   |
| <b>Total</b>                  |  |      |     |            | <b>\$259,003.83</b> |
| <b>Alternate</b>              |  |      |     |            |                     |
| 1                             | 18" RCP Pipe Reuse                           | LF   | 1   | \$88.89    | \$88.89             |
| 2                             | 4' Manhole (if existing is damaged)          | EA   | 1   | \$2,700.00 | \$2,700.00          |
| <b>Subtotal Alternate</b>     |  |      |     |            | <b>\$2,788.89</b>   |

Contractor CJB's Excavation  
Representativ Cliff Ball

Title: \_\_\_\_\_ Owner

Date: 6/21/2023

**PROJECT SCHEDULE – EXHIBIT B**

## **PROJECT SPECIFICATIONS**

## PROJECT SPECIFICATIONS – GENERAL

Measurement and payment for all unit items included in this contract are delineated in this section.

All materials used, installations and tests performed shall conform to the latest City of Arvada Specifications. If any materials or installations are not specified by the City of Arvada, industry standards shall be used. The Owner or City of Arvada shall be the sole judge of the Industry Standard to be used.

Collectively the unit items presented in the Bid Proposal shall be considered to be all items necessary to complete the Project in accordance with the Contract Documents. Any items not included in the Bid Form, needed to complete the Project according to the Contract Documents, shall be considered incidental to the Contract Price.

As a convenience to the Bidder/Contractor descriptions of certain unit items contain references to incidental material, labor or work that is required to complete the item; however additional items, materials, labor or work may be required to complete the item. These additional items, material, labor or work shall be considered incidental to the unit item. The item shall be measured and paid on the unit basis presented for each item; payment shall be at the contract price per unit of measure, complete and in-place, according to the Contract Documents. Payment at the unit price stated in the Bid Form shall be considered full compensation for furnishing all labor, materials, equipment, incidentals, and any other work, necessary to complete the items in place as specified in the Contract Documents.

Contractor shall protect all existing erosion and sediment control measures installed by others and shall promptly replace or maintain all items disturbed during his work at no additional cost to the Owner. Such Erosion Control items include, but are not limited to concrete washouts, tracking pads, silt fence, erosion control logs, and rock socks. Additionally, the Contractor shall not enter restricted areas within the Project. Any damage or disturbance to existing conditions within or at the restricted areas shall be promptly corrected and returned to original condition by the Contractor at no additional cost to the Owner.

The Contractor shall be reimbursed at cost for all fees and permits required by the City of Arvada and/or any other governmental agency.

### MOBILIZATION AND BONDS

**Mobilization and Insurance.** This work shall include all mobilization of all personnel, equipment, contractor field trailers, field offices and supplies at the project site in preparation for work on the Project. This item shall include the establishment of sanitary and other necessary facilities, and all other costs incurred or labor and operations which must be performed prior to beginning items of work for the Project. It is anticipated this work will require multiple Contractor mobilizations. The Mobilization pay item is intended to be full payment for all mobilizations. Mobilization will be paid according to the following schedule of payments:

| PAYMENT DUE     | PERCENT OF CONTRACT COMPLETE |
|-----------------|------------------------------|
| 50% of Lump Sum | 5%                           |
| 25% of Lump Sum | 50%                          |
| 25% of Lump Sum | 90%                          |

**Bonds** This item will be paid as a Lump Sum item. This item shall include the Contractor's cost for obtaining and maintaining Bonds and Insurance in accordance with the Contract Documents. Bonds shall be paid at 100% in the first Pay Application after Bonds and Insurance Certificates have been submitted, in accordance with the Contract Documents.

**Miscellaneous.** This item will be paid as a Lump Sum item.

Payment will be made under:

| <u>Pay Item</u>               | <u>Pay Unit</u> |
|-------------------------------|-----------------|
| <b>Mobilization/Insurance</b> | <b>Lump Sum</b> |
| <b>Bonds</b>                  | <b>Lump Sum</b> |

END OF SECTION

## PROJECT SPECIFICATIONS – UTILITY CIMARRON METROPOLITAN DISTRICT

### GENERAL UTILITY

Contractor shall coordinate with Owners Surveyor to ensure they are notified forty eight hours in advance of layout or other survey needs of the Contractor. Contractor shall inform the Owners Geotechnical Engineer of any work requiring testing or monitoring 48 hours in advance of such testing or monitoring. These coordination issues shall not be paid for separately but considered incidental to the Contract.

**Trenching.** All Utility trenches shall be constructed by open trench method and shall adhere to all OSHA regulations and requirements. It will be the responsibility of the Contractor to coordinate with the geotechnical representative on the appropriate sloping and benching allowed per soil type and slope condition, and to provide all the necessary personnel and practices in order to properly adhere to OSHA Specifications and Standards. Contractor may need to use trench boxes in areas identified by the geotechnical representative. The actual locations and limits shall still be subject to the geotechnical representatives approval.

**Backfill and Compaction.** Contractor is required to backfill all trenches daily. Contractor's attention is called to the Compaction Specifications in the Slope Stability Geotechnical Report.

### STORM DRAIN

**RCP Storm Drain.** Measurement and payment shall be made at the Unit Price for the types and sizes specified per lineal foot. Measurement shall be the actual net length of pipe measured along the top centerline of the installed pipe. Payment shall be for the size specified and considered as a complete-in-place item in accordance with the Contract Documents. The cost of trenching, bedding, backfill, connections to existing, and testing shall be considered incidental to the cost of RCP Storm Drain.

**Removal and Reinstall.** Measurement and payment shall be made at the Unit Price for the types and sizes specified per each or linear foot. Measurement shall be the actual number removed and reinstalled as allowable. Payment shall be for the size specified and considered as a complete-in-place item in accordance with the Contract Documents.

**Underdrains, Shallow Trench Drains and Interceptor Drains.** Measurement and payment shall be made at the Unit Price for the types and sizes specified per lineal foot. Measurements shall be the actual net length of pipe measured along the top centerline of the installed pipe or for each service. Payment shall be for the size specified and considered as a complete-in-place item in accordance with the Contract Documents. The cost of coordinating field fitting, trenching, connecting to existing or new inlets, fabric, bedding, backfill and all other items necessary to complete the drains are incidental to the cost of the item. The cost of the drains will include any necessary cleanouts.

**Underdrain Headwall.** Measurement and payment shall be made at the Unit Price for the types and sizes specified per each. Payment shall be for the size specified and considered as a complete-in-place item in accordance with the Contract Documents. The cost of excavation,



connecting to underdrain, bedding, backfill and all other items necessary to complete the underdrain headwall is incidental to the cost of the item.

**Manholes and Inlets.** Measurement and payment shall be made at the Unit Price for the types and sizes specified per each. Measurement shall be the actual number constructed. Payment shall be for the size specified and considered as a complete-in-place item in accordance with the Contract Documents. Manholes rims shall be installed to within +/- 0.1' of finished grade.

**Raise Existing Manhole.** Measurement and payment shall be made at the Unit Price for the types and sizes specified per each. Measurement shall be the actual number raised. Payment shall be for the size specified and considered as a complete-in-place item in accordance with the Contract Documents. This item shall include but is not limited to raising manhole and backfill around manhole.

Payment shall be made under:

| <u>Pay Item</u>               | <u>Pay Unit</u> |
|-------------------------------|-----------------|
| 18" RCP                       | Lineal Foot     |
| 18"RCP Remove and Reinstall   | Lineal Foot     |
| 4' Diameter Manhole           | Each            |
| Raise Manhole                 | Each            |
| 12" Area Drain                | Each            |
| 24" Area Inlet                | Each            |
| 4" Perforated Underdrain      | Lineal Foot     |
| 4" Solid Underdrain           | Lineal Foot     |
| 4" Perforated PVC Interceptor | Lineal Foot     |
| 4" Solid PVC Interceptor      | Lineal Foot     |
| Cut off Wall                  | Each            |

## WATER

**Irrigation Service Line.** Measurement and payment shall be made at the Unit Price for the abandoning of the irrigation service per City of Arvada requirements and includes excavation, backfill and pavement repairs. Permit fees will be reimbursed by face value. Payment shall be for the item and considered as a complete-in-place item in accordance with the Contract Documents.

Payment shall be made under:

| <u>Pay Item</u>                      | <u>Pay Unit</u> |
|--------------------------------------|-----------------|
| Abandon 1.5" Irrigation Service Line | Each            |

END OF SECTION

# CIMARRON METRO DISTRICT PROFESSIONAL SERVICES AGREEMENT TASK ORDER

**AGREEMENT TITLE** Service Agreement for District Oversight Services

**AGREEMENT NO.** \_\_\_\_\_ **AGREEMENT DATE** 9/15/2010 **TASK ORDER NO.** 11

**CONSULTANT** IDES, LLC

**TASK ORDER REFERENCE:** Task Order 11 Submittal (attached)

**TASK ORDER NAME:** Filing 1 Tract A4 Slope Stability Services

**METRO DISTRICT PROJECT ENGINEER:** IDES, LLC (Brandon Collins)

**BASIS OF COMPENSATION:** Attached Proposal

**SCHEDULE:** As Construction Requires

**AGREEMENT PRICE RECONCILIATION:**

Previously Approved Change Orders/Amendments/Task Orders \$ 3,154,721.35

Task Order Price – Task Order No. 11 \$ 45,000.00

**Total of Agreement Prices including this Task Order** \$ 3,199,721.35

**AGREEMENT TERMS AND CONDITIONS**

All other terms and conditions of the Agreement remain unchanged and in full force and effect.

This Task Order constitutes written assurance by the Metro District (if a Metro District Agreement) that lawful appropriations have been made to cover the cost of the Task Order, pursuant to Section 24-91-103.6, C.R.S.

**APPROVALS REQUIRED:**

To be effective, this Task Order must be approved according to the Agreement.

Recommended by Brandon Collins, PE Date 8/15/23

Approved by Approved, Brian Daly Date 8/24/2023

The undersigned agrees to the above terms and conditions:

  
Consultant

Brandon Collins, PE  
Authorized Agent

8/15/23  
Date

Vice President  
Title



August 14, 2023

Cimarron Metropolitan District  
C/O Brian Daly  
10184 Park Meadows Drive, Unit 1320  
Lone Tree, CO 80124

**RE: IDES Task Order Ten (11) Proposal for District Services for Filing 1 Tract A4 Slope Stability Services.**

Brian,

Independent District Engineering Services, LLC (IDES) is pleased to respond to your request to provide District Services (Services) for the Cimarron Metropolitan District (District) for the Filing 1 Tract A4 Slope Stability (Project).

The below listed items are a summary of the work that IDES is expected to provide for the District through this Task Order. Billings will be based on the actual hours worked each month and will vary due to project requirements and schedule as the project progresses. Additional items requested or identified in 2023 will be billed via additional Task Order and shall be paid at the hourly rates as identified at that time.

Total estimated cost for District Engineering services from August 2023 through December 30, 2023, are estimated to be \$45,000.

**GENERAL COMPREHENSIVE SCOPE OF SERVICES / T&M BUDGET**

**Bidding and Contract Documents - \$10,000**

IDES will provide contractor bidding services including advertising, Contractor notification, reviewing of AIA forms, and recommendation of qualified contractors. Prior to the bid IDES will review the plans and make recommendations as necessary. IDES will conduct the Bid Process which includes development of the Bid Documents, Bid Addendums, Bidders Scope Tabulation and Pay Item Specifications, answer questions, conduct a Pre-Bid Conference and a Bid Opening. IDES will review the schedules submitted with the bid and provide Bid Comparisons and make a recommendation to the Board for Contractor Selection. IDES will manage the unit prices and alternates as part of putting together the final contract for the project.

**Construction Administration – \$10,000**

IDES will prepare standardized Agreements for Construction Contracts, Contractor forms including Change Orders, RFI, Submittals, Pay Certifications, and other miscellaneous forms for use by all contractors involved with the District. IDES will provide construction administration activities, including contractor preconstruction efforts, partial pay request processing, manage contractor submittal process, change order review, permit management, project close-out, claim reviews, and other tasks as necessary to provide project documentation. IDES will prepare consultant Task Orders for review and approval by the District and provide support services for the progress and completion of Consultants Services. IDES will process invoicing from consultants and make recommendations to the District for payment.

**Construction and Contractor Coordination - \$10,000**

IDES will provide construction coordination activities including project coordination with stakeholders, monitor project scheduling, jurisdictional coordination for project acceptance and other activities necessary to provide coordination between multiple contractors. IDES will establish scope and expectations for third party testing

requirements and manage the chosen consultant through construction and acceptance. IDES will provide construction observation for compliance with the Contract Documents for all phases of construction activities. It is anticipated Construction Observation will be required three times a week for the duration of each and all construction contracts.

#### **Meetings and Project Closeout - 9,000**

IDES will participate in Project Meetings as necessary or requested. Meetings shall include monthly District Board Meetings, jurisdiction coordination meetings, pre-construction meetings, and weekly construction progress meetings. IDES will provide weekly updated meeting agendas to track the status of contractor, consultant and jurisdictional issues. IDES will observe the final product and require testing reports, others inspection reports, permit close outs, designer certifications and other documentation as needed to ensure the project has been completed to the satisfaction of the District.

#### **District Invoice Tracking and Expenditure Verification - \$5,000**

IDES will provide monthly invoice summaries for all project expenditures, prepare and submit reimbursement requests as required by escrow agreements and review the documentation provided by the District to determine the scope of District eligible improvements and the claimed cost for the improvements.

#### **Reimbursable Expenses - \$1,000**

Reimbursable expenses will include mileage, permit fees, and any other non-labor items.

#### **Exclusions and Miscellaneous –**

1. IDES can provide additional Services as directed by the Board, subject to the Charge Rate Schedule.
2. Observation required more than three visits weekly during construction shall be considered additional.
3. Other meetings with Project Stakeholders as required or requested and not listed above shall be considered additional.
4. Work related to unanticipated delays, re-engineering or circumstances which require rebidding of any project elements shall be considered additional.

#### **FEE**

IDES proposes to perform services on a time and material basis in accordance with the Charge Rate Schedule attached. A firm estimate of the services cannot be provided at this time as cost can vary depending on the final scope determined.

Fee estimates for District Engineering services may vary from consultant to consultant and should only be used as an estimate to assist in budgeting. The accuracy of our fee estimate can be affected by the completeness of the information provided by the District and Developer. This fee estimate can be impacted by

- constructability of plans,
- completeness of agreements,
- delayed construction,
- excessive change order requests,
- low quality construction,
- completeness of invoices and evidence of payment (completeness, readability, quantities and unit costs included, quantity, lack of duplicates, and evidence of payment easily ties to invoice),
- responsiveness of District and Developer

We will provide services to the District as requested and bill only for the actual time required to complete the services. We will bill using the unit rates provided. Our unit rates are subject to change on an annual basis.

## 2023 CHARGE RATE SCHEDULE

Services will be provided on a Labor Time and Expenses basis as provided below. Hourly rates are revised periodically to reflect the current cost for delivery of services and the fees charged for services under this engagement may change without notice. The District agrees that IDES is authorized perform a task authorized under this scope of services at the direction of any individual board member.

### Billing Rates:

The following Billing Rates shall apply for the Task Order:

|                               |                    |
|-------------------------------|--------------------|
| Project Administrator         | \$ 115.00 per hour |
| Contract Administrator        | \$ 130.00 per hour |
| Senior Contract Administrator | \$ 145.00 per hour |
| Project Engineer              | \$ 140.00 per hour |
| Project Engineer II           | \$ 150.00 per hour |
| Technical Specialist          | \$ 140.00 per hour |
| Senior Technical Specialist   | \$ 165.00 per hour |
| Project Manager               | \$ 155.00 per hour |
| Project Manager II            | \$ 165.00 per hour |
| Construction Manager          | \$ 165.00 per hour |
| Construction Manager II       | \$ 175.00 per hour |
| Professional Engineer         | \$ 175.00 per hour |
| Senior Project Manager        | \$ 180.00 per hour |
| Senior Construction Manager   | \$ 195.00 per hour |
| District Engineer             | \$ 190.00 per hour |
| Director                      | \$ 200.00 per hour |
| Principal                     | \$ 225.00 per hour |

### Reimbursable Expenses

|  |                |
|--|----------------|
| Mileage                                  | IRS Rate + 10% |
| Plan Copies, outside copies, other items | at cost + 10%  |

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Sincerely,

*Tanna Boisvert*

Tanna Boisvert, CSM  
Independent District Engineering Services

## CHANGE ORDER

**Project:** Candelas Slope Failure Repair Storm Sewer and Drains

**Date of Issuance:** 7/20/2023

**Owner:** **CIMARRON METROPOLITAN DISTRICT**      **Change Order No.:** 1

**Address:** 370 Interlocken Blvd, Suite 500 Broomfield, CO 80021

**Contractor:** CJBs Excavating

**Owner's Representative:** IDESLLC

You are directed to make the following changes in the Contract Documents:

**Description:** New location for mailbox kiosk, sidewalk approach and kiosk beams and roof panels, demo for reuse.

**Purpose of Change Order:** Concrete installation for ADA compliance and cost savings for material reuse.

**Attachments (List Documents Supporting Change):** Proposal for concrete \$4,365.00. Proposal for material reuse \$2,710.00 attached.

**CHANGE IN CONTRACT PRICE:**

Original Contract Price:  
\$259,003.83

Previous Change Orders:  
No. 0 to No. 0  
\$

Contract Price Prior to this Change Order:  
\$259,003.83

Net Increase of this Change Order:  
\$7,075.00

Net Decrease of this Change Order:  
\$0

Contract Price with All Approved Change Orders:  
\$266,078.83

**CHANGE IN CONTRACT TIME:**

Original Contract Time:  
10/15/2023

Net Change from Previous Change Order:  
0

Contract Time Prior to this Change Order:  
10/15/2023

Net Increase of this Change Order:  
30 Days

Net Decrease of this Change Order:  
0

Contract Time with all Approved Change Orders:  
11/15/2023

RECOMMENDED:

BY: Tanna Boisvert  
Engineer

APPROVED:

By: \_\_\_\_\_  
Owner

APPROVED:

By:   
Contractor

**CJB's LLC**

363

Brighton, CO 80603 US  
cjblc94@gmail.com

**Estimate**

ADDRESS  
PM Tanna Boisvert  
Tanna

ESTIMATE 23-0091  
DATE 08/09/2023

| DATE | ACTIVITY | DESCRIPTION  | QTY | RATE     | AMOUNT   |
|------|----------|--|-----|----------|----------|
|      | Demo     | Line item includes the following;<br>Demo existing mail box Kiosk's and salvage roof/roof post. Haul off all demo material.<br>Demo-\$2,710<br>Will provide a quote to set roofs on new kiosks once there is a plan with engineering on means and methods. | 1   | 2,710.00 | 2,710.00 |

---

|              |                   |
|--------------|-------------------|
| SUBTOTAL     | 2,710.00          |
| TAX          | 0.00              |
| <b>TOTAL</b> | <b>\$2,710.00</b> |

Accepted By

Accepted Date

**CJB's LLC**

364

Brighton, CO 80603 US  
cjblc94@gmail.com

**Estimate**

ADDRESS  
PM Tanna Boisvert  
Tanna

ESTIMATE 23-0093  
DATE 08/11/2023

| DATE     | ACTIVITY | DESCRIPTION   | QTY | RATE     | AMOUNT            |
|----------|----------|---|-----|----------|-------------------|
|          | Concrete | Line item includes the following;<br>Prep sub-grade for approach sidewalk<br>for new mailbox kiosk location, pour<br>temp pad, pour/finish concrete, backfill.<br><br>Concrete work-\$2900<br>Subgrade prep/backfill-\$1465 | 1   | 4,365.00 | 4,365.00          |
| -----    |          |   |     |          |                   |
| SUBTOTAL |          |   |     |          | 4,365.00          |
| TAX      |          |   |     |          | 0.00              |
| -----    |          |   |     |          |                   |
| TOTAL    |          |   |     |          | <b>\$4,365.00</b> |

Accepted By

Accepted Date



# CIMARRON METRO DISTRICT PROFESSIONAL SERVICES AGREEMENT TASK ORDER

AGREEMENT TITLE Service Agreement – Candelas

AGREEMENT NO. CTL 01 AGREEMENT DATE 9/22/14 TASK ORDER NO. 25

CONSULTANT CTL Thompson

TASK ORDER REFERENCE: Task Order 25 Submittal

TASK ORDER NAME: Tract A4 Filing 1 Geotechnical Slope Failure Testing, observation, and Coordination

METRO DISTRICT PROJECT ENGINEER: IDES, LLC (Brandon Collins)

BASIS OF COMPENSATION: NTE \$ 55,000 for services

SCHEDULE: As construction requires

**AGREEMENT PRICE RECONCILIATION:**

Previously Approved Change Orders/Amendments/Task Orders \$ 1,667,728.00

Task Order Price – Task Order No. 25 \$ 55,000.00

Total of Agreement Prices including this Task Order \$ 1,722,728.00

**AGREEMENT TERMS AND CONDITIONS**

All other terms and conditions of the Agreement remain unchanged and in full force and effect.

This Task Order constitutes written assurance by the Metro District (if a Metro District Agreement) that lawful appropriations have been made to cover the cost of the Task Order, pursuant to Section 24-91-103.6, C.R.S.


**APPROVALS REQUIRED:**

To be effective, this Task Order must be approved according to the Agreement.

Recommended by Brandon Collins, PE Date 8/14/23

Approved by Approved, Brian Daly Date \_\_\_\_\_

The undersigned agrees to the above terms and conditions:

CTL Thompson  
Consultant  
  
Authorized Agent

8/21/2023  
Date  
Principal  
Title



## PROPOSAL

August 4, 2023

Cimarron Metropolitan District  
 c/o Independent District Engineering Services  
 355 Union Boulevard, Suite 302  
 Lakewood, Colorado 80228

Attention: Brian Daly

Subject: Proposal for  
 Geotechnical Consultation  
 Candelas, Filing No. 1, Tract A4 Landslide  
 North of West 94<sup>th</sup> Drive and West 95<sup>th</sup> Avenue  
 Arvada, Colorado  
 Proposal No. DN 23-0314

CTL|Thompson, Inc. (CTL|T) presents this proposal to evaluate suspected slope movement in Tract A4 north of West 94<sup>th</sup> Drive and West 95<sup>th</sup> Avenue within Candelas, Filing No. 1. We observed site conditions on August 1<sup>st</sup> and 2<sup>nd</sup>, 2023. Slope movement is believed to span from the rear of Lots 9, 10, and 11 within Block 24 (9474, 9482, and 9484 Noble Way, respectively), across Tract A4, to potentially the rear of Lots 6, 7, 8, 9, and 10, Block 18 (9529, 9537, 5939, 9547, and 9549 Nile Way, respectively). Conversations with homeowners indicate the suspected movement occurred rapidly, 1 to 2 weeks, within the past 2 to 3 months.

At this time, we propose to drill and sample a total of six initial, paired exploratory borings to evaluate the subsurface conditions and perform global stability analysis of the existing slope configuration. Each pair of borings will consist of one boring drilled and sampled to depths of 30 to 60 feet and installed with inclinometer casing to monitor slope movement; the other boring will be drilled to similar depths and installed with hand-slotted PVC pipe to facilitate delayed groundwater readings. The borings will be drilled using a limited-access drill rig, if other means of drilling are used our fee will be adjusted. A detailed scope of services is presented in Exhibit A of the attached Service Agreement. We can schedule drilling within about two weeks of notice to proceed, although drilling should ideally occur after the survey of the slope has been performed.

We recommend the existing slope be surveyed (including the location of tension cracks and other pertinent surface features) by a Professional Surveyor. Drilling should ideally occur after the survey of the slope has been performed. We will use the data from our exploratory borings along with associated grading plans and previous geotechnical investigations (where available) to evaluate stability of the current slope, assess the need for mitigation, and develop conceptual mitigation alternatives. It will likely be necessary to engage a contractor to provide preliminary cost estimates for the potential alternatives. A civil engineer may also be needed to assess possible site grading changes. Additional services from our firm may be necessary to supplement the design process, and for construction monitoring.

[CTL|Thompson, Inc.](#)

[Denver](#), [Fort Collins](#), [Colorado Springs](#), [Glenwood Springs](#), [Pueblo](#), [Summit County](#) – Colorado  
[Cheyenne](#), Wyoming and [Bozeman](#), Montana



We will provide the initial services described on a unit rates basis in accordance with our current Fee Schedule in Exhibit B. We anticipate our fee for the initial scope will range between \$45,000 and \$55,000. If you would like us to proceed, please return an executed copy of the Agreement, or authorize us to proceed subject to the terms of the Agreement. We look forward to working with you on this project. If you have questions, please call or email.

Very truly yours,

CTL|THOMPSON, INC.

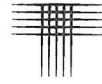
Robert J. Brown,  
Staff Geologist  
[rbrown@ctlthompson.com](mailto:rbrown@ctlthompson.com)

Reviewed by:

Alan J. Lisowy, P.E.  
Denver Branch Manager  
[alisowy@ctlthompson.com](mailto:alisowy@ctlthompson.com)

Attachments: Service Agreement  
Exhibit A – Scope of Services  
Exhibit B – Fee Schedule

Via email: [bdaly@mylandsteward.com](mailto:bdaly@mylandsteward.com)



## SERVICE AGREEMENT

|                       |   |
|-----------------------|---|
| <b>Parties</b>        | This Agreement is entered into this 4th day of August, 2023 between CIMARRON METROPOLITAN DISTRICT c/o INDEPENDENT DISTRICT ENGINEERING SERVICES, 355 Union Boulevard, Suite 302, Lakewood, Colorado 80228, referred to herein as "Client" and CTL Thompson, Inc., 1971 West 12th Avenue, Denver, Colorado 80204, referred to herein as "CTL T."  |
| <b>Project</b>        | Client retains CTL T to provide consulting services in connection with Candelas, Filing No. 1, Trace A4 Landslide, North of West 94 <sup>th</sup> Drive and West 95 <sup>th</sup> Avenue, Arvada, Colorado, referred to herein as "Project." Client's relationship to the Project is that of "MUNICIPAL."   |
| <b>Scope</b>          | The scope of CTL T's services is set forth in Exhibit A, which is part of this Agreement.   |
| <b>Fee</b>            | CTL T agrees to provide the services set forth in this Agreement with a fee range between \$45,000 and \$55,000. Post-report consultation will be invoiced on a time and materials basis, as set forth in the CTL T's current Fee Schedule (Exhibit B), which is also part of this Agreement. The quoted fee shall remain available to Client for 30 days from the date of this Agreement, after which CTL T may increase the fee. If the Client desires to change CTL T's scope of services, Client and CTL T shall execute a written addendum to this Agreement setting forth CTL T's revised scope of services and fee.    |
| <b>Invoices</b>       | CTL T may submit interim invoices to Client and will submit a final invoice upon completion of its services. Invoices will detail charges for different personnel and expense classifications, a lump sum fee, or a percentage of completion, as appropriate. A more detailed itemization of charges and back-up data will be provided at Client's request. Payment is due upon presentation of each invoice and is past due thirty (30) days from invoice date. Client shall pay a finance charge of one-and-one half percent (1½%) per month on past due accounts, plus attorney fees and costs associated with collection. |
| <b>Right-of-Entry</b> | Client shall arrange for and provide CTL T with safe access to the Project property, including access for necessary equipment, to allow CTL T to complete its services. While onsite, CTL T will take reasonable precautions to minimize damage to the Project property, but Client agrees that in the normal course of work some damage may occur, the correction of which shall not be CTL T's responsibility.  |
| <b>Utilities</b>      | Client shall be responsible for designating the location of all private utility lines and subterranean structures within the property lines of the Project. CTL T will request responsible utilities to locate off-site lines and public on-site lines when necessary for CTL T's services. Client agrees to defend, indemnify, and hold CTL T harmless for damage to utilities or subterranean structures that are not correctly located by Client or the responsible utility.   |





## SERVICE AGREEMENT

|                               |  |
|-------------------------------|--|
| <b>Samples</b>                | <p>CTL T will retain soil and rock samples for thirty (30) days after submitting the report on those samples. Construction materials samples collected and tested, if any, will be disposed of after testing. Further storage or transfer of samples can be arranged at Client's expense, upon written request.</p>  |
| <b>Ownership of Documents</b> | <p>CTL T retains ownership and copyrights of all work product, reports, field data, field notes, laboratory test data, calculations, estimates, design plans, and other documents CTL T prepares in connection with this Agreement. Client is licensed to use these Instruments of Service solely for the purpose they were prepared in furtherance of this Agreement. Client shall not reproduce, use, or alter CTL T's Instruments of Service for other projects, or for making future modifications to the Project, without CTL T's prior written consent. If CTL T terminates this Agreement for non-payment, Client shall not be entitled to use CTL T's Instruments of Service for any reason.</p> <p>CTL T shall retain delivered Instruments of Service in electronic form for five (5) years following completion of its services, during which period the Instruments of Service shall be made available to Client during regular business hours.</p>  |
| <b>Job Site</b>               | <p>Client shall require the construction contractors and subcontractors to assume sole and complete responsibility for job site conditions at the Project, including the safety of persons and property, and for construction means, methods, techniques, and sequences. Accordingly, Client shall defend, indemnify and hold CTL T harmless from all claims for personal injury or property damage sustained due to the negligence of any contractor, subcontractor, or other person not under the control of CTL T i) in safeguarding the worksite, ii) for using unacceptable materials in construction, iii) in constructing the Project, and iv) for claims arising under workers' compensation laws.</p>   |
| <b>Standard of Care</b>       | <p>CTL T shall perform its services under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. CTL T makes no express or implied warranty in connection with the performance of its services.</p> <p>Client acknowledges that subsurface conditions may vary from those CTL T encounters at the location where CTL T performs borings, test pits, surveys, or explorations (if any) and that CTL T's data, interpretations and recommendations are based solely on the information available to it. Client also acknowledges that the performance of soils depends on variables beyond the control of CTL T and therefore, CTL T cannot and does not guarantee the performance of soils at the Project property. CTL T will be responsible for its data, interpretations and recommendations as indicated above, but shall not be responsible for the interpretation or implementation by others of the information developed.</p> |

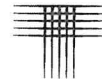


## SERVICE AGREEMENT

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|                                |   |
|--------------------------------|---|
| <b>Limitations on Claims</b>   | <p>Any claim or cause of action between Client and CTL T including, but not limited to, claims for contribution and indemnity, shall be deemed to have accrued and the applicable statutes of limitation and repose shall commence to run no later than the date of substantial completion of CTL T's services under this Agreement. Substantial completion shall be deemed to occur no later than the date CTL T issues its final invoice under this Agreement.</p> <p>In the event of a claim, Client agrees that as its sole and exclusive remedy, any claim, demand, or suit shall be brought against CTL T as a corporation only, and not against any of CTL T's individual employees, engineers, agents, officers, directors, or shareholders.</p> <p>The services CTL T provides pursuant to this Agreement are solely for the benefit of Client. Neither CTL T nor Client intends to confer a benefit on any other person or entity. To the extent any other person or entity benefits from the services CTL T provides, such benefit is purely incidental and such person or entity shall not be deemed a third-party beneficiary of this Agreement.</p> <p>Client and CTL T waive claims against each other for consequential, incidental, indirect, special, exemplary or punitive damages arising out of the services CTL T performs pursuant to this Agreement. This mutual waiver includes, but is not limited to, claims for loss of use, product, rent, income, profit, financing, business, and reputation, for delay damages of any kind, for lost management and labor productivity, lost opportunity to complete other projects, and for increased construction and financing costs.. This waiver extends, without limitation, to all consequential damages due to either party's termination under this Agreement.</p> |
| <b>Limitation of Liability</b> | <p>Client agrees CTL T's total aggregate liability to Client and others for all injuries, claims, losses, damages, and expenses (including costs, expert fees, attorney fees, and interest) arising out of CTL T's services for the Project shall be limited to the greater of \$50,000 or CTL T's fee for the services rendered pursuant to this Agreement. This limitation shall apply regardless of the nature of the claim made or the theory of liability pursued, including but not limited to, negligence, strict liability, breach of contract, breach of warranty, contribution, and indemnity. CTL T will have no liability to Client or others for damages resulting from the failure of Client or others to follow CTL T's recommendations.</p>   |
| <b>Value Engineering</b>       | <p>If Client directs CTL T or others to revise the Construction Documents to include value engineering, value reduction, or substitution proposals (VE Proposals) made by others, and CTL T does not recommend acceptance of the VE Proposals, then Client shall release, indemnify, and defend CTL T from and against all claims, damages, losses, liabilities, costs and attorney fees arising from the inclusion of the VE Proposals into the Project.</p>   |

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## SERVICE AGREEMENT

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| <b>Insurance</b>                           | <p>CTL T represents that it, its employees, and the consultants it retains are protected by worker's compensation insurance, and that CTL T has such coverage under commercial general liability, property damage, and professional liability insurance policies as CTL T deems to be adequate. CTL T will provide Certificates for these insurance policies to Client upon written request. CTL T shall in no event be responsible for any loss or damage beyond the amounts, available limits, and conditions of these insurance policies.</p>   |
| <b>Termination</b>                         | <p>Either party may terminate this Agreement for cause upon seven (7) days written notice if the other party substantially fails to perform its obligations hereunder. Such termination shall not be effective if the substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, Client shall pay CTL T for services performed to the termination notice date, plus reasonable termination expenses.</p>  |
| <b>Hazardous Materials</b>                 | <p>Client represents that Client has made a reasonable effort to evaluate whether hazardous materials are on or near the Project property and has informed CTL T of any information or findings relative to the possible presence of hazardous materials. Should unanticipated hazardous materials be discovered in the course of CTL T's performance of its services, such discovery shall constitute a changed condition mandating a renegotiation of the scope of services, or termination of services. Should the discovery of unanticipated hazardous materials require CTL T to take immediate measures to protect health and safety, Client agrees to pay CTL T for costs incidental to taking such measures and for necessary decontamination or replacement of affected equipment. CTL T agrees to notify Client promptly when it encounters unanticipated or suspected hazardous materials. Client agrees to make any disclosure required by law to appropriate government agencies. Furthermore, Client agrees to defend, indemnify, and hold CTL T harmless from all liability arising from discovery by anyone of hazardous materials or suspected hazardous materials.</p> |
| <b>Humidity, Moisture Vapor &amp; Mold</b> | <p>Unless specifically stated, services intended to control humidity, moisture vapor, and mold are expressly excluded from this Agreement. Client acknowledges that the growth of mold, some of which may be harmful to human health, can be caused or exacerbated by conditions which occur inside or outside habitable structures. If Client desires services intended to reduce humidity, moisture vapor and mold, CTL T can provide such services for an additional fee. If such services are not expressly undertaken by CTL T, Client agrees to indemnify, defend, and hold CTL T harmless from all claims alleging that CTL T caused, contributed to, or failed to prevent injury and damage related to the presence of humidity, moisture vapor or mold.</p>   |



## SERVICE AGREEMENT

**Work by Others** In performing services under this Agreement, CTL|T shall be entitled to rely upon the accuracy and completeness of information, reports, recommendations, and design services provided by Client, contractors, or other consultants, and CTL|T shall have no liability for claims or damages resulting from errors and omissions in the same.

**Applicable Law** The Law of the State of Colorado shall govern the validity of this Agreement, and its interpretation, enforcement, and performance. Should any provision of this agreement be found to be unenforceable, the remainder of this Agreement shall nonetheless remain valid and binding.

**Entire Agreement** This Agreement shall be the entire agreement between Client and CTL|T and shall supersede any other agreement relating to the subject matter hereof. In case of conflict or inconsistency between this Agreement and any other contract documents, this Agreement shall control. Notwithstanding any other provision in this Agreement, if Client authorizes CTL|T to proceed with its services or if CTL|T begins performance of its services, this Agreement shall become an enforceable agreement between the parties regardless of whether either party has signed this Agreement.

| Authorization | CTL T  | Client                |
|---------------|--|-----------------------|
|               |  |                       |
|               | _____<br>Signature<br>Alan J. Lisowy, P.E.     | _____<br>Signature    |
|               | _____<br>Printed Name<br>Denver Branch Manager | _____<br>Printed Name |
|               | _____<br>Title<br>August 4, 2023               | _____<br>Title        |
|               | _____<br>Date                                  | _____<br>Date         |



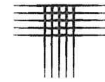


## EXHIBIT A

### Geotechnical Investigation

1. Stake or mark the borings with limited precision using a Leica GS18 GPS unit referencing the NAD83 system. CTLJT will contact the Utility Notification Center of Colorado (UNCC) to mark the presence of buried utilities in the vicinity of the stakes. A private utility locator may also be retained. CTLJT will not be responsible for damage to unmarked or undisclosed underground utilities.
2. Drill and sample 6 exploratory borings near staked locations using solid-stem auger and a truck-mounted or limited-access drill rig. The borings will be drilled to depths of 30 to 60 feet below existing grades, unless practical drill rig refusal occurs. Inclinometer casing will then be installed upon completion of drilling. A companion boring will also be drilled at each location (without sampling) and hand-slotted pvc pipe will be inserted to facilitate delayed groundwater readings.
3. Obtain samples from the borings at approximate 5 feet intervals using modified California barrel samplers.
4. Measure the depth to groundwater during drilling, and once several days after drilling. Additional groundwater readings may be elected.
5. Perform a baseline reading of the inclinometers after installation, and three subsequent readings on a weekly basis. Additional readings can be performed for an additional fee of \$1,000 per reading. Groundwater measurements will also be taken during inclinometer readings.
6. Perform laboratory testing on samples to evaluate classification, strength, and other pertinent properties.
7. Perform global stability analysis based on the geometry of the existing slope and soil/bedrock properties based on laboratory testing and our experience. Stability analyses will also be performed for potential mitigation measures, if merited.
8. Analyze the results of our field and laboratory data and prepare an initial letter which will include:
  - a. A site plan showing the locations of borings and existing site features;
  - b. Descriptions of existing site conditions;
  - c. Graphical summary logs of borings indicating soil types and groundwater levels;
  - d. Laboratory test results in graphic and tabular form, including previous data;
  - e. Results of global stability analysis for the existing slope configuration; and
  - f. Discussion of potential causes of slope movement and possible mitigation of slope movement.

A PDF report will be provided upon completion of the investigation, signed by a Professional Engineer registered in the State of Colorado. Paper copies are available upon request.



## EXHIBIT B

### Fee Schedule

|   |  |                  |
|---|--|------------------|
| <b>Personnel<sup>1</sup></b>  | Engineering Technician I   | 75 / hour        |
|   | Engineering Technician II / Administrative Assistant   | 80 / hour        |
|   | Engineering Technician III / CADD / Draftsperson   | 85 / hour        |
|   | Senior Engineering Technician  | 110 / hour       |
|   | Environmental Technician   | 90 / hour        |
|   | Staff Engineer / Geologist / Scientist   | 120 / hour       |
|   | Project Engineer / Geologist / Scientist   | 135 / hour       |
|   | Project Manager  | 155 / hour       |
|   | Associate  | 190 / hour       |
|   | Principal  | 230 / hour       |
|   | Senior Principal   | 290 / hour       |
|   | Expert Consultation / Witness  | Quote on Request |
| <sup>1</sup> Applies to analysis and preparation of reports, calculation time, travel, consultation, sample preparation and direct supervision of the CTL/T project, when not covered by task specific pricing. |  |                  |
| <b>Field Investigation Services</b>   | Drilling and Sampling with a 4-inch Solid-Stem Auger   | 210 / hour       |
|   | Drilling and Sampling with Hollow-Stem Auger   | 225 / hour       |
|   | Drilling and Sampling with Track-Mounted Rig or Rotary Drill   | Cost + 15%       |
|   | Drilling Rig Mobilization  |                  |
|   | Metro Area   | Hourly Rate      |
|   | Outlying Areas (Over 75 Miles)   | 2.90 / mile      |
|   | Auto or Pickup Mileage (Out of Town Mobilization)  | 100 / hour       |
|   | Labor, Out-of-Town Living Expenses, Travel Costs, Equipment Rental, Subconsultants, Supplies   | Cost + 15%       |
|   | Coring (2 Hour Minimum)  | 175 / hour       |
|   | Deflection Testing - Benkelman Beam, Operator & Truck  | 250 / hour       |
| Bond Testing  | 150 / hour   |                  |
| <b>Specialized Testing and Services</b>   | <b>Environmental Services</b>  |                  |
|   | Environmental Assessment, Remediation Design, Underground Storage Tanks, Drilling and Sampling, Methane Hazard, Compliance Assistance, Site Audits, Hazmat Surveys | Quote on Request |
|   | <b>Industrial Hygiene and Safety Services</b>  |                  |
|   | Indoor Air Quality, Asbestos Services, Lead Services, Exposure Assessments, Compliance Assistance, Training, Sampling, Program Development                         | Quote on Request |
|   | <b>Biological Services</b>   |                  |
|   | Endangered Species Review, Wetlands Delineation, Environmental Assessments   | Quote on Request |
|   | <b>Geophysical Services</b>  |                  |
|   | Pier Integrity, Profiles by Reflection or Refraction, Resistivity Surveys, Dynamic Soil Properties   | Quote on Request |
|   | <b>Specialized Testing Equipment Charges</b>   |                  |
|   | Portable Drill Rig, Pressuremeter, Resistivity, Photoionization Device, Field Permeability, Down-Hole Moisture / Density   | Quote on Request |
| NDT Equipment (Pulse-Velocity, Windsor Probe Test System, Pachometer, Half-Cell)  | 44 / hour  |                  |
| <b>Torsional Strength Tests &amp; Calibrations</b>  |  |                  |
| Up to 1 million inch-pounds   | Quote on Request   |                  |



## EXHIBIT B

|  |   |  |             |
|--|---|--|-------------|
| Construction Observation and Materials Testing Services <sup>2</sup>   | City / County of Denver Third Party Inspection (TPI)        |  | 85 / hour   |
|  | Earthwork Compaction Testing                                |  | 85 / hour   |
|  | Standard Proctor  | (ASTM D698)                            | 135 / each  |
|  | Modified Proctor  | (ASTM D1557)                           | 145 / each  |
|  | Grain Size Analysis, 1-inch to #200 sieve                   | (ASTM D3613)                           | 60 / each   |
|  | Grain Size Analysis, #200 sieve only                        | (ASTM D1140)                           | 45 / each   |
|  | Atterberg Limits (LL & PI)                                  | (ASTM D4318)                           | 95 / set    |
|  | Drilled Pier Installation                                   |  | 80 / hour   |
|  | Asphalt Placement and Compaction                            |  | 85 / hour   |
|  | Asphalt Coring (2 Hour Minimum)                             |  | 175 / hour  |
|  | Asphalt Core Thickness (Per Core)                           |  | 60 / each   |
|  | Asphalt Core Density (Per Lift)                             |  | 60 / each   |
|  | Concrete Testing and Cylinder Pickup                        |  | 70 / hour   |
|  | 4x8 Cylinders Cast by CTL T                                 | (ASTM C39) (AASHTO T22)                | 20 / cyl    |
|  | 6x12 Cylinders Cast by CTL T                                | (ASTM C39) (AASHTO T22)                | 30 / cyl    |
|  | Cylinders Cast by Others                                    | (ASTM C39) (AASHTO T22)                | 40 / cyl    |
|  | Flexural Beams  |  | 70 / beam   |
|  | Shotcrete, Includes Preparation and Report (Set of 5)       |  | 375 / set   |
|  | On Site Curing Service                                      |  | 300 / month |
|  | Concrete Maturity Meter Method                              |  | 3,000 / mix |
|  | Data Loggers - Temperature or Maturity Probes               |  | Cost + 15%  |
|  | Moisture Emissions or Relative Humidity Testing             |  | 90 / hour   |
|  | Moisture Kit or Probes                                      |  | Cost + 15%  |
|  | Floor Flatness (FF and FL and/or 10-Foot Straightedge)      |  | 125 / hour  |
|  | Concrete Reinforcing Steel Placement Observation            |  | 80 / hour   |
|  | Masonry Special Inspection                                  |  | 90 / hour   |
|  | Proof Load of Anchor or Dowels                              |  | 110 / hour  |
|  | Weld & Bolt Inspection                                      |  | 110 / hour  |
|  | Framing Observation   |  | 110 / hour  |
|  | Post Tension - Strand Observation - Elongation Measurements |  | 90 / hour   |
|  | Dampproofing  |  | 90 / hour   |
|  | Insulation  |  | 90 / hour   |
| Sprayed on Fireproofing or Firestopping  |   | 110 / hour                             |             |
| Report Review / Supervision for Construction Observation and Materials Testing Services  |   | 60 / report                            |             |
| Overtime Charge - Increase for work done on Saturday, Sunday, Holidays and off normal shift hours  |   | 25 / hour                              |             |
| <sup>2</sup> Time is charged for travel, testing and observation and field report preparation (2-hour minimum trip charge).<br>Fuel surcharge may be assessed on individual project basis, based on market conditions. |   |  |             |
| Asphalt Concrete Laboratory Services   | Core Density  | (ASTM D2725) (AASHTO T166)             | 60 / each   |
|  | Core Thickness  | (ASTM D3549)                           | 60 / each   |
|  | Theoretical Maximum Density (Rice)                          | (ASTM D2041) (AASHTO T209)             | 130 / each  |
|  | Asphalt Content by Chemical Extraction and Gradation        | (ASTM D2172 and D5444) (AASHTO T164)   | 275 / each  |
|  | Asphalt Content by Ignition Oven and Gradation              | (ASTM D6307 and D5444) (AASHTO T308)   | 265 / each  |
|  | Superpave Gyrotory Compaction                               | (ASTM D6925) (AASHTO T312) (CDOT 5115) | 60 / each   |
|  | Mixture Volumetrics Calculations                            | (CDOT 48)                              | 60 / set    |
|  | Hveem Stability (Per Puck)                                  | (CDOT 5106)                            | 60 / each   |
|  | Resistance to Moisture Induced Damage (Lottman)             | (ASTM D4867) (AASHTO T283) (CDOT 5109) | 465 / each  |
|  | Sample Preparation Fees May Apply                           |  | Hourly Rate |



## EXHIBIT B

| Soil and Rock<br>Laboratory Services                         | Soil Testing                 |                        |           |
|--|------------------------------|------------------------|-----------|
|  | Natural Moisture and Density | (ASTM D2216 and D7263) | 20 / each |
| Grain Size Analysis, 1-inch to #200 sieve                    | (ASTM D3613)                 | 60 / each              |           |
| Grain Size Analysis, #200 sieve only                         | (ASTM D1140)                 | 45 / each              |           |
| Hydrometer Analysis  | (ASTM D422)                  | 95 / each              |           |
| Atterberg Limits (LL & PI)                                   | (ASTM D4318)                 | 85 / set               |           |
| Specific Gravity   | (ASTM D854)                  | 60 / each              |           |
| Standard Proctor Compaction Test                             | (ASTM D698)                  | 135 / each             |           |
| Modified Proctor Compaction Test                             | (ASTM D1557)                 | 145 / each             |           |
| Relative Density   | (ASTM D4253 and D4254)       | 220 / each             |           |
| Soil Suction   | (ASTM D5298)                 | 60 / each              |           |
| One-Dimensional Swell Test                                   | (ASTM D4546)                 |                        |           |
| Set up and Initial Load                                      |                              | 55 / each              |           |
| With Load Back for Swell Pressure                            |                              | 65 / each              |           |
| One-Dimensional Time Consolidation Test                      | (ASTM D2435)                 |                        |           |
| Set up and Initial Load                                      |                              | 185 / each             |           |
| Additional Increments  |                              | 50 / each              |           |
| California Bearing Ratio (3 Points)                          | (ASTM D1883)                 | 600 / each             |           |
| Hveem Stabilometer (3 Points)                                | (ASTM D2844)                 | 600 / each             |           |
| Resilient Modulus  | (AASHTO T307)                | 1,250 / each           |           |
| Water Soluble Sulfates                                       | (CDOT CP-L2103)              | 55 / each              |           |
| pH   | (AASHTO T289)                | 50 / each              |           |
| Electrical Resistivity (Natural Moisture & Saturated)        | (ASTM G57)                   | 120 / each             |           |
| Thermal Resistivity  |                              | 900 / each             |           |
| Unconfined Compression - Soils                               | (ASTM D2166)                 | 50 / each              |           |
| With Stress / Strain Curve                                   |                              | 60 / each              |           |
| Direct Shear   | (ASTM D3080)                 | 140 / each             |           |
| Triaxial or Direct Shear Tests, per point                    |                              |                        |           |
| Unconsolidated-Undrained                                     | (ASTM D2850)                 | 140 / each             |           |
| Consolidated-Undrained with Pore Pressure                    | (ASTM D4767)                 | 480 / each             |           |
| Permeability   |                              |                        |           |
| Flexible Membrane (Triaxial Cell)                            | (ASTM D5084)                 | 480 / each             |           |
| Remolded Sample (Falling or Constant Head)                   | (ASTM D2434)                 | 300 / each             |           |
| <b>Rock Testing</b>  |                              |                        |           |
| Specific Gravity   |                              | 55 / each              |           |
| Two-Cycle Slake-Durability, per point                        |                              | 115 / each             |           |
| Unconfined Compression, per point                            |                              |                        |           |
| Peak Load Only   |                              | 120 / each             |           |
| With Stress / Strain Curve, Static E, and Poisson's Ratio    |                              | Quote on Request       |           |
| Unconfined Compression - Rock Cores <sup>3</sup>             |                              |                        |           |
| Peak Load Only   |                              | Quote on Request       |           |
| With MOE   |                              | Quote on Request       |           |
| With MOE and Poisson's Ratio                                 |                              | Quote on Request       |           |
| Triaxial Compression - NX Per Point                          |                              | 160 / each             |           |
| With Stress / Strain Curve, Static E and Poisson's Ratio     |                              | 310 / each             |           |
| Point Load Test  |                              | 60 / each              |           |
| <sup>3</sup> Additional for Sample Preparation of Rock Cores |                              | Hourly Rate            |           |



## EXHIBIT B

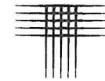
|  |   |   |              |
|--|---|---|--------------|
| Aggregate Laboratory Services                | Moisture Content  | (ASTM C566) (AASHTO T255)                     | 35 / each    |
|  | Rodded Unit Weight + Voids                                | (ASTM C29) (AASHTO T19)                       | 60 / each    |
|  | Loose Unit Weight + Voids                                 | (ASTM C29) (AASHTO T19)                       | 60 / each    |
|  | Uncompacted Void Content                                  | (ASTM C1252) (AASHTO T304)                    | 130 / each   |
|  | Gradation Analysis (per Fraction)                         | (ASTM C136) (AASHTO T27)                      | 60 / each    |
|  | Gradation Analysis (Pit-Run Samples, Larger than 12-inch) | (ASTM C136) (AASHTO T27)                      | 100 / hour   |
|  | Passing No. 200 Sieve                                     | (ASTM C117) (AASHTO T11)                      | 45 / each    |
|  | Sand Equivalency  | (ASTM D2419) (AASHTO T176) (CP 37)            | 115 / each   |
|  | Specific Gravity / Absorption                             |   |              |
|  | Fine Aggregate  | (ASTM C128) (AASHTO T84)                      | 60 / each    |
|  | Coarse Aggregate  | (ASTM C127) (AASHTO T85)                      | 60 / each    |
|  | Flat and Elongated Particles                              | (ASTM D4791) (CRD C119)                       | 210 / each   |
|  | Fractured Face Determination                              |   |              |
|  | Fine Aggregate  |   | 340 / each   |
|  | Coarse Aggregate  | (ASTM D5821) (AASHTO T335)                    | 155 / each   |
|  | Organic Impurities  | (ASTM C40) (AASHTO 721)                       | 52 / each    |
|  | Clay Lumps and Friable Particles                          | (ASTM C142) (AASHTO T112)                     | 95 / each    |
|  | Lightweight Particles - 2.0 or 2.4 Specific Gravity       | (ASTM C123) (AASHTO T113)                     | 225 / each   |
|  | Pop-out of Lightweight Aggregates                         | (ASTM C331 and C151)                          | 315 / each   |
|  | Staining Test (Lightweight Aggregates)                    | (ASTM C641)                                   | 130 / each   |
|  | Sodium or Magnesium Soundness                             | (ASTM C88) (AASHTO T104)                      |              |
|  | 5-Cycles <sup>4</sup>                                     |   | 245 / each   |
|  | 12-Cycles <sup>4</sup>                                    |   | 500 / each   |
|  | Potential Reactivity                                      | (ASTM C227) Withdrawn                         | 2,000 / each |
|  | Potential Reactivity - 14 Day                             | (ASTM C1260 or C1567) (CRD 662) (AASHTO T303) | 900 / each   |
|  | Potential Reactivity - 28 Day                             | (ASTM C1260 or C1567) (CRD 662) (AASHTO T303) | 1,000 / each |
|  | Potential Reactivity - 1 Year                             | (ASTM C1293)                                  | 1,250 / each |
|  | Alkali Carbonate Reactivity                               | (ASTM C1105)                                  | 1,210 / each |
|  | Scratch Hardness  | (CRD C130)                                    | 160 / each   |
|  | Micro Deval   | (ASTM D6928) (AASHTO T327)                    | 245 / set    |
|  | L.A. Abrasion   |   |              |
|  | Small-Sized Aggregate                                     | (ASTM C131) (AASHTO T96)                      | 110 / each   |
|  | Large-Sized Aggregate                                     | (ASTM C535)                                   | 145 / each   |
|  | Aggregate Freeze/Thaw                                     |   |              |
| Fine Aggregate                               |   | 375 / each                                    |              |
| Coarse Aggregate                             | (AASHTO T103)   | 375 / each                                    |              |
| Mill Abrasion                                | (UPBN / BNSF)   | 250 / each                                    |              |
| Insoluble Residue in Carbonate Aggregates    | (ASTM D3042)  | 200 / each                                    |              |
| Desorption of Lightweight Aggregates         | (ASTM C1761)  | 300 / each                                    |              |
| Chloride in Aggregate                        | (ASTM C1524)  | 225 / each                                    |              |
| Crushing                                     |   | 150 / sample                                  |              |
| Blending, Sampling and Miscellaneous Testing |   | 100 / hour                                    |              |

<sup>4</sup> "Rip Rap" Type sample add \$15 to \$25 depending on size.



## EXHIBIT B

| Block and Segmental Retaining Wall Units              |  |                           |                  |
|---|--|---------------------------|------------------|
| Masonry and Dimensional Stone Laboratory Services     | Q-Block Test Series (Compressive, Dimensional, Absorption) | (ASTM C140)               | 330 / each       |
|   | Compressive Strength Tests (Set of 3)                      | (ASTM C140)               | 150 / set        |
|   | Dimension  | (ASTM C140)               | 90 / set         |
|   | Density  | (ASTM C140)               | 150 / set        |
|   | British Shrinkage (Set of 3)                               | (ASTM C426)               | 425 / set        |
|   | British Shrinkage - Additional Samples                     | (ASTM C426)               | 125 / each       |
|   | Fire Rating  | (UL618)                   | 225 / each       |
|   | Freeze/Thaw 100 Cycle                                      | (ASTM C1262)              | 975 / each       |
|   | Freeze/Thaw 150 Cycle                                      | (ASTM C1262)              | 1,425 / each     |
|   | <b>Brick</b>   |                           |                  |
|   | Compressive Strength Tests (Set of 5)                      | (ASTM C67)                | 230 / set        |
|   | Coefficient of Saturation (Set of 5)                       | (ASTM C67)                | 190 / set        |
|   | Absorption Analysis (Set of 5)                             | (ASTM C67)                | 175 / set        |
|   | Initial Rate of Absorption (Set of 5)                      | (ASTM C67)                | 310 / set        |
|   | Efflorescence (Set of 5)                                   | (ASTM C67)                | 150 / set        |
|   | Dimensional Analysis (Set of 5)                            | (ASTM C67)                | 100 / set        |
| Modulus of Rupture (Flexural Strength) (Set of 5)     | (ASTM C67)   | 260 / set                 |                  |
| Freeze / Thaw, 50 cycle                               | (ASTM C67)   | 525 / each                |                  |
| Adobe Brick Properties                                | (ASTM C67)   | 790 / each                |                  |
| <b>Mortar and Grout</b>                               |  |                           |                  |
| Mortar Mix Properties (Includes 6 Cubes Per Mix)      | (ASTM C780)  | 215 / mix                 |                  |
| Compressive Strength - Field Sampled Mortar (6 Cubes) | (ASTM C109)  | 150 / each                |                  |
| Compressive Strength - Cored Grout (Includes Coring)  | (ASTM C42) (ASTM C1019)                                    | 60 / each                 |                  |
| <b>Compressive Strength Prisms</b>                    |  |                           |                  |
| Hollow Prisms, Brick or Block                         | (ASTM C1314)   | 130 / each                |                  |
| Grout Filled Prisms, Brick or Block                   | (ASTM C1314)   | 200 / each                |                  |
| <b>Dimensional Stone</b>                              |  |                           |                  |
| Specific Gravity / Absorption                         | (ASTM C127) (AASHTO T85)                                   | 135 / each                |                  |
| Compressive Strength                                  | (ASTM C170)  | 500 / set                 |                  |
| Modulus of Rupture                                    | (ASTM C99)   | 560 / set                 |                  |
| Freeze / Thaw   | (ASTM D5312) (AASHTO T103)                                 | 900 / each                |                  |
| Flexural Strength                                     | (ASTM C880)  | 550 / set                 |                  |
| Saw Cutting   |  | 105 / hour                |                  |
| Steel Laboratory Services                             | Ultimate Tensile Strength (Including Post-Tension Strands) | (ASTM A370) (AASHTO T244) | 150 / each       |
|   | Ultimate Tensile Strength & Percent Elongation             | (ASTM A370) (AASHTO T244) | 175 / each       |
|   | Ultimate Tensile Strength & Yield Tensile Strength         | (ASTM A370) (AASHTO T244) | 175 / each       |
|   | Ultimate Tensile Strength & Area Reduction                 | (ASTM A370) (AASHTO T244) | 175 / each       |
|   | Torsional Strength Up to 1 million inch-pounds             |                           | Quote on Request |
|   | Sample Preparation Fees May Apply                          |                           | Hourly Rate      |



## EXHIBIT B

|  |   |                                     |                  |
|--|---|-------------------------------------|------------------|
| Concrete<br>Laboratory Services          | Density / Absorption of Hardened Concrete                     | (ASTM C642)                         | 125 / core       |
|  | Compressive Strength, Cylinders                               | (ASTM C39) (AASHTO T22)             |                  |
|  | 4x8 Cylinders Cast by CTL T                                   |                                     | 20 / cyl         |
|  | 6x12 Cylinders Cast by CTL T                                  |                                     | 30 / cyl         |
|  | Cylinders Cast by Others                                      |                                     | 40 / cyl         |
|  | Compressive Strength & Density, Core Samples                  | (ASTM C42) (AASHTO T24)             | 60 / each        |
|  | Flexural Strength, Beams                                      | (ASTM C78, C293) (AASHTO T97, T177) | 70 / each        |
|  | Splitting Tensile Test, Cylinders                             | (ASTM C496) (AASHTO T198)           | 65 / each        |
|  | Modulus of Elasticity Tests (Frame Method)                    | (ASTM C469)                         | 450 / set        |
|  | Chloride Content, Chemical Analysis                           | (ASTM C1152)                        | 110 / each       |
|  | Concrete Freeze / Thaw, 300 Cycles                            | (ASTM C666) (AASHTO T161)           | 2,200 / set      |
|  | Cracking Tendency of Concrete                                 | (AASHTO T334)                       | 2,000 / each     |
|  | Length Change of Hardened Concrete                            | (ASTM C157) (AASHTO T160)           | 350 / each       |
|  | Abrasion Resistance   | (ASTM C779)                         | 375 / each       |
|  | Chloride Ion Penetration / Rapid Chloride Permeability        | (ASTM C1202) (AASHTO T277)          | 435 / each       |
|  | Surface Resistivity   | (AASHTO T358)                       | 325 / set        |
|  | Scaling Resistance  | (ASTM C672)                         | 1,250 / set      |
|  | Pulse Velocity  | (ASTM C597)                         | 125 / hour       |
|  | Blocking Assessment   | (ASTM C1621)                        | 60 / each        |
|  | Static Segregation  | (ASTM C1610)                        | 60 / each        |
| Height Change of Hardened Concrete       | (ASTM C1090)  | 500 / each                          |                  |
| Shear Bond                               | (ASTM C882)   | 600 / each                          |                  |
| Direct Tension of Cores                  | (ASTM D2936)  | 350 / each                          |                  |
| Electrical Conductivity                  | (ASTM 1760)   | 400 / each                          |                  |
| Mixing Fee - Required for Some Tests     |   | 550 / each                          |                  |
| Concrete<br>Laboratory Trial-Mix Batches | 3-Point Curve - Cylinders for Compressive Strength            |                                     | 2,400 / each     |
|  | 3-Point Curve - Beams for Flexural Strength & Cylinders       |                                     | 2,550 / each     |
|  | CDOT Compressive Mix (Mix Only)                               |                                     | 2,000 / each     |
|  | CDOT Flexural Mix (Mix Only)                                  |                                     | 2,100 / each     |
|  | Single Mix, Compressive Strength                              |                                     | 1,500 / each     |
|  | Single Mix, Flexural Strength                                 |                                     | 1,600 / each     |
|  | Additional Compressive Strength Mixes                         |                                     | 600 / each       |
|  | Additional Flexural Strength Mixes                            |                                     | 700 / each       |
|  | Mini-Mixes  |                                     | 250 / each       |
|  | Time of Sets  |                                     | 75 / add.        |
|  | Mix with Lightweight Aggregate (Additional Charge per Mix)    |                                     | 150 / add.       |
|  | Maturity Meter Calibration & Report (Does not include probes) |                                     | 3,000 / each     |
|  | Maturity Meter Probes   |                                     | Cost+ 15%        |
|  | Roller Compacted Concrete Mix                                 |                                     | Quote on Request |

## EXHIBIT B



|                                 |  |                                       |                  |
|---------------------------------|--|---------------------------------------|------------------|
| Cement<br>Laboratory Services   | Sulfate Expansion                              | (ASTM C452)                           | 710 / each       |
|                                 | Compressive Strength Tests (6 Cubes / Mix)     | (ASTM C109) (AASHTO T106)             | 240 / set        |
|                                 | Additional Cubes                               | (ASTM C109) (AASHTO T106)             | 33 / each        |
|                                 | Flexural Strength - 3 Beams                    | (ASTM C348)                           | 147 / set        |
|                                 | Time of Set: Vicat                             | (ASTM C191) (AASHTO T131)             | 192 / each       |
|                                 | Standard Properties                            | (ASTM C150)                           | 800 / each       |
|                                 | Density  | (ASTM C188) (AASHTO T133)             | 100 / each       |
|                                 | Blaine Fineness                                | (ASTM C204) (AASHTO T153)             | 110 / each       |
|                                 | False Set - Paste Method                       | (ASTM C191, C266, C359, C451, C807)   | 93 / each        |
|                                 | Chemical Analysis                              | (ASTM C114) (AASHTO T105)             | 317 / each       |
|                                 | Autoclave Expansion                            | (ASTM C151) (AASHTO T107)             | 241 / each       |
|                                 | Sulfate Expansion                              | (ASTM C1012)                          | 1,650 / each     |
|                                 | Air Content                                    | (ASTM C185) (AASHTO T137)             | 160 / each       |
| Cement Content                  |  | 819 / each                            |                  |
| Pozzolan<br>Laboratory Services | Blaine Fineness                                | (ASTM C204) (AASHTO T153)             | 328 / each       |
|                                 | Loss on Ignition, Moisture                     | (ASTM C311)                           | 100 / each       |
|                                 | Air Content                                    | (ASTM C185) (AASHTO T137)             | 160 / each       |
|                                 | Alkali Reactivity                              | (ASTM C441)                           | 591 / each       |
|                                 | Standard Properties (Includes Tests Below)     | (ASTM C618)                           | 1,400 / set      |
|                                 | Fineness, No. 325 Sieve                        | (ASTM C430) (AASHTO T192)             | 100 / each       |
|                                 | Density  | (ASTM C188) (ASTM C604) (AASHTO T133) | 100 / each       |
|                                 | Chemical Analysis                              | (ASTM C114) (AASHTO T105)             | 306 / each       |
|                                 | Strength Activity Index                        | (ASTM C109) (AASHTO T106)             | 247 / each       |
|                                 | Drying-Shrinkage (Mortar Bar Method)           | (ASTM C157) (AASHTO T160)             | 247 / each       |
|                                 | Autoclave Expansion                            | (ASTM C151) (AASHTO T107)             | 247 / each       |
| Available Alkali                | (ASTM C311)                                    | 197 / each                            |                  |
| Miscellaneous<br>Services       | Wood Moisture Content                          |                                       | 105 / each       |
|                                 | Hydraulic Ram Calibration, Less than 200 Ton   |                                       | 500 / each       |
|                                 | Hydraulic Ram Calibration, 200 Ton & Higher    |                                       | 600 / each       |
|                                 | Hydraulic Ram Calibration, Same Day Turnaround |                                       | 120 / add.       |
|                                 | Petrographic Analysis                          |                                       | Quote on Request |
|                                 | Ground Penetrating Radar                       | (ASTM C457, C295, C856, C1324, C1723) | Quote on Request |
|                                 | Report Review (All Laboratory Test Results)    |                                       | 125 / each       |
|                                 | Report Review (Coring Results)                 |                                       | 250 / each       |



**CHANGE ORDER**

|   |  |
|---|--|
| <b>Change Order No:</b> 2   | <b>Date Issued:</b> 8/14/2023                      |
| <b>Name of Agreement:</b> Tract A4 Slope Stability Support Services |  |
| <b>Date of Agreement:</b> 08/22/2022                                | <b>District(s):</b> Cimarron Metropolitan District |
| <b>Other Party/Parties:</b> Martin / Martin, Inc.                   |  |

**CHANGE IN SCOPE OF SERVICES (describe):**

Additional civil engineering support services for efforts to stabilize the slope in Tract A4, Candelas Filing 1. CTL Thompson will be providing a slope stability analysis report and Aztec Consultants will be providing survey services. Martin/Martin, Inc. has been asked to provide the following services:

A. Construction Documents: Coordinate with Geotechnical engineers to prepare construction documents for regrading the slope in Tract A4. Work with City of Arvada for approval of plans.

B. Construction Assistance: Provide assistance during construction as needed.

|   |  |
|---|--|
| <b>CHANGE IN AGREEMENT PRICE:</b>                     | <b>CHANGE IN TERM OF AGREEMENT:</b>                            |
| Original Price including CO1:<br>\$50,000.00          | Original Term:<br>Upon Satisfactory Completion of the Services |
| Increase of this Change Order:<br>\$30,000.00         | New Term:<br>Upon Satisfactory Completion of the Services      |
| Price with all Approved Change Orders:<br>\$80,000.00 | Agreement Time with all Approved Change Orders:                |

**APPROVED:**

By: *Approved, Brian Daly*

District

**APPROVED:**

By: *Paul A. Lantz*

Consultant

August 10, 2023

Brian Daly  
Cimarron Metropolitan District  
8390 E. Crescent Parkway, Suite 300  
Greenwood Village, CO 80111

Job Title: Tract A4 Slope Stability Support Services  
Sub Job Title: Candelas Filing No. 1

Proposal

All provisions of the referenced Agreement and/or Agreement For Professional Services shall remain in full force and effect as modified herein.

Re: Original Agreement and/or Agreement For Professional Services by and between Martin/Martin, Inc. and Cimarron Metropolitan District, dated August 22, 2022.

Additional Services were determined from ongoing correspondence with Brian Daly.

## I. ADDITIONAL SERVICES

The following proposal is for providing civil engineering support services for efforts to stabilize the slope in Tract A4, Candelas Filing 1. CTL Thompson is the geotechnical engineer and is working to prepare recommendations for stabilizing the A4 slope. Martin/Martin, Inc. has been asked to provide the following services:

- A. **Document Coordination:** As the Infrastructure Design Engineer of Record (Engineer) for this project, Martin/Martin, Inc. will provide original Filing No. 1 construction documents and reports as necessary.
- B. **Design Team Meetings and Coordination:** Meet with and Coordinate with project design team to prepare scope of work need to stabilize the slope in Tract A4. Work with City of Arvada for approval of plans.
- C. **Grading & Drainage Plans:** Final grading & drainage plans for Tract A4 will be developed and prepared with input and review from geotechnical engineers. Design realignment of open space trail if needed.
- D. **Erosion Control Plans:** Erosion control plans for the earthwork required to stabilize the slope in Tract A4 will be provided.
- E. **Construction Assistance:** Provide assistance during construction as needed.

## II. COMPENSATION

All services will be provided on an hourly basis, at the rates and charges listed below, not to exceed a total fee of **\$30,000**.

## III. LABOR RATES

|                                     |                |                                   |                |
|-------------------------------------|----------------|-----------------------------------|----------------|
| Principal .....                     | \$250 per hour | Sr. Designer.....                 | \$160 per hour |
| Bridge Design Manager.....          | \$235 per hour | Designer.....                     | \$140 per hour |
| Associate .....                     | \$215 per hour | Technician III.....               | \$125 per hour |
| Sr. Façade Access Consultant....    | \$200 per hour | Technician II.....                | \$115 per hour |
| Sr. Bldg. Envelope Specialist ..... | \$200 per hour | Technician I.....                 | \$105 per hour |
| Sr. Project Engineer.....           | \$195 per hour | Sr. Construction Services Rep ... | \$160 per hour |
| Project Engineer.....               | \$160 per hour | Intern .....                      | \$85 per hour  |
| Project Manager .....               | \$160 per hour | Project Coordinator .....         | \$100 per hour |
| Bldg. Envelope Specialist .....     | \$155 per hour | Administrative Assistant.....     | \$90 per hour  |
| Professional Engineer .....         | \$145 per hour | Survey Crew (two-man) .....       | \$245 per hour |
| Bldg. Envelope Consultant .....     | \$135 per hour | Survey Crew (one-man) .....       | \$165 per hour |
| Engineer EIT II .....               | \$130 per hour | Professional Land Surveyor .....  | \$150 per hour |
| Engineer EIT I .....                | \$120 per hour | Survey Technician I .....         | \$105 per hour |

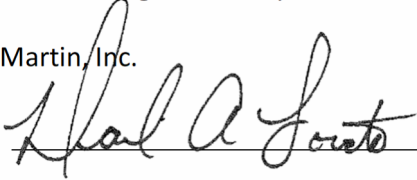
Rates for personnel above are subject to change each year.

## IV. REIMBURSABLE EXPENSES

Non-Labor expenses are in addition to the fee at 1.1 times the amount billed to Martin/Martin, Inc.

## V. ACCEPTANCE AND AUTHORITY

Work will begin on receipt of this Authorization.

|   |                     |                                |
|---|---------------------|--------------------------------|
| Martin/Martin, Inc.   | “Client”:           | Cimarron Metropolitan District |
| By:  | By:                 | _____                          |
| Name: <u>David A. Lovato, PE</u>  | Name:               | <u>Brian Daly</u>              |
| Title: <u>Principal</u>   | Title:              | _____                          |
| PE: <u>Colorado PE: 32137</u>   | Client Project No.: | _____                          |

**CIMARRON METROPOLITAN  
DISTRICT**

**CONTRACT DOCUMENTS  
FOR  
CANDELAS SLOPE FAILURE RETICULATED  
MICRO-PILE WALL**

**JURISDICTION: CITY OF ARVADA, COUNTY OF JEFFERSON,  
COLORADO**

**DATE: AUGUST 2023**

**COPY NO. \_\_\_\_\_**

# **AGREEMENT**

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (this “**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **CIMARRON METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, located in the County of Jefferson, State of Colorado, hereinafter referred to as “**Owner**,” and **Coggins & Sons, Inc.**, hereinafter referred to as “**Contractor**.”

In consideration of the mutual covenants, agreements, conditions, and undertakings hereinafter specified, Owner and Contractor agree as follows:

### **PART 1 CONTRACTOR’S AGREEMENT AND SCOPE OF WORK**

A. Contractor agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all Work required for the construction of the Project in strict compliance with the Contract Documents as herein defined.

### **PART 2 CONTRACT DOCUMENTS**

A. The “**Contract Documents**” which comprise the entire agreement and contract between Owner and Contractor and which are attached to this Agreement and are incorporated herein by this reference, consist of:

1. This Agreement and any Amendments thereto;
2. Performance Bond;
3. Labor and Materials Payment Bond;
4. Certificates of Insurance;
5. Notice to Proceed;
6. Drawings and specifications consisting of:

**Plans entitled:**

(a) Candelas Filing1A6 Concept Grading, by Martin and Martin Consulting Engineers, dated May 16, 2023, and consisting of 5 sheets.

(b) Candelas Filing 1 Structural Drawings, by Martin/Martin Consulting Engineers, dated April 30, 2012, and consisting of 1 sheet

(c) Candelas Bid Revision 00, by Coggins and Sons Inc., and consisting of 3 sheets.

**Geotechnical reports:**

(a) Candelas, Filing No. 1 Retaining Walls Progress Report, by CTL Thompson, dated April 26, 2023, and consisting of 39 pages.

7. General Conditions and Supplementary Conditions, if any;
8. Any Modifications, Change Orders, Field Orders or other such revisions properly authorized after execution hereof.
9. Contractor's Project Schedule, which is attached hereto and incorporated herein by this reference as **Exhibit B**, (hereafter, "**Project Schedule**");
10. Specifications and Standards as follows:
  - (a) See **Exhibit C** – Project Specification
11. Notice of Substantial Completion and Notice of Final Completion and Acceptance; and
12. All documents contained within the Contract Specifications for the Project.

B. There are no Contract Documents other than those listed above in this Part 2. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in the General Conditions).

C. If, and to the extent of any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) any Modifications including, but not limited to Change Orders; (2) this Agreement; (3) the General Conditions; (4) the Supplementary Conditions (if any); (5) any exhibits attached to this Agreement; (6) Addenda, with those of later date having precedence over those of earlier date; (7) the Specifications; and (8) the Drawings.

D. The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

### **PART 3 ENGINEER AND OWNER'S REPRESENTATIVE**

A. The Project has been designed by Martin/Martin (hereinafter called "**Engineer**"), who will assume all duties and responsibilities of Engineer,

and who will have the rights and authority assigned to Engineer in the Contract Documents. Engineer will make itself reasonably available to perform the services required of Engineer under the Contract Documents.

B. Independent District Engineering Services (hereinafter called “**Owner’s Representative**”) will assume all duties and responsibilities of Owner’s Representative and will have the rights and authority assigned to Owner’s Representative in the Contract Documents. Owner’s Representative will make itself reasonably available to perform the services required of Owner’s Representative under the Contract Documents. Owner’s Representative may, at the direction of Owner, undertake some duties and responsibilities assigned to Engineer.

C. If no person or entity is described in Part 3(b) above, then Owner shall assume all responsibilities for Owner’s Representative hereunder.

#### **PART 4 AGREEMENT PRICE**

A. For the performance of all Work and completion of the Project as specified in the Contract Documents, Owner shall pay Contractor Two Hundred Fifty-Five Thousand, Nine Hundred and Sixty Three Dollars and Zero Cents, (\$ 255,963.00), in accordance with the Contract Documents. The Agreement Price shall be subject to adjustment for changes in the Drawings and Specifications or for extensions of time to complete performance, if approved by Owner and Contractor as hereinafter provided, and for changes in quantities, if bid on a unit-price basis in the Bid Form, which shall be verified by Engineer. The Agreement Price expressly includes all labor, materials, equipment, and services required by, incidental to, or reasonably inferable from the Work required by this Agreement as necessary to achieve the Owner’s intended use for the Project.

#### **PART 5 CONTRACT TIME**

A. Contractor shall commence performance on the Project within ten (10) days after receipt of written Notice to Proceed. The Contractor will achieve Substantial Completion (as that term is defined in the General Conditions) of the entire Work by October 30, 2023:

B. Owner and Contractor recognize that TIME IS OF THE ESSENCE of this Agreement and that Owner will suffer financial loss if Project is not substantially completed within the time specified in Part 5 A., above, plus any extensions thereof granted by Owner in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if Project is not substantially completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor



shall be liable to Owner for liquidated damages until Substantial Completion of the entire Work has been achieved, at the following rates: \$1,000 per day. Unless otherwise agreed in writing by the Parties, Contractor shall achieve Final Completion of the entire Work within thirty (30) days of the date it achieves Substantial Completion.

C. Nothing herein or otherwise shall limit Owner's rights under the Contract Documents for any matter other than delay, including (but not limited to) Owner's rights in the event of termination, or Owner's right to pursue a claim for damages due to defective or non-conforming Work or for Contractor's breach of contract. For the avoidance of doubt, nothing herein shall impair or limit Owner's rights to indemnity and defense under the Contract Documents.

## **PART 6 PAYMENT PROCEDURES**

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit an Application for Payment for the preceding month, in accordance with the General Conditions. Applications for Payment will be reviewed and processed by Engineer and Owner's Representative as provided in the General Conditions.

B. Subject in all events to the following retainage provisions and the other rights of the Owner to retain amounts, Owner shall make progress payments on the basis of Contractor's Applications for Payment, as recommended by Owner's Representative, by the end of the following month (the "**Due Date**").

1. If, in the opinion of the Owner, the Contractor is satisfactorily performing this Agreement, progress payments shall be in an amount equal to ninety-five percent (95%) of the calculated value of completed Work, less the aggregate payments previously made. If, in the opinion of Owner, satisfactory progress is not being made on the Project, or if a claim is filed under Section 38-26-107, Colorado Revised Statutes, Owner may retain such additional amounts as may be deemed reasonably necessary by Owner to assure completion of the Work or to pay such claims and any engineer's and attorney's fees reasonably incurred or to be incurred by Owner in defending or handling such claims. Subject to the foregoing, the withheld percentage of the Agreement Price may be retained until this Agreement is completed satisfactorily and the Project is finally accepted by Owner in accordance with the provisions of the Contract Documents. Progress payments shall not constitute final acceptance of the Work.

2. Payments will be made for materials stored on-site in accordance with Part 14.01 B of the General Conditions.

3. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., Owner shall make final payment, including release of any retainage, to Contractor as recommended by Engineer, and in accordance with the Contract Documents and Section 38-26-107, C.R.S., within sixty (60) days.

C. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (“**Contractor’s Bonds and Lien on Funds**”), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (“**General Mechanics’ Liens**”). Nevertheless, to the extent that any portion of the Project, the underlying property, or the improvements thereon, is/are subject to the assertion of a mechanic’s lien under the General Mechanic’s Liens statute, then Contractor hereby forever waives and releases any and all rights, which may now or heretofore exist or accrue, to record a lien thereon for any work or services performed, materials or equipment furnished, or labor supplied, regardless of whether such services, work, materials, equipment, or labor were required by the Contract Documents, to the maximum extent allowable by law. Contractor further agrees that all debts owed by Contractor to any third party relating to the goods or services covered by this waiver of lien rights have been paid or will be timely paid. Apart from their right to timely and properly assert claims against the Performance Bond or Labor and Materials Payment Bond required hereunder or under C.R.S. § 38-26-106, the sole remedy of Contractor’s subcontractors and suppliers, and any other person, as defined in section 2-4-401(8), C.R.S., that has furnished labor, materials, sustenance, or other supplies used or consumed by a contractor or his or her subcontractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor, as against the Owner, the Project, the underlying property, or the improvements thereon, shall be to file a verified statement of claim before the time of final settlement pursuant to C.R.S. § 38-26-107. No Subcontractor, laborer, supplier, nor any other person for whom Contractor is responsible in connection with this Agreement shall have the right to lien the Project or the real property underlying the Project, any such rights being expressly waived.

D. Contractor agrees to require each of its Subcontractors and suppliers (at all tiers) to expressly incorporate Part 6, Subparagraph C of this Agreement into their respective subcontracts and/or purchase orders, with the word “Contractor” being substituted for the name of such Subcontractor and/or supplier. This obligation shall represent a material term of this Agreement. Upon Owner’s written request, Contractor shall provide copies of its subcontracts and/or purchase orders (whether executed or unexecuted) to Owner. Owner reserves the right (but not the obligation) to verify that such subcontracts and/or purchase orders expressly incorporate

the acknowledgments, waivers, and releases of Part 6, Subparagraph C of this Agreement.

E. Contractor shall defend, indemnify, and hold harmless the Owner, from and against any and all General Mechanics' Liens recorded by Contractor, or by any Subcontractors engaged by Contractor, directly or indirectly, for any work or services performed, materials or equipment supplied, or labor furnished in relation to or arising out of this Agreement.

## **PART 7      DEFAULT**

**7.01**      If any of the events or circumstances described in Section 7.02 occur, and the Contractor fails within a seven (7) calendar day period after receipt of notice from the Owner to commence and continue correction of such events or circumstances with diligence and promptness, the Owner may, without prejudice to other remedies in the Contract Documents, in equity, or at law, undertake any of the remedies described in Section 7.03.

**7.02**      Without limiting any other right, remedy, or term under the Contract or at law, any one or more of the following shall constitute a default or an event of default by the Contractor:

A.      The Contractor fails or refuses to comply with or perform, in whole or in part, any term, requirement, or condition of the Agreement or the Contract Documents;

B.      The Contractor fails to pay or cause to be paid (as applicable) any of its Subcontractors, other subtiers of any level, supervisory staff, or work force, or for any materials, labor, equipment, or other expenses incurred in the performance of the Work, when such payments are due and in accordance with the respective agreements requiring such payment and/or any and all applicable laws requiring the same, including (without limitation) C.R.S. § 24-91-103(2);

C.      The Contractor becomes insolvent, makes or attempts to make any assignment for the benefit of creditors, commences any proceeding in bankruptcy, or any such proceedings are commenced against it and are not discharged within thirty days of such commencement;

D.      The Contractor abandons any or all of the Work, or reduces its management, supervisory staff, or work force to a level that may not allow the Contractor to maintain the appropriate progression of the Work according to the Project Schedule and/or the otherwise appropriate provision of services or the Work for the timely and proper completion of the Project, as determined by the Owner (including services during pre-construction as well as during construction), and including without limitation Work being performed prior to Substantial Completion as well as

following Substantial Completion and until all Punch List items are complete and the Project achieves Final Completion;

E. The Contractor fails to achieve Final Completion of the Work (including, without limitation, the completion of all Punchlist Items) within thirty (30) calendar days from the date of Substantial Completion;

F. The Contractor fails to perform this Agreement or the Work in accordance with applicable laws, ordinances, codes, statutes, rules and regulations, or the lawful orders of any governmental authorities having jurisdiction over the Project; or

G. Contractor is otherwise in breach of any material term(s) of the Contract Documents.

### 7.03

If the Contractor is ever in default or an event of default exists the Owner may, without limiting any other right, remedy, or term under the Contract or at law, elect to do any one or more of the following:

A. Issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, provided that the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity;

B. Direct the Contractor to comply with the terms of the Agreement and/or Contract Documents;

C. Direct the Contractor to remove any defective or hazardous material or Work which the Contractor controls, which the Contractor shall do at its sole cost;

D. Accept any non-conforming work or materials, in which event the Owner shall be entitled to a reduction in Agreement Price for the reduced value thereof;

E. Make payments directly to Subcontractors, other subtiers of any level, supervisory staff, or work force, to satisfy the Contractor's obligations for any materials, labor, equipment, or other expenses incurred in the performance of the Work;

F. Withhold any further payments to the Contractor or to any Subcontractor until the cause for the default or the event of default is cured to the satisfaction of the Owner;

G. Terminate the Contract pursuant to Section 15.02 of the General Conditions;

H. Engage separate contractors to perform, repair, or complete the Work required by the Contract Documents, or to perform Contractor's warranty obligations under the Contract Documents; and/or

I. Exercise any other action or seek any other remedy to which the Owner may be entitled under the Contract Documents, at law, or in equity.

**7.04** The Owner's choice of a remedy under Section 7.03 hereof shall not be construed or interpreted as a waiver of any other rights or remedies provided to the Owner under the Contract Documents, at law, or in equity, against the Contractor, its surety, or any other party. Owner, at its option, may choose more than one remedy or choose one or more particular remedies at different times, without prejudice to any other remedies, and Owner may exercise any remedies in any sequence or combination.

**7.05** The Contractor shall pay, immediately upon demand, all costs, losses, damages, and expenses, including, without limitation, all administrative, management, overhead, and other costs and expenses, as well as all reasonable attorneys' fees, costs, and expenses (collectively, "Default Costs"), incurred by the Owner in connection with any default by the Contractor or exercise of any right or remedy upon the Contractor's default. Payment shall be due immediately upon Contractor's receipt of written demand, and interest shall accrue at a rate of 1.5% per month on any amounts not paid by Contractor within thirty (30) days. If the Contractor does not pay the Default Costs immediately, the Owner may deduct them from any unpaid portion of the Contract Sum and the Agreement Price, including (without limitation) any retainage.

## **PART 8 CONTRACTOR'S REPRESENTATIONS**

A. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

1. Contractor is familiar with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of Project.
2. Contractor has carefully studied the Site and has performed all necessary investigations, tests, and subsurface investigations to define the latent physical conditions of the construction Site affecting cost, progress, or performance of Project.
3. Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data as Contractor deems necessary for the performance of Project at the Agreement Price, within the Contract Time, and in

accordance with the other terms and conditions of the Contract Documents.

4. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

5. Contractor has given Engineer and Owner's Representative written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

## **PART 9 OWNER'S REPRESENTATIONS**

A. Owner makes the following representations:

1. This Agreement is subject to the provisions of Section 24-91-103.6, C.R.S., as amended. Owner has appropriated money equal to or in excess of the Agreement Price. This Agreement is subject to annual appropriation by Owner.

2. Owner will not issue any Change Order or other form of order or directive by Owner requiring additional compensable work to be performed by Contractor, which work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement Price unless Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. By executing a Change Order which causes an increase in the Agreement Price, Owner represents to Contractor that Contractor is being given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made. Any claim for additional compensation shall be in full compliance with Section 24-91-103.6(4), C.R.S., as amended.

## **PART 10 MISCELLANEOUS**

A. Terms used in this Agreement which are defined in Part 1 of the General Conditions shall have the meanings indicated in the General Conditions.

B. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of Owner, specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not

in compliance with the terms hereof shall be null and void. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

C. The terms of this Agreement, and all covenants, agreements, and obligations contained in the Contract Documents shall inure to and be binding upon the partners, legal representatives, successors, heirs, and permitted assigns of the parties hereto.

D. If any term, section or other provision of the Contract Documents shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of the Contract Documents, and to this end, each term, section and provision of the Contract Documents shall be severable.

E. No waiver by either party of any right, term or condition of the Contract Documents shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of the Contract Documents.

F. None of the remedies provided to either party under the Contract Documents shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable in accordance with Part 21 of the General Conditions. The Contract Documents shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

G. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

H. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and superseded by, the Contract Documents.

I. In the event any provision of this Agreement conflicts with any provision of any other Contract Document, then the provisions of this Agreement shall govern and control such conflicting provisions.

J. Unless otherwise expressly provided, any reference herein to "days" shall mean calendar days. All times stated in the Contract Documents are of the essence.

K. Contractor authorizes the Owner to provide to any person any pertinent information, personal or otherwise, regarding the Contractor's performance with respect to the Contract Documents and releases all parties from liability for any damage that may result from the Owner's furnishing such information to others.

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(Signatures appear on following pages)







## **PERFORMANCE BOND**

## Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and Travelers\*, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and firmly bound unto the Cimarron Metropolitan District, as Obligee, in the sum Two Hundred Fifty Five Thousand, Nine Hundred and Sixty Three Dollars and Zero Cents (\$ 255,963.00), for the payment of which penal sum, well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed an Owner-Contractor Agreement dated \_\_\_\_\_, for the construction of the Candelas Slope Failure Repair Reticulated Micro-Pile Wall (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform said Contract, including a two (2) **year** warranty period described in the Contract Documents, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives any notice of any alteration of the Contract or extension of the Contract Time, as stated in the Contract, as may be agreed upon by the Obligee and the Contractor and embodied in any written Change Order whether or not it increases the total price of the Project.

Whenever the Principal shall be in default under the Contract and is declared so by the Obligee and the Obligee has performed all obligations under the Contract, the Surety may (1) remedy the default, or (2) complete the Contract in accordance with its terms and conditions, or (3) obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest, qualified, responsive and responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest, qualified, responsive and responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) funds sufficient to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this Bond must be instituted before the expiration of **two (2) years** from the date final payment under the Contract is due. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the

Obligee for any judgements, and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default, together with interest thereon at the rate of eight percent (8%) per annum from the date of judgment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

(Signatures appear on following pages)

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26,101 et seq., C.R.S. This bond must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute the Bond.

**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 Attached)

**LABOR AND MATERIALS PAYMENT BOND**



## Labor and Materials Payment Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned, \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and bound firm unto Cimarron Metropolitan District, as Obligee, in the penal sum of Two Hundred Fifty Five Thousand, Nine Hundred and Sixty Three Dollars and Zero Cents (\$ 255,963.00), together with interest at the rate of eight percent (8%) per annum on all payments becoming due in accordance with the Contract (defined below) from the time such payments shall become due until such payment shall be made, for the payment of which sum well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed a Contract dated \_\_\_\_\_, for the construction of the Candelas Slope Failure Reticulated Micro-Pile Wall (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for the use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant shall be defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract; labor and material being construed to include, but not be limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant, as herein defined, who has not been paid in full before the expiration of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for sums as may be justly due claimant, together with interest at the rate of eight percent (8%) per annum, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgments, and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default.

3. No suit or action shall be commenced hereunder by any claimant:

- a) Unless the claimant, other than one having a direct contract with the Principal, shall have given written notice to the Obligee and either the Principal or the Surety within six (6) months after such claimant did or performed the last of the work or labor, or furnished the last of the material for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the Project is located, save that such service need not be made by a public officer.
- b) After the expiration of **one (1) year** following the date on which the Principal ceased work on the above-described Project, it being understood, however, that, if any limitation embodied in this Bond is prohibited by any law controlling construction hereof, such limitation shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.
- c) Other than in a state court of competent jurisdiction in and for the county of the state in which the Project, or any part thereof, is situated, and not elsewhere.
- d) In addition, if the Principal or its subcontractor shall fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such Principal or its subcontractor in performance of the Contract or shall fail to duly pay any person who supplies laborers, rental machinery, tools or equipment in the prosecution of the Work, then the Surety shall pay the same in an amount not exceeding the sum specified in this Bond together with interest at a rate of eight percent per annum.
- e) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of statutory claims which may be filed of record for the Project, whether or not the claim or the amount of such claim be presented under and against this Bond.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26-101 et. seq., C.R.S., and must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute Bond.

**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 Attached)

**END OF SECTION**

**CERTIFICATES OF INSURANCE**

**NOTICE TO PROCEED**

**NOTICE TO PROCEED**

Arvada, Colorado  
Date: 8/14/2023

TO: Coggins and Sons, Inc.  
9512 Titan Park Circle  
Littleton, CO 80125  
[ccoggins@cogginsandsons.com](mailto:ccoggins@cogginsandsons.com)

You are hereby authorized to proceed on August 14, 2023, or within ten (10) consecutive calendar days thereafter, with the Work as set forth in the Contract Documents.

You are to notify the Engineer forty-eight (48) hours before starting work.

**CIMMARON METROPOLITAN DISTRICT**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE TO PROCEED:**

Receipt of the above Notice to Proceed is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**END OF SECTION**

## **GENERAL CONDITIONS**



**GENERAL CONDITIONS  
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## PART 1 DEFINITIONS

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

**Addendum** – Written or graphic instrument which clarifies, corrects or changes the bidding documents or the Contract Documents.

**Agreement** – The written agreement between Owner and Contractor covering the Work to be performed.

**Agreement Price** – The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement for the Work or discrete portions thereof.

**Application for Payment** – The form designated by Engineer which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

**Bid Form** – The offer or proposal of the Bidder attached to the Agreement as **Exhibit A**.

**Change Order** – A written order to Contractor signed by Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Agreement Price or the Contract Time issued after the effective date of the Agreement.

**Contract Documents** – As defined in the Agreement.

**Contract Time** – The number of days stated in the Agreement for the Completion of the Work.

**Contractor** – The person or entity with whom Owner has entered into the Agreement to perform field construction.

**Day** – A calendar day of twenty-four hours measured from midnight to the next midnight.

**Defective** – An adjective which when modifying the word “**Work**” refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer’s recommendation for final payment.

**Drawings** – The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.

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

**Engineer** – The person or entity named as “**Engineer**” in the Agreement.

**Field Order** – A written order issued by Engineer which orders minor changes in the Work in accordance with Paragraph 10.01.B but which does not involve a change in the Agreement Price or the Contract Time.

**Modification** – (a) a written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A modification may only be issued after the effective date of the Agreement.

**Notice of Award** – The written notice by Owner to the apparent Successful Bidder stating that upon compliance by the apparent Successful Bidder with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.

**Notice to Proceed** – A written notice given by the Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform its obligations under the Contract Documents.

**Owner** – Cimarron Metropolitan District, with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

**Project** – The total construction required under the Contract Documents, of which the Work to be provided under the Contract Documents may be the whole or part.

**Part** – Section(s) of these General Conditions.

**Plans** – The official plans, working drawings, or supplemental drawings or exact reproductions thereof, prepared by or approved in concept by the Engineer which show the location, character, dimensions, and details of the Work to be done and which are to be considered as part of the Contract Documents, supplemental to these Specifications.

**Shop Drawings** – All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work.

**Site** – Any area or areas where Work is to be performed on the Project.

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

**Subcontractor** – A person or entity, including a supplier, having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

**Substantial Completion** – The date when Work has progressed to the point where, in the opinion of Engineer as evidenced by its definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended and it is ready for punch listing.

**Supplementary Conditions** – The specific clauses setting forth conditions or requirements peculiar to the Project, covering work or materials involved in the Bid which are not thoroughly or satisfactorily stipulated in the General Conditions or Specifications.

**Work** – The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. The term “**Work**” shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the Project in accordance with the design intent conveyed in the Contractor Documents, and the carrying out of all duties and obligations imposed by the Contract Documents to achieve the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

## **PART 2      PRELIMINARY MATTERS**

### **2.01            DELIVERY OF BONDS AND CERTIFICATE OF INSURANCE**

A.      When Contractor delivers the executed Agreement to Owner’s Representative, Contractor shall also deliver to Owner’s Representative the Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies.

### **2.02            EXECUTION AND TRANSMISSION OF DOCUMENTS**

A.      At least four (4) copies of the Contract Documents will be prepared by Owner’s Representative. All copies will be submitted to Contractor and Contractor shall execute the Agreement, insert all Certificates of Insurance on ACORD Form 27 and copies of all applicable insurance policies, and submit all copies to Owner’s Representative within ten days of Notice of Award. The date on the Agreement shall be left blank for completion by Owner. The date on the Bonds and the certification date on the Power of Attorney must not be prior to the date of the Agreement.

B.      Owner will execute all copies, insert the date on the Agreement and Bond forms and the Certification Date on the Power of Attorney, and transmit all copies to Owner’s Representative within ten (10) days for review and distribution. Distribution of signed copies will be one copy each to Owner, Contractor, and Engineer. Contractor shall be responsible for distribution of copies to the Surety.

### **2.03            COPIES OF DOCUMENTS**

A. Owner shall furnish to Contractor three (3) complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction.

#### **2.04 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED**

A. The Contract Time shall commence to run on the day indicated in the Notice to Proceed.

#### **2.05 STARTING THE PROJECT**

A. Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the Site prior to the date on which the Contract Time commences to run.

#### **2.06 BEFORE STARTING CONSTRUCTION**

A. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements.

Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

B. If not delivered previously, before any Work under this Agreement is started, Contractor shall deliver to Owner's Representative, with a copy to Engineer, certificates of insurance on ACORD Form 27 and copies of the applicable insurance policies (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Part 5.

#### **2.07 PRECONSTRUCTION CONFERENCE**

A. Within ten (10) days after the effective date of the Agreement, but before Contractor starts the Work at the Site, a conference will be held for review and acceptance of the schedules referred to in Paragraph 6.13 to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

### **PART 3 CONTRACT DOCUMENTS: INTENT AND REUSE**

#### **3.01 INTENT**



A. The Contract Documents comprise the entire Agreement between Owner and Contractor concerning the Work. They may be altered only by a Modification.

B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall report it to Engineer as a request for information in writing at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Specifications or Drawings unless Contractor had actual knowledge thereof or should reasonably have known thereof.

C. It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of Bids (or, on the effective date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided for in Paragraph 9.03.A.

D. The Contract Documents have been made, executed, and delivered in the State of Colorado and shall be governed and construed for all purposes under and in accordance with the laws of the State of Colorado.

E. The Project Manual consists of Bid Form, Agreement, Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplementary Conditions, if any, and Specifications. Should any construction or conditions which are not thoroughly or satisfactorily stipulated or set forth by the Specifications be anticipated on any proposed project, Supplementary Conditions for such Work may be prepared and attached to the Bid Proposal Form and Agreement, and shall be considered as part of the Specifications, the same as though contained fully therein.

Should any Supplementary Condition conflict with the General Conditions, the Supplementary Condition will govern.

### **3.02 REUSE OF DOCUMENTS**

A. Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer; and they shall not reuse any of them on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adoption by Engineer.

## **PART 4 AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

### **4.01 AVAILABILITY OF LANDS**

A. Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. In acquiring easements or rights-of-way, the Owner shall proceed as expeditiously as possible, but in the event all easements or rights-of-way are not acquired prior to the beginning of construction, the Contractor shall begin Work on such easements and rights-of-way that have been acquired. In the event a delay in the acquisition of rights-of-way causes unavoidable delay in Contractor's prosecution of the Work, then Contractor may make a claim for an extension of Contract Time, as provided in Part 12.

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

### **4.02 PHYSICAL CONDITIONS – INVESTIGATIONS AND REPORTS**

A. Owner shall identify and make available to Contractor, upon request by Contractor, copies of those reports of investigations and tests of subsurface and latent physical conditions at the Site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness.

### **4.03 UNFORESEEN PHYSICAL CONDITIONS**

A. Contractor shall promptly notify Owner and Engineer in writing of any latent physical conditions at the Site or in an existing structure differing materially from those indicated or referred to in the Contract Documents which could not have been discovered upon a reasonable inspection of the Site, or conditions of an unusual nature which differ materially from those ordinarily found to exist and recognized in an area such as the Site. Engineer will promptly review those conditions and advise Owner in writing if further investigation or tests are necessary. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Engineer and Contractor. If Engineer finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

B. In addition to the exceptions set forth in the above paragraph, rock encountered during excavation, and dewatering of soils, shall not constitute unforeseen physical conditions pursuant to Paragraph 4.03.A. Contractor shall not be entitled to a Change Order for expense and delay resulting from greater than anticipated rock excavation or dewatering.

#### **4.04 REFERENCE POINTS**

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

### **PART 5 BONDS AND INSURANCE**

#### **5.01 PERFORMANCE AND OTHER BONDS**

A. Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond in an amount at least equal to the Agreement Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Bond shall meet all requirements of C.R.S. 38-26-101, et. seq. The Bond shall remain in effect at least until **one (1) year** after the date when final payment becomes due, or until the **two-year** correction period in Paragraph 13.07 is over, except as otherwise provided by law or regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required herein by the Supplementary Conditions. All Bonds shall be on the forms prescribed by

the Contract Documents and be executed by such Sureties authorized to do business in the State of Colorado as are named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each Bond shall be accompanied by a “Power of Attorney” authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond.

B. If the Surety on any bond furnished by Contractor is declared as bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.A Contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to Owner.

C. The Performance Bond and Labor and Materials Payment Bond shall be in an amount equal to one hundred percent (100%) of the Agreement Price, as indicated by Change Orders and all Modifications, as security for payment of all wages and bills contracted for materials, supplies, and equipment used in the performance of the contract.

## 5.02

### CONTRACTOR’S INSURANCE REQUIREMENTS

A. Contractor shall purchase and maintain during the entire term of this Agreement, including any extensions of the Contract Time through Change Orders, and as provided in Paragraph 5.02.B., such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor’s performance of the Work and Contractor’s other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers’ or workmen’s compensation, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor’s employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (i) by any person directly or indirectly resulting from the employment of such person by Contractor, or (ii) by any person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and

7. Claims involving contractual liability insurance applicable to the Contractor's obligations.

B. The insurance required of Contractor shall include the specific coverages and corresponding limits of liability provided in Paragraph 5.02.C., or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least "A:XIII" by A.M. Best Company. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to Owner. All such insurance shall contain a provision that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to Owner and Engineer. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Paragraph 13.07.A. In addition, Contractor shall maintain the Products/Completed Operations insurance as shown in Paragraph 5.02.C for at least **two (2) years** after final payment and furnish Owner with evidence of continuation of such insurance at final payment and **one (1) year** thereafter.

C. Contractor shall obtain and maintain insurance coverage as provided herein, including the following:

1. Worker's Compensation and Employers' Liability

(a) State: Statutory

(b) Employers' Liability

\$500,000 Each Accident

\$500,000 Disease, Policy Limit

\$500,000 Disease, Each Employee

(c) A Waiver of Subrogation in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

2. General Liability (Occurrence Form):

- (a) Combined Bodily Injury and Property Damage:
- \$1,000,000 each occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$1,000,000 Products/Completed Operations Aggregate
- (b) The following coverages must be included:
- (i) Premises Operations
  - (ii) Independent Contractor's Protective
  - (iii) Explosion, Collapse
  - (iv) Underground
  - (v) Contractual (including the contract obligations specified in Paragraphs 5.05, 6.05, 6.07, 6.11B, 6.11D, 13.01A, 13.06A, 13.07A, and 14.03A)
  - (vi) Broad Form Property Damage
  - (vii) Personal/Advertising Injury
  - (viii) General Aggregate Limit (applies to each project)
  - (ix) Products and Completed Operations Insurance shall be maintained by the Contractor for a minimum of **2 years** after final payment, and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.
  - (x) Subcontractors shall comply with all provisions of this Part.
  - (xi) A waiver of subrogation endorsement in favor or the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

3. Automobile Liability:

Combined Bodily Injury and Property Damage:

\$1,000,000 per person

\$1,000,000 each Accident

The following coverages must be included:

Owned automobiles

Non-owned and hired automobiles

4. Umbrella Excess Liability

\$5,000,000 each Occurrence/\$5,000,000 Aggregate

5. Builders' "All-Risk" Insurance

D. Builder's Risk Insurance.

1. Builder's Risk Insurance will not be required to be provided by the Contractor and will be supplied by the Owner.

**NOTE: (THE SPECIFIED LIMITS FOR THE LIABILITY POLICIES CAN BE SATISFIED THROUGH THE COMBINATION OF PRIMARY POLICIES AND EXCESS OR UMBRELLA LIABILITY POLICIES.)**

E. To the extent that Contractor's work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

F. Insured losses under policies of insurance which include Owner's interests shall be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause, and any direction by arbitrators. Owner as trustee shall have the right to adjust and settle losses with the insurers unless one of the parties in interest shall object in writing within 5 days after the occurrence of loss to Owner's exercise of this power and, if such objection be made, arbitrators shall be chosen as provided in the General Conditions. Owner as trustee shall, in that case, make settlement with the insurers in accordance with the direction of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Owner waives all rights against Contractor and Engineer for damage caused by fire or other perils but only to the extent that such damage is covered by insurance and only to the extent that such damage does not fall within the indemnification given by Contractor in Paragraph 5.05. Owner shall have no liability for damages caused by fire or other perils.

### 5.03 INSURANCE CERTIFICATES/POLICY

A. Prior to the commencement of any Work under these Contract Documents, the Contractor shall furnish to the Owner's Representative certificates of insurance on ACORD Form 27, copies of the applicable insurance policies and policy endorsements to prove that all required insurance is in force. Insurance obtained by the Contractor shall be subject to approval by the Owner for adequacy of protection. Neither approval by the Owner of any insurance supplied by Contractor, nor failure to disapprove such insurance shall relieve the Contractor of its obligation to maintain in full force during the life of the Contract Documents all required insurance as set forth herein.

### 5.04 ADDITIONAL REQUIREMENTS

A. No insurance coverages required to be obtained by Contractor pursuant to this Part 5 shall have a deductible greater than \$1,000 or as reasonably approved by Owner. The Contractor is solely responsible for the payment of any deductible(s).

B. If any policy required under this Part 5 is a claims made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than **one year**. The Contractor agrees to purchase such an extended reporting period. The Contractor's failure to purchase such an extended reporting period as required by this Paragraph 5.04 shall not relieve it of any liability under this Agreement. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Contractor purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the Parties hereto.

C. The Owner and its directors, officers, agents and employees and the Owner's Representative shall be designated as additional insureds on the Contractor's commercial general liability insurance and the automobile liability insurance and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with the requirements of this Part 5.

D. For any claims related to the provision of services by the Contractor, Contractor's insurance shall be primary insurance with respect to the Owner, and its directors, officers, employees and agents. Any insurance maintained by the Owner (or its directors, officers, employees and agents) shall be excess of Contractor's insurance and shall not contribute with it.



E. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

F. Each commercial general liability policy and, though not a general liability policy, any worker's compensation policy, shall waive any right of subrogation against the Owner and its directors, officers, employees and agents through a separate policy endorsement.

G. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the Owner and its directors, officers, employees and agents. If the Contractor fails to obtain or maintain the required coverage, the Owner may obtain such coverage. The Contractor shall be liable to the Owner for any costs associated in procuring and maintaining in force any such insurance coverage.

## 5.05

### INDEMNIFICATION

A. To the maximum amount allowed by Colorado law, Contractor shall indemnify and hold harmless the Owner, the Owner's Representative, the Engineer, and all of their respective consultants, board members, directors, officers, agents and employees (hereinafter the "Indemnified Parties"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees) caused by either: (i) the Contractor's breach of this Agreement; or (ii) the negligent, criminal, or tortious act or omission of the Contractor or any of its employees, agents, Subcontractors (at any tier) or any person for whom Contractor is legally responsible, in connection with the Project, this Agreement, or the scope of services hereunder, whether any such negligence or any criminal or tortious act or omission is within or beyond the scope of its duties or authority. Contractor agrees that the existence and policy limits of the coverage which the Contractor is required to maintain pursuant to the Contract Documents, including property damage insurance and excess coverages, shall not negate or limit in any way the Contractor's obligation to indemnify the Indemnified Parties.

B. In any and all claims against the Indemnified Parties by any employee of Contractor, any Subcontractor, anyone directly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.05.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

C. In the event that any Subcontractor, laborer, supplier, or any other person for whom Contractor is responsible in connection with this Agreement records a mechanic's lien against the Project or the real property underlying the Project, any such lien rights being expressly waived pursuant to Part 6, Subparagraph C of this Agreement, then Contractor shall indemnify, save harmless, and defend the Owner and all of its consultants, directors, officers, agents and employees from and against any and all claims, demands, losses, liens, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees), to the extent arising directly or indirectly in any manner whatsoever out of such lien. In addition, the Owner may withhold from payment to Contractor a sum that the Owner, in its sole discretion, considers sufficient to defend, discharge, satisfy, or bond over any such liens pursuant to C.R.S. § 38-22-131, as Owner may decide in its sole discretion, plus the reasonable fees and costs (including attorney's fees) incurred by the Owner in the course of defending, discharging, satisfying, or bonding over such lien or lawsuit. The provisions of this Section 5.05(C) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **PART 6 CONTRACTOR'S RESPONSIBILITIES**

### **6.01 SUPERVISION AND SUPERINTENDENT**

A. The Contractor is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Contractor or any of its employees, agents, Subcontractors or suppliers as employees of the Owner. The Work to be performed by the Contractor shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Owner, except the payments to be made by the Owner to the Contractor for the Work performed as provided herein. Neither Owner, Engineer, nor Owner's Representative shall be responsible for Contractor's means, methods, techniques, sequences or procedures of construction nor for safety precautions and programs incident thereto. **The Contractor is not entitled to worker's compensation benefits and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Contract.**

B. Contractor shall supervise and direct the Work competently and efficiently giving the Work the constant attention necessary to facilitate its progress and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

C. Contractor shall employ at all times during its work progress a competent resident superintendent, who shall not be replaced without written notice to Owner or Owner's Representative except under extraordinary circumstances. Such superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions, suggestions and communications from the Engineer, or its authorized representative. The superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and to promptly supply materials, tools, plant equipment and labor as may be required to perform such Work. Such superintendent shall be furnished irrespective of the amount of Work sublet. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

D. The Contractor shall employ such superintendent and foremen, as are careful and competent, and the Owner or Owner's Representative may request the dismissal of any person or persons employed by the Contractor in, about, or upon the Work who is incompetent or negligent in the proper performance of its or their duties, or neglects or refuses to comply with the Contract Documents given or whose conduct is inappropriate and such person or persons shall not be employed again thereon without the written consent of the Owner.. Should the Contractor continue to employ, or again employ, such person or persons, the Engineer may withhold all pay estimates which are or may become due, or the Engineer may suspend the Work until such orders are complied with.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. The Contractor shall notify the Owner's Representative at least forty-eight (48) hours in advance of the time it intends to start Work on the Site. The Contractor shall operate at such points as the Owner through the Owner's Representative may direct. The Contractor shall conduct the Work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time limit set forth in the Agreement. Should the prosecution of Work for any reason be discontinued by the Contractor, it shall notify the Owner's Representative at least forty-eight (48) hours in advance of resuming operations.

## **6.02**

### **LABOR, MATERIALS, AND EQUIPMENT**

A. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline

and order at the Site. Except in connection with the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without Owner's written consent given after prior written notice to Owner's Representative.

B. Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no damage to the Work, roadways, adjacent property, or other objects will result from its use. The Agreement may be terminated if the Contractor fails to provide adequate equipment for the Work.

C. The source of supply of each of the materials required shall be reviewed and accepted by the Engineer before delivery is started. Representative preliminary samples of the character and quality specified may be submitted by the Contractor or producer for examination and testing. The results obtained from testing such samples may be used for preliminary review but will not be used as a final acceptance of the materials. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after testing, it is found that sources of supply which have been reviewed and accepted do not furnish a uniform product, or of the product from any source proves unacceptable at any time, the Contractor shall furnish acceptable material from other sources acceptable to Engineer.

Samples of all materials for testing upon which is to be based the acceptance or rejection, shall be taken by the Engineer or its authorized representative at the discretion of the Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed. The Contractor shall provide such facilities as the Engineer or its representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the Work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials confirming to the requirements of these specifications and which

have been accepted by the Engineer or its authorized agents shall be used in the Work. Any material which, after acceptance, has for any reason become unfit for use shall not be incorporated into the Work. Additionally, Contractor and Engineer shall be subject to the procedures and responsibilities set forth in Paragraph 6.13 as it pertains to samples.

Except as otherwise provided herein, sampling and testing of all materials, and the laboratory methods and testing equipment required under these Specifications, shall be in accordance with the most current edition of the standards set forth in Technical Specifications. The testing of all samples shall be done at the expense of the Contractor at an independent laboratory accepted by the Engineer. Laboratory sieves shall have square openings of the sizes specified. The Contractor shall furnish the required samples without charge. All samples shall have been checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended. The Contractor shall give sufficient notification to the Engineer of the placing of orders for materials to permit testing.

D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. Materials shall be stored so as to insure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover or otherwise protected when requested by the Engineer. Stored materials shall be located so as to facilitate prompt inspection. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the Site, and for protection of the Project and shall hold Owner and Owner's authorized representative harmless for any damages or loss incurred thereto.

F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Site by Contractor without the prior written approval of Owner's Representative.

G. All materials not conforming to the requirements of these Specifications shall be considered defective. Whether in place or not, such material shall be removed immediately from the Site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure of the Contractor to comply promptly with any order of the Engineer or Owner's Representative made under the provisions of this article, the Engineer or Owner's Representative shall have authority

to remove defective materials and to deduct the cost of removal and replacement with specified materials from any moneys due or to become due the Contractor.

### **6.03 EQUIVALENT MATERIALS AND EQUIPMENT**

A. Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that a substitution is not permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent to that named. The procedure for review by Engineer will be as set forth in Paragraphs 6.03.A.1 and 6.03.A.2 below as supplemented in the other Contract Documents.

1. Requests for review of substitute items of material and equipment will not be accepted by Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment Contractor shall make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application shall state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Engineer in evaluating the proposed substitute. Engineer will be the sole judge of acceptability, and no substitute will be ordered or installed without Engineer's prior written acceptance. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other Surety with respect to any substitute.

2. Engineer will record time required by Engineer and Engineer's consultants in evaluating substitutions proposed by Contractor and in making changes in the Drawings or Specifications occasioned thereby. Whether or not Engineer accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Engineer and Engineer's consultants for evaluating any proposed substitute.

3. In case of a difference in price, the Owner shall receive all benefit of the difference for any substitutions, and the Agreement Price shall be altered by Change Order to credit the Owner with any savings so obtained.

#### **6.04 CONCERNING SUBCONTRACTORS**

A. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner and Engineer by Contractor prior to the Notice of Award and not objected to in writing by Owner or Engineer prior to the Notice of Award will be deemed acceptable to Owner and Engineer. Acceptance of any Subcontractor, other person or organization by Owner or Engineer shall not constitute a waiver of any right of Owner or Engineer to reject defective Work. If Owner or Engineer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the Agreement Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contact with Contractor, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

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

D. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer and contains waiver provisions as required by the Contract Documents. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to the Contract Documents.

E. Contractor shall fully cooperate with Owner and such other contractors or Subcontractors as may be performing work or supplying materials in connection with the Project and shall carefully fit its work in with that of all such other persons or entities. Contractor shall neither commit nor permit any act which will interfere with the performance of the Project by any such person or entity.

F. Contractor shall promptly pay in full for any and all damages caused to the Site or the Project by Contractor or by any Subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions the Contractor is responsible hereunder.

## **6.05 PATENT FEES AND ROYALTIES**

A. If the Contractor is required or desires to use any design, device, invention, product, materials, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and assume all costs incident to said use in performance of the Work or incorporation of the Work. The Contractor and the surety shall indemnify and hold harmless the Owner and Engineer from any and all claims for infringement by reason of the use of any such patented design, device, invention, product, material, or process or any trademark or copyright in connection with the Work agreed to be performed under this contract, and shall indemnify the Owner and Engineer for any costs, expense, and damages, including attorney's fees, which they may be obliged to pay for reason of any such infringement at any time during the prosecution, or after the completion of the Work. The provisions of this Section 6.05(A) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **6.06 PERMITS**



A. Unless otherwise provided in the Contract Documents, Contractor shall obtain all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Owner and Engineer shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all charges of utility service companies for connections to the Work, and Owner shall pay all charges of such companies for capital costs related thereto. A copy of all permits and licenses procured by Contractor shall be supplied to Engineer within a reasonable period of time. With respect to permits obtained by Contractor as necessary for the performance of the Work, Contractor shall be reimbursed for the face value of the permits.

## 6.07

### LAWS AND REGULATIONS

A. Contractor shall be familiar with all federal, state and local laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or on the Site, or in any way affect the conduct of the Work, including rules and regulations that Owner may promulgate at any time for the safe, orderly and efficient conduct of all Work on the Project (the “applicable regulations”). If Contractor observes that the Specifications or Drawings are at variance therewith, Contractor shall give Engineer or Owner’s Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. The Contractor, at all times, shall observe and comply with all applicable regulations and the Contract Documents and its surety shall indemnify and hold harmless the Owner, the Engineer and their consultants, agents and employees, against any claim or liability arising from or based on the violation of any applicable regulations, by anyone for whom Contractor is responsible.

B. Contractor shall comply with all applicable codes, laws, and ordinances pertaining to Small Business Enterprise (SBE), Small Business Enterprise Concession (SBEC), Disadvantaged Business Enterprise (DBE), Airport Concessionaire Disadvantaged Business Enterprise (ACDBE), Women Business Enterprise (WBE), Minority Business Enterprise (MBE), or Emerging Business Enterprise (EBE) in the location where the Work is being performed. Without limiting the foregoing, to the extent the Work is performed in the City and County of Denver, the Contractor shall comply with: (i) the MBE and WBE participation requirements set forth in Division 1 and Division 3 of Article III, Title 28, of the Denver Revised Municipal Code, as the same may be amended or recodified from time to time (the “DRMC”); (ii) SBE participation requirements set forth in Article VII, Title 28 of the DRMC; and (iii) any other ordinances that are currently, or may be subsequently, adopted by the City and County of Denver with respect to construction work or construction services.

C. Contractor shall comply with all applicable all applicable codes, laws, and ordinances pertaining to payment of prevailing wages in the location where the Work is being performed.

## **6.08 TAXES**

A. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it.

B. Owner is exempt from Colorado State sales and use taxes. Accordingly, taxes from which Owner is exempt shall not be included in the Agreement Price. Owner shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and Subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to Subsection 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and Subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

## **6.09 USE OF PREMISES**

A. Contractor shall confine construction, equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and the requirements of the Contract Documents.

B. During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, temporary structures, stumps or portions of trees and surplus materials, and shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. Materials cleared from the Site and deposited on adjacent property will not be considered as having been disposed of satisfactorily.

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

D. All structures or obstructions found on the Site and shown on the Contract Drawings which are not to remain in place or which are not to be used in the new construction shall be removed to the satisfaction of the Engineer. Unless specified in the Bid Proposal, this Work will not be paid for separately but will be included in the price bid for that portion of the Work requiring the removal of the obstruction. All material found on the Site or

removed therefrom shall remain the property of the Owner unless otherwise indicated.

E. The Contractor, with the consent of the Engineer, may use in the proposed construction any stone, sand, or gravel found on the Site. The Contractor will not be paid for such excavation unless specifically stated in the Bid Proposal, and it shall replace with other suitable material, without compensation, all of that portion of the material so removed and used. If it was intended by the Engineer and indicated in the Specifications that any or all of the material so excavated and used was to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate outside of the proposed slope and grade lines as indicated on the Drawings, without prior consent by the Engineer.

F. Contractor shall protect all existing erosion control measures installed by others and shall promptly replace all items disturbed during his work.

#### **6.10 AS-BUILT DOCUMENTS**

A. Contractor shall keep one set of as-built records of all Plans, Specifications, drawings, Addenda, Modifications, Shop Drawings and samples at the Site, in good order and annotated and updated weekly to show all changes made during the construction process. These shall not be used for construction purposes, shall be available to Engineer or Owner's Representative at all times for examination and shall be delivered to Engineer or Owner's Representative for Owner upon completion of the Work. All changes or drawings from the original drawings shall be neatly marked thereon in brightly contrasting color.

#### **6.11 SAFETY AND PROTECTION**

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

1. All employees on the Work or other persons who may be affected thereby.
2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall be required to assume sole and complete responsibility for Site conditions during the course of construction of the project, including the safety of all persons who may enter on the Site for any reason and the security of all property located on the Site. This requirement shall apply at all times during the course of the contract and not only to normal work hours.

B. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Paragraphs 6.11.A.2 or 6.11.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable solely to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable). Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and final payment has been made.

C. Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

D. Contractor has the affirmative duty of ensuring compliance with all Occupational Safety and Health Administration (OSHA) regulations, of designating a representative who is a competent person for purposes of identifying existing or predictable hazards at the Site, of providing required safety instruction for Contractor's Subcontractors and employees, and of immediately taking precautionary measures when necessary and remedying all identified OSHA violations. Daily, and other, inspections of the Site, including of excavations, adjacent areas and protective systems, shall be the sole responsibility of Contractor. Contractor's obligation to indemnify Owner pursuant to Paragraph 5.05 shall include failure of Contractor to effect full compliance with OSHA regulations.

E. The Contractor shall at all times conduct the Work in such manner as will incur the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service except after permission has been granted by the Engineer or Owner's Representative. Each item of Work shall be prosecuted to completion without delay and in no instance will the

Contractor be permitted to transfer its forces from uncompleted Work to new Work without prior written notification of the Contractor to the Engineer or Owner's Representative. Except as otherwise required by Owner or Engineer, the Contractor shall not open up Work to the prejudice of Work already started.

Unless the Contract Documents specifically provide for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highway. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Work to be done under this Contract, and of constructing and maintaining such approaches, crossing, intersections and any necessary features without direct compensation, except as otherwise provided.

The Contractor shall not close any road to the public except by express permission of the appropriate engineering authority. When the road under construction is being used by the traveling public, special attention shall be paid to keeping the subgrade and surfacing in such condition that the public can travel over same in comfort and safety. The Contractor shall cooperate with the appropriate officials in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights to protect the Work and the safety of the public. Contractor shall comply with the provisions of any and all applicable Traffic Safety Manuals which may be published by a governmental entity having jurisdiction over the project area. All barricades, signs and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept burning from sunset to sunrise. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence of such damage is found prior to acceptance, the Engineer or Owner's Representative may order the damaged portion immediately removed and replaced by the Contractor without cost to the Owner if, in its opinion, such action is justified. The Contractor's responsibility for necessary barricades, signs and lights shall not cease until the Project shall have been accepted.

F. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other authorities having jurisdiction thereover.

G. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed, the number and size of the charges shall be reduced. The Contractor shall notify the proper representative of any public service corporation, any company, or any individual, at least 8 hours in advance of any blasting which may damage its or their property, on, along, or adjacent to the Site. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "DANGEROUS EXPLOSIVES," and shall be in care of competent watchmen at all times.

## 6.12 EMERGENCIES

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

## 6.13 PLANS AND SHOP DRAWINGS

A. The approved Plans will show details of all structures; lines and grade of roadways and utility systems, typical cross-sections of roadways; character of foundation; location and designation of all structures; and the general arrangement of circuits and outlets, location of switches, panels and other Work.

B. Drawings and Specifications are complementary each to the other, and what is called for by one shall be as binding as if called for by both. Data presented on Drawings are as accurate as planning can determine, but accuracy is not guaranteed. As such, Contractor shall not rely upon such data. Instead, Contractor shall perform field verification of all dimensions, locations, levels, etc., to suit field conditions. The Contractor shall review all structural and mechanical plans and adjust all Work to conform to all conditions shown therein. The mechanical Drawings shall take precedence over all other Drawings.

C. Discrepancies between different Plans, or between Plans and Specifications, or regulations and codes governing the installation shall be brought to the attention of the Engineer in writing as soon as said discrepancies are noticed. In the event such discrepancies exist and the Engineer is not so notified, the Engineer shall reserve the right to exercise sole authority in making final decisions in resolution of such a conflict. It is mutually agreed that all authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the Engineer. When at any time reference is made to the "**Plans**", the interpretation shall be the Plans as affected by all authorized alterations

then in effect. Plans will be supplemented by such Shop Drawings to be prepared by Contractor as are necessary to adequately control the Work.

D. After checking and verifying all field measurements and approving of Shop Drawings, Contractor shall submit to Engineer for review, in accordance with the accepted schedule of Shop Drawing submissions, six copies (unless otherwise specified in the Supplementary Conditions) of all Shop Drawings, which shall have been checked by and stamped with the approval of Contractor and identified as Engineer may require. The date shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Engineer to review the information as required.

E. At the time of each submission, Contractor shall in writing call Engineer's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

F. Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to satisfy precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make any corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for Engineer's review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved in writing by the Engineer.

H. Engineer's review of Shop Drawings or samples shall not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings.

I. The cost of furnishing all Shop Drawings shall be borne by the Contractor.

J. Finished surfaces in all cases shall conform with lines, grade, cross-sections and dimensions shown on the Plans. Any deviations from the Plans and working Drawings, as may be required by the demands of construction, will in all cases be determined by the Engineer and authorized in writing.

K. The Plan and Specifications, and all supplementary plans and documents, are essential parts of the Contract, and a requirement occurring in one is just as binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. The Contractor shall not take advantage of any apparent error or omission in the Plans or Specifications. In the event the Contractor discovers any apparent conflict, error or discrepancy, it shall immediately submit a written request for information to the Engineer for its interpretation and the Engineer's decision shall be final. Any apparent error or discrepancy must be resolved before Contractor proceeds with the Work affected thereby.

#### **6.14 CONSTRUCTION STAKES**

A. Unless otherwise directed in the Supplementary Conditions, the Owner will furnish and set construction stakes establishing all lines, grades, and measurements necessary for the proper execution of the Work contracted for under these Specifications. The Contractor shall request that Engineer provide engineering surveys and placement of construction stakes no less than 48 hours prior to the time such service is needed. The Contractor shall satisfy itself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors which may have been made in laying out the Work. The Contractor shall be held responsible for the proper preservation of all marks and stakes. Stakes provided by the Owner, which must be reset after initial placement, will be replaced at Contractor's expense at the current billable rate for a three-person survey crew unless the stakes were removed or destroyed by causes beyond the Contractor's control. Said cost may be deducted from any funds due the Contractor.

B. The Engineer and Owner's Representative shall be authorized to inspect Work done and material furnished. Such observation may extend to any part of the Work and to preparation, fabrication, or manufacture of the materials to be used. The Engineer and Owner's Representative is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. The Engineer and Owner's Representative shall have the authority to reject materials or suspend the Work not conforming to Contract Documents until any questions at issue can be referred to and decided between the Engineer



and the Owner. If the Contractor refuses to suspend operations on verbal order, the Engineer or Owner's Representative may issue a written order giving the reason for shutting down the Work. Work done during such a suspension will not be accepted nor paid for. A subsequent written order from the Owner or Owner's Representative is necessary to release a written suspension order. The Engineer and Owner's Representative shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the Contractor. Any advice which the Engineer or Owner's Representative may give the Contractor shall in no way be construed as releasing the Contractor from fulfilling all of the terms of the Contract, nor as modifying the requirements of the Contract Documents.

## **6.15 PRIVATE PROPERTY AND EXCAVATION**

A. The Contractor shall not enter upon private property for any purpose without first obtaining permission, and it shall be responsible for the preservation of all public and private property, trees, fences, monuments, underground structures, etc., on and adjacent to the Site and shall use every precaution necessary to prevent damage or injury thereto. It shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. It shall be responsible for all damage or injury to property or any character resulting from any act, omission, neglect or misconduct in its or any Subcontractor's manner, or method of executing said Work, or due to its or any Subcontractor's non-execution of said Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the Work has been completed and accepted. The Contractor's attention is directed to the importance of protecting all public utilities encountered on all projects. These may include telephone, telegraph and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities. Before any excavation is begun in the vicinity of water lines, railroad tracks or structures, sewer lines, gas lines, or telephone conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility company concerned is on the ground and has designated the location of their facilities. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor or Subcontractor, Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed, or it shall make good

such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or to have started action to make good such damage or injury, the Engineer or Owner's Representative may, upon forty-eight (48) hours' notice, proceed to direct the repair, rebuilding of or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted for any moneys due or which may become due the Contractor under the Contract. The cost of damages due to Contractor's operation or cost of protecting utilities where required to permit construction under these Contract Documents shall be included in the original Agreement Prices for the Project.

## **PART 7 COORDINATION OF WORK**

### **7.01 OWNER'S RIGHT TO PERFORM**

A. Owner may perform additional Work related to the Project by itself, or have additional Work performed by utility service companies, or let other direct contracts therefor which shall contain general conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or Owner, if Owner is performing the additional Work with Owner's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs, and shall conduct its operations as to minimize the interference with theirs, as directed by Engineer.

### **7.02 CONTRACTOR TO COORDINATE**

A. If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility service company (or Owner), Contractor shall inspect and promptly report to Engineer in writing any patent or apparent defects or deficiencies in such work that renders it unsuitable for such proper execution and results. Contractor's failure so to report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work. Such acceptance by Contractor shall render him responsible for subsequent correction of any such work.

B. Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected.

C. If the performance of additional work by other contractors or utility service companies or Owner was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work. If the performance of such additional work not noted in the Contract Documents causes unavoidable additional expense to Contractor or causes unavoidable delay in Contractor's prosecution of the Work, Contractor may make a claim therefore as provided in Parts 11 and 12 respectively.

## **PART 8 OWNER'S RESPONSIBILITIES**

### **8.01 COMMUNICATIONS**

A. Except as otherwise provided expressly herein, Owner shall issue all communications to Contractor through Engineer or the Owner's Representative.

B. Nothing herein or otherwise shall prevent Owner from communicating directly with Contractor's subcontractors (at any tier) concerning issues affecting the Work or payment for the Work.

## **PART 9 STATUS OF ENGINEER DURING CONSTRUCTION**

### **9.01 DUTIES OF ENGINEER**

A. The duties and responsibilities and the limitations of authority of Engineer during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

### **9.02 VISITS TO SITE**

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

### **9.03 CLARIFICATIONS AND INTERPRETATIONS**

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall

be consistent with or reasonably inferable from the overall intent of the Contract Documents.

#### **9.04 REJECTING DEFECTIVE WORK**

A. Engineer will have authority to disapprove or reject Work, which is defective, and will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04.B, whether or not the Work is fabricated, installed or completed.

#### **9.05 DECISIONS ON DISAGREEMENTS**

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render in writing within a reasonable time. Written Notice of each such claim, dispute and other matter shall be delivered by the claimant to Engineer and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within forty-five (45) days of such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In its capacity as interpreter and judge Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith and in accord with professional standards in such capacity.

B. Notwithstanding Paragraph E of Part 10 of the Owner-Contractor Agreement, the rendering of a decision by Engineer pursuant to Paragraph 9.06.A with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 14.11.A) or the determination by Engineer that it shall not render a decision with respect thereto, will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under Part 21 hereof.

#### **9.06 LIMITATIONS ON ENGINEER'S AND OWNER'S RESPONSIBILITIES**

A. Neither Engineer's nor Owner's authority to act under this Part 9 or elsewhere in the Contract Documents nor any decision made by Engineer or Owner in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer or Owner to Contractor, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or

any of their agents or employees or any other person performing any of the Work.

B. Whenever in the Contract Documents the terms “as ordered,” “as directed,” “as required,” “as allowed” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper” or “satisfactory” or adjectives of like effect or import are used, to describe requirements, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that Engineer shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Paragraphs 9.07.C or 9.07.D.

C. Engineer will not be responsible for Contractor’s means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

D. Neither Engineer, nor Owner, nor Owner’s Representative will be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor or Subcontractor, or of any other persons at the Site or otherwise performing any of the Work.

## **PART 10 CHANGES IN THE WORK**

### **10.01 OWNER MAY ORDER CHANGES**

A. Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Orders or Change Orders. Upon receipt of a Field Order or Change Order, Contractor shall promptly proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Agreement Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Part 11 or Part 12. Only changes authorized by a Change Order or Field Order shall be binding on the Owner.

B. The Engineer, by Field Order only, may authorize minor changes in the Work which do not require an adjustment in the Agreement Price or the Contract Time and which are consistent with the overall intent of the Contract Documents. The Contractor shall perform changes authorized by a Field Order in a timely fashion and as specified in the Field Order.

C. Additional Work performed without authorization of a Change Order will not entitle Contractor to an increase in the Agreement Price or an extension of the Contract Time, except in the case of an emergency, as provided in Paragraph 6.12.A.

D. If Notice of any change affecting the general scope of the Work or change in the Agreement Price is required by the provisions of any Bond to be given to the Surety, it will be Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to Owner.

E. If Owner and Contractor are unable to agree to an adjustment in the Agreement Price or Contract Time of a Change Order, as provided in Parts 11 and 12 herein, the Owner may issue the Change Order without an adjustment and the Parties may proceed to Dispute Resolution pursuant to Part 21. The Contractor shall promptly perform any such Change Order. Alternatively, the Owner reserves the right to perform the Work described in the Change Order directly or to hire other contractor(s) to perform said Work. In this case, the Contractor shall not be entitled to any increase in the Agreement Price, nor to any additional cost or fees, nor to any extension of the Contract Time, and the Contractor shall permit free access to the Site by the Owner or any other contractor engaged by Owner to perform said Work.

## **PART 11 AGREEMENT PRICE AND CHANGES**

### **11.01 AGREEMENT PRICE CHANGED ONLY BY CHANGE ORDER**

A. The Agreement Price constitutes the total compensation (subject to authorized adjustments by Change Order) payable to Contractor for performing the Work and is based on unit prices. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Agreement Price.

B. The Agreement Price may only be changed by a Change Order signed and approved by Contractor and Owner. When Contractor and Owner agree upon a price for extra or changed Work by way of a Change Order, Contractor and Owner agree that the price set forth in the Change Order shall be based on unit prices set forth in the Agreement, unless the parties otherwise agree.

C. The Owner, through the Engineer or Owner's Representative, may request changes to the Agreement for additional Work or a reduction in the Work or in response to claims by Contractor not quantifiable by unit prices set forth in the Agreement. In such case, Change Order pricing and time extension analysis shall be in accordance with the following:

1. The Engineer or Owner's Representative shall submit to the Contractor a "**Request for Proposal**" outlining the scope of Work contemplated for said construction changes.
2. The Contractor shall submit within fourteen (14) days of receipt of a "**Request for Proposal**" (or within such shorter period of time as may be reasonably designated by the Owner) a complete cost and fee and time extension analysis for the proposed change which shall include detailed supporting documentation to the satisfaction of the Owner and Engineer.

D. If the Contractor believes extra compensation is due for Work or materials not clearly covered in the Agreement, or not ordered in writing by the Owner or Engineer, it must, prior to beginning the Work on which it bases the claim, submit in writing to the Engineer and the Owner its intention to make a claim for such extra compensation and must afford the Engineer every facility for keeping track of the actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by Contractor and the keeping account of costs by the Engineer shall not in any way be construed to prove the validity of the claim. When such Work has been completed, the Contractor shall within fifteen days file its claim for extra compensation with the Engineer, including an itemization of all items for which extra compensation is requested and documentation reasonably satisfactory to Owner. Engineer shall present the claim to Owner with Engineer's recommendations.

E. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price shall be determined in one of the following ways:

1. On a unit price basis stated in the Contract Documents and subsequently agreed upon;
2. On the basis of the estimated Cost of the Work (determined as provided in Paragraph 11.02) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraph 11.03.B);
3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or
4. In any other manner agreed upon by the parties.

F. Notwithstanding anything in the Contract Documents to the contrary, 29 (representing overhead and profits) on any Work covered by a Change

Order or of any claim for an increase or decrease in the Agreement Price, shall be limited in the following ways:

1. For Work performed by subcontractors and/or suppliers (of any tier), such subcontractors and/or suppliers may apply markup of not more than 7% of the Cost of the Work covered by a Change Order or claim;
2. For Work performed by subcontractors and/or suppliers (of any tier), Contractor may apply markup of not more than 7% of the Cost of the Work covered by a Change Order or claim;
3. For self-performed Work, Contractor may apply markup of not more than 5% of the Cost of the Work covered by a Change Order or claim; and
4. Except as specifically permitted by Sections 1 thru 3 of this Part 11.01 (F), there shall be no other markup, profit, or fee of any kind on Work covered by a Change Order or any claim for an increase or decrease in the Agreement Price. Contractor and its subcontractors and/or suppliers shall provide reasonable documentation (including receipts or other supporting documentation) of the Cost of the Work covered by a Change Order or claim to ensure that markup has been applied appropriately in accordance with the Contract Documents.

## 11.02 COST OF THE WORK

A. The term “**Cost of the Work**” means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.02.B. Whenever the cost of any Work is to be determined pursuant to Paragraphs 11.02.A and 11.02.B, Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Payroll cost for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but shall not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers’ or workmen’s compensation.



Such employees shall include superintendents and foremen at the Site. The expenses of performing Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

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

3. Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

5. Supplementary costs include the following:

(a) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.

(b) Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – all in accordance with terms of said rental agreements. The rental of any such equipment,

machinery or parts shall cease when the use thereof is no longer necessary for the Work.

(c) Any sales, use or similar taxes related to the Work, if applicable, and for which Contractor is liable, imposed by any governmental authority.

(d) Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.

(e) Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor or in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated in Paragraph 11.03.A.

(f) Cost of premiums for additional Bonds and insurance required because of changes in the Work.

(g) The proportion of necessary, transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

(h) The cost of utilities, fuel and sanitary facilities at the Site.

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

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Site or in its principal or a branch office

for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in subparagraph 11.02.A.1—all of which are to be considered administrative costs covered by the Contractor's Fee as defined in Paragraph 11.03.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).
5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.02.A.

### **11.03 CONTRACTOR'S FEE**

A. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:
  - (a) For costs incurred under Paragraphs 11.02.A.1 and 11.02.A.2, the Contractor's Fee shall be 3%; and
  - (b) For costs incurred under Paragraph 11.02.A.3, the Contractor's Fee shall be 3%; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be 1% as set forth in Paragraph 11.03.A.1.a; and
  - (c) No fee shall be payable on the basis of costs itemized under Paragraphs 11.02.A.4, 11.02.A.5, and 11.02.B.

B. The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined fee shall be figured on the basis of the next increase if any.

## **PART 12 CONTRACT TIME AND CHANGES**

### **12.01 DETERMINATION AND EXTENSION OF CONTRACT TIME**

A. The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work contracted, within the number of calendar days stipulated in the Agreement. Time will be assessed against the Contractor in accordance with the Notice to Proceed. If the Contractor does not begin the Work within the limit designated in the Notice to Proceed, the calendar days shall start on the first calendar day after the last permissible starting date as set forth in the Notice to Proceed. If the satisfactory execution and completion of the Work shall require Work or materials in greater amounts or quantities than those set forth in the Contract Documents, then the Contract Time may be increased as negotiated between Contractor and Engineer or Owner's Representative and accepted by Owner as set forth in a Change Order. In general, extensions to the completion period for the Contract Documents will not be approved, regardless of cause for claim.

No allowances will be made for delays or suspensions of the prosecution of the Work due to the fault of the Contractor.

### **12.02 CONTRACT TIME CHANGED ONLY BY CHANGE ORDER**

A. The Contract Time may only be changed by a Change Order. If Contractor desires to make any claim for an extension in the Contract Time, as a result of any alleged delays, it shall give immediate verbal notification to Engineer followed by written notice delivered to Owner's Representative and Engineer within five days of the occurrence of the event giving rise to the Claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days of such occurrence unless Engineer or Owner's Representative allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by Engineer if Owner and Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

B. Where, due to delays beyond the control of Contractor, such as acts or omissions of the Owner or others performing work as contemplated by Part 7 or to fires, floods, labor disputes, epidemics, acts of God, or to abnormally inclement weather conditions, which allegedly cause

unavoidable delay to the Contractor's prosecution of the Work and the Contractor is prevented from completing any part of the Work within the Contract Time or within scheduled milestones, Contractor may be entitled to request an extension of time equal to the time unavoidably lost and/or an increase in the Agreement Price equal to the general conditions costs unavoidably incurred by Contractor; provided, however, that Contractor shall not be entitled to an increase in the Agreement Price to the extent that any of the delays described by this Part 12.02 (B) occur concurrently with any delays caused (in whole or in part) due to the fault of the Contractor or those for whom Contractor is responsible. Weather conditions shall only be considered abnormally inclement if there was greater than normal inclement weather considering the term of the contract and the ten-year average of accumulated record mean values from data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale of the Work.

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

**PART 13      WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS;  
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**13.01      WARRANTY AND GUARANTEE**

A. Contractor warrants and guarantees to Owner and Engineer that, without exception, all Work will be in accordance with the Contract Documents and will not be defective. Four copies of all manufacturer's guaranties or certificates that are required by the Contract Documents shall be submitted to Owner through Engineer prior to acceptance of the Work. No exceptions to Contract Documents and guarantee or warranty requirements are permitted. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Part 13.

**13.02      ACCESS TO WORK**

A. Engineer and Engineer's representatives, other representatives of Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

**13.03      TESTS AND INSPECTION**

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.

B. If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) specifically to be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with Owner's or Engineer's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by Owner (unless otherwise specified), except that the cost of re-testing of materials and equipment as a direct result of a failure to pass a specified test shall be paid by Contractor.

C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to Owner and Contractor (or by Engineer, if so specified).

D. If any Work that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.

E. Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

F. Any Work outside the normal five (5) day, forty (40) hour week may require that the Engineer be on the job. All inspection so required shall be done at the Engineer's expense at the Engineer's current billable rates and the cost thereof shall be deducted from any funds due Contractor. The Contractor shall notify the Engineer at least 24 hours in advance of starting any such overtime Work.

#### **13.04 UNCOVERING WORK**

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

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Engineer shall issue a Field Order so directing and Contractor shall thereupon uncover, expose

or otherwise make available for observation, inspection or testing, as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing, and all expenses for satisfactory correction or reconstruction of the defective Work, including, for all of the foregoing tasks, compensation for additional professional services required. Contractor shall not request payment for, nor shall Contractor be entitled to compensation for such expenses. If the Work is found not to be defective, Contractor shall be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, for any expense or delay directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, provided that Contractor submits a verified claim as provided in Parts 11 and 12 within 20 days of performing any such tasks.

### 13.05 OWNER MAY STOP THE WORK

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

### 13.06 CORRECTION OR REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

A. If required by Engineer, Contractor shall promptly, without cost to Owner and as specified by Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the Site and replace it with non-defective Work. Work done without lines and grades having been given, Work done beyond the lines and grades shown on the Plans, or as given, except as herein provided, Work done without proper inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to prices, will be done at the Contractor's risk and will be considered unauthorized and, at the option of the Engineer, may not be measured and paid for and may be ordered removed and replaced at the Contractor's expense.

### 13.07 TWO YEAR CORRECTION PERIOD

A. If within **two (2) years** after the date of final acceptance by Owner or another entity as might be appropriate, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the

Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions within seven (7) days after Owner's issuance of written instructions, correct the defective Work at Contractor's cost. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. Contractor shall also pay for any damage done to other Work, other property or persons which occurred as a result of the defective Work within the correction period.

### **13.08 ACCEPTANCE OF DEFECTIVE WORK**

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. In such case, if acceptance occurs prior to Engineer's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Agreement Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to Owner.

### **13.09 OWNER MAY CORRECT DEFECTIVE WORK**

A. If Contractor fails within a reasonable time after written notice to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer or Owner's Representative in accordance with Paragraph 13.06.A, or in accordance with Paragraph 13.07.A, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), Owner may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph Owner shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees such access to the Site as may be necessary to enable Owner to exercise its rights under this paragraph. All direct and indirect costs of Owner in exercising such rights shall be charged against Contractor in an amount verified by Engineer, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Agreement Price. Such direct and indirect costs shall



include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights hereunder.

B. If it becomes necessary for Owner to take over the completion of the Work, all of the amounts owing to Contractor, including the withheld retainage, shall be applied: (i) first, toward the cost of completion of the Work; (ii) second, toward performance of Owner's withholding requirement set forth in section 38-26-107, C.R.S.; (iii) third, to the surety furnishing bonds for the contract work, to the extent such surety has incurred liability or expense in completing the contract work or made payments pursuant to section 38-26-106, C.R.S.; then, (iv) to Contractor. Such retained amounts as may be due Contractor shall be due and payable at the expiration of thirty days from the date of final acceptance by Owner of the Work.

## **PART 14 CONSTRUCTION SCHEDULE, PAYMENTS TO CONTRACTORS AND COMPLETION**

### **14.01 SCHEDULES**

A. Within ten (10) days after issuance of the Notice to Proceed and at least ten days prior to submitting the first application for a progress payment, the Contractor shall prepare and submit to Owner the progress schedule listing all Work tasks required, duration of tasks, sequence of Work, significant milestone events; and a schedule for Shop Drawing submission. These schedules shall be satisfactory in form and substance to the Owner and the Engineer and shall employ the CPM or PERT method if so directed in the Supplementary Conditions. The progress schedule shall be an accurate reflection of the Work to be performed by Contractor. The progress schedule shall be subject to the review and concurrence of Owner, but Owner's concurrence shall not constitute any guarantee or warranty by Owner that the Work can be performed as scheduled. Notwithstanding Owner's review and concurrence of the progress schedule, Contractor shall be paid only according to its completion of the items contained in the Bid Form and not according to the progress schedule. The Contractor shall provide updated written progress reports to Owner on a weekly basis.

B. The schedules contained in the Bid Form shall be incorporated into the form for Application for Payment. The Contractor shall revise the schedule contained in the Bid Form if requested by Owner. The Contractor may include on its Application for Payment, payment for materials stored at the Site, provided that title to such materials will pass to the Owner at the time of payment free and clear of all claims, security interests and encumbrances, are insured and properly stored and protected.

## 14.02 APPLICATION FOR PROGRESS PAYMENTS

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit to Engineer and Owner's Representative for review an Application for Payment for the previous month, completed and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as Owner's Representative may reasonably require. Each subsequent Application for Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor's obligations reflected in prior Applications for Payment. A waiver of claim for partial payments also will be required to be executed by Contractor prior to payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. The determination of quantities of Work acceptable completed under the terms of the Contract Documents, will be made by the Engineer and based on measurements taken by Engineer or its assistants and/or observations in the field. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on plans or specified. Structures shall be measured as shown on the plans. When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly marked on said vehicle and the capacity or marking shall not be changed without permission of the Engineer. The Engineer may require all vehicles to have uniform capacity.

C. No progress payment except final payment will be made for a sum of less than \$1,000.00. The estimates will be approximate only, and all partial or monthly estimates and payments shall be subject to correction in

the estimate rendered following discovery of an error in any previous estimates. Should any defective Work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the Work completed previous to the final payment, there will be deducted from the first estimate rendered after the discovery of such Work an amount equal in value to the defective or questioned Work, and this Work will not be included in a subsequent estimate until the defects have been remedied or the causes for doubt removed.

#### **14.03** CONTRACTOR'S WARRANTY OF TITLE

A. Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner at the time of payment free and clear of all claims, security interests and encumbrances (hereafter in these General Conditions referred to as "**Claims**").

#### **14.04** REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

A. Owner's Representative will, within ten (10) days after receipt of each Application for Payment either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Owner's Representative reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

B. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative to Owner, based on Owner's Representative's on-site observations of the Work in progress as an experienced and qualified design professional, and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; and that, to the best of Owner's Representative's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation.) However, by recommending any such payment, Owner's Representative will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to Contractor on account of the Agreement Price, or that title to any Work, materials or equipment has passed to Owner free and clear of any Claims.

C. Owner's Representative may refuse to recommend, and Owner may refuse to pay, the whole or any part of any payment if, in their opinion, it would be incorrect to make such payment. They may also refuse to recommend to make any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Engineer's or Owner's opinion to protect Owner from loss because:

1. The Work is defective, or completed Work has been damaged requiring correction or replacement,
2. Written claims have been made against Owner or claims have been filed in connection with the Work,
3. The Agreement Price has been reduced because of modifications,
4. Owner has been required to correct defective Work or complete the Work in accordance with Paragraph 13.09.A.,
5. Of Contractor's unsatisfactory prosecution of the Work in accordance with the Contract Documents, or
6. Of Contractor's failure to make payment to Subcontractors for labor, materials, or equipment.

#### **14.05 SUBSTANTIAL COMPLETION**

A. When Contractor considers the entire Work ready for its intended use, Contractor shall, in writing to Owner and Engineer, certify that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving its reasons therefor. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Owner a tentative certificate of Substantial Completion. There shall be attached to the certificate a punch list of items to be completed or corrected before Project completion and final payment.

#### **14.06 PARTIAL UTILIZATION**

A. Use by Owner of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. Owner at any time may request Contractor in writing to permit Owner to use any part of the Work which Owner believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If Contractor agrees, Contractor will certify to Owner and Engineer that said part of the Work is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of that part of the Work to determine its status of completion. Prior to Owner's use, Engineer will deliver to Owner and Contractor a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance and correction periods for that part of the Work which is binding upon Owner and Contractor as to that part of the Work, unless Owner and Contractor shall have otherwise agreed in writing or shall object to the Engineer in writing within (15) days of receiving Engineer's recommendations. Owner shall have the right to exclude Contractor from any part of the Work which Owner uses, but Owner shall allow Contractor reasonable access to complete or correct items on the punchlist.

2. In lieu of the provisions of Paragraph 14.06.A.1., Owner may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately useable; provided that prior to any such takeover, Owner and Contractor have agreed as to the division of responsibilities between Owner and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

3. No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to acknowledgment from the insurers providing the property insurance on the Work that notice of such occupancy has been received and that said insurers, in writing have effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

## **14.07 FINAL INSPECTION**

A. Upon written notice from Contractor to the Engineer that the Work is complete and that all items on the punch list have been completed, Engineer will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals

that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

#### **14.08 FINAL APPLICATION FOR PAYMENT**

A. After Contractor has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents—all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions of Paragraph 14.11.A), Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as Engineer may reasonably require, together with complete and legally effective releases or waivers (satisfactory to Owner) of all claims arising out of or filed in connection with the Work. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. In lieu thereof and as approved by Owner, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any claim.

#### **14.09 FINAL PAYMENT AND ACCEPTANCE**

A. If, on the basis of Engineer's observation of the Work, during construction and final inspection, and Owner's Representative's review of the final Application of Payment and accompanying documentation—all as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, Owner's Representative will, within ten (10) days after receipt of the final Application for Payment, indicate in writing its recommendation of payment and present the Application to Owner for payment. Thereupon, Engineer will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.10.A. Otherwise, Engineer will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, and acceptable to Owner, Owner shall, within thirty (30) days after receipt thereof, cause publication to commence of Notice of Final Settlement in accordance with statutory requirements applicable to Owner. In the event no claims are made against Contractor in response to said publication, Owner shall pay Contractor the amount of final payment recommended by the engineer in accordance with the Notice of Final Settlement. In the event any claim(s) is made against Contractor, Owner shall withhold from all payments to such contractor sufficient funds to insure the payment of said claims until the same have been paid or withdrawn, such payment to be evidenced by filing with the Owner a receipt in full or an order for withdrawal in writing from claimant.

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

#### **14.10 CONTRACTOR'S CONTINUING OBLIGATION**

A. The Contract Documents will be considered complete when all Work has been finished, the final inspection made and the Work finally accepted by the Engineer, all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled by the

Contractor or its Surety and final payment has been made by Owner. The Surety Bond executed from performance of the Contract Documents shall be in full effect for a period equal to the warranty correction period following the date of initial acceptance by Owner or another public entity as might be appropriate.

B. Notwithstanding the provisions of Paragraph 14.10.A., Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor the issuance of a Notice of Acceptability by Engineer pursuant to Paragraph 14.09.A., nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

## **PART 15      SUSPENSION OF WORK AND TERMINATION**

### **15.01      ENGINEER OR OWNER MAY SUSPEND WORK**

A. The Engineer, in consultation with Owner when time permits, shall have the authority to suspend the Work wholly or in part because of unfavorable weather or other essential conditions, or because of the failure on the part of the Contractor to properly prosecute the Work in accordance with the Contract, to carry out orders or to remove defective material or Work. The Contractor shall not suspend the Work without written authority from Owner or Engineer. Prior to resuming Work, Contractor shall give the Engineer adequate notice to afford opportunity to re-establish observation and inspection of Work being performed.

B. In the event the Contractor is ordered by the Engineer, in writing, to suspend Work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of suspension. No allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in the written order for Work to cease until the date of the order for Work to resume. Claims for such reimbursement shall be filed with the Engineer within ten (10) days after date of the order to resume Work or such claims will not be considered. The Contractor shall submit with its claims, substantiating papers covering the entire amount shown on the claim. After receiving relevant information from the Engineer, the Owner shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim



and such decision shall be final. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the Specifications.

C. Owner may at any time suspend the Work or any portion thereof without cause for a period of not more than ninety (90) days by notice in writing to the Contractor and Engineer which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, directly attributable to such suspension if it makes a claim therefor as provided in Parts 11 and 12.

## **15.02 OWNER MAY TERMINATE**

A. Upon the occurrence of any one or more the following events, Owner may terminate the Agreement:

1. If Contractor is adjudged a bankrupt or insolvent,
2. If Contractor makes a general assignment for the benefit of creditors,
3. If a trustee or receiver is appointed for Contractor or for any of Contractor's property,
4. If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
5. If Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
6. If Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials or equipment,
7. If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,
8. If Contractor disregards the authority of Engineer,
9. If Contractor fails to commence Work as prescribed in the Notice to Proceed,
10. If Owner secures substantial evidence that progress of the Work by the Contractor is insufficient to complete the Work within the Contract Time,

11. If Contractor repeatedly fails to observe any requirement of these Specifications,
12. If Contractor fails to promptly make good any defects in materials or Work or any defects of any other nature, the correction of which has been directed in writing by the Engineer,
13. If Contractor fails to promptly disburse payment or retainage to subcontractors upon its receipt of such payment from Owner;
14. If Contractor fails to remedy any default under the Contract Documents within seven (7) days of receipt of Notice of such default from Owner, or
15. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents.

B. Before the Agreement is terminated, the Contractor and its Surety will first be notified in writing by the Engineer of the conditions which make termination of the Agreement imminent. Seven (7) days after this notice is given, if efforts satisfactory to the Owner have not been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Agreement terminated and notify the Contractor and its Surety accordingly. Upon receipt of notice from the Owner that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The Owner may then proceed with the Work in any lawful manner that it may elect until the Work is finally completed. Owner may exclude Contractor from the Site and take possession of the Work and all Contractor's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Agreement Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, including but not limited to fees and charges of engineers and attorneys and any court or arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Engineer and incorporated in a Change Order, but in finishing the Work, Owner shall not be required to obtain the lowest figure for the Work performed.

C. Where Contractor's services have been so terminated by Owner, the termination shall not affect any rights of Owner against Contractor then

existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

### **15.03 CONTRACTOR MAY STOP WORK OR TERMINATE**

A. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or Owner fails for forty-five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to Owner and Engineer, terminate the Agreement and recover from Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if Engineer has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven (7) days' notice to Owner and Engineer stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of its obligations under Paragraph 21.01.B. to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with Owner.

### **15.04 OWNER MAY TERMINATE FOR CONVENIENCE**

A. The Owner may terminate the performance of Work under the Contract Documents in accordance with this section without cause and in the Owner's sole and absolute discretion. Such termination may be in whole, or from time to time, in part. Any such termination shall be effected by delivery of a written notice of termination to the Contractor specifying the extent to which performance of Work under the Contract Documents is terminated and the date upon which termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the Contract Documents on the date and to the extent specified in the notice of termination.
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract Documents which is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
4. Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of

the Contractor under the orders and subcontracts so terminated. The Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent it may require. Its approval or ratification shall be final for all purposes of this clause.

6. Transfer to the Owner and deliver in the manner, at the times, and to the extent, if any directed by the Owner:

(a) The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

(b) The completed or partially completed plans, drawings, information, and other property which, if the Project had been completed would have been required to be furnished to the Owner.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the Owner directs or authorizes, any property of the types referred to in Paragraph 15.04.B.6., but the Contractor:

(a) shall not be required to extend credit to any purchaser; and

(b) may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract Documents or shall otherwise be credited to the Agreement Price or cost of the Work covered by the Contract Documents or paid in such other manner as the Owner may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.

9. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Project which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

C. After receipt of a notice of termination, the Contractor shall submit to the Owner its termination claim (calculated in accordance with the provisions of paragraph 15.04.E.), in the form and with the certification the Owner prescribes. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such sixty (60) day period or authorized extension. However, if the Owner determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such sixty (60) day period or extension. If the Contractor fails to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to Owner, the amount, if any, due to Contractor because of the termination. The Owner shall then pay to the Contractor the amount so determined.

D. Subject to the provisions of this paragraph, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of Work under this subsection. The amount or amounts may include a reasonable allowance for profit on Work done if acceptable to Owner. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of the portion of the Work not terminated. The Contract Documents shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in this paragraph prescribing the amount to be paid to the Contractor in the event of the failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor because of termination of Work under this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. If the Contractor and the Owner fail to agree on the whole amount to be paid to the Contractor because of the termination of Work under this section, the Owner shall determine, on the basis of information available to Owner, the amount, if any, due to the Contractor by reason of the termination and shall pay the Contractor the amounts determined as follows:

1. For all Contract Work performed before the effective date of the notice of termination the total (without duplication of any items) of:

- (a) The reasonable costs actually incurred by Contractor for work performed prior to termination. Reasonable costs shall not include any overhead expenses, including but not limited to, rent, insurance, supervision, superintendents,

timekeepers, clerks, expeditors, watchmen, small tools, incidental job burdens and general office expenses.

(b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as Paragraph 15.04.B.3. above provides. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made.

2. The total sum to be paid to the Contractor shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Owner, of property to the extent that it is undeliverable to the Owner, or to a buyer under Paragraph 15.04.B.7. of this Part 15. **If the parties do not reach agreement under Paragraph 15.04.D. and the Owner utilizes this Paragraph 15.04.E., no allowance for profit shall be included in the calculation of the sum to be paid to Contractor.**

F. The Contractor shall have the right to dispute under the Disputes provision hereof any determination the Owner makes under this Part 15. But, if the Contractor has failed to calculate and submit its claim according to the provisions provided in Paragraph 15.04.C. and has failed to request an extension of time, it shall have no such right of appeal. In any case, where the Owner has determined the amount due, the Owner shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been made, the amounts so determined by the Owner; or
2. If a dispute proceeding is initiated, the amount finally determined in such dispute proceeding.

G. In arriving at the amount due to the Contractor under this clause there shall be deducted:

1. All unliquidated advance or other payments on account therefor made to the Contractor, applicable to the terminated portion of the Work.
2. Any claim which the Owner may have against the Contractor in connection with the Contract Documents.

3. The agreed price for, or the proceeds of the sale of, any materials, supplies or other things kept by the Contractor or sold, under the provisions of this section, and not otherwise recovered by or credited to the Owner.

H. If the termination hereunder is partial, before the settlement of the terminated portion of the Contract Documents, the Contractor may file with the Owner or request in writing for an equitable adjustment of the price or prices specified in the Contract Documents relating to the continuing portion of the Work (the portion not terminated by the Notice of Termination). Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Work when the Contract Documents do not contain an established price for the continued portion.

## **PART 16 MISCELLANEOUS**

### **16.01 GIVING NOTICE**

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

Notice may also be given by facsimile, providing the notice is also immediately sent by first class mail, except in those cases which require an original to confirm the validity of a signature or other element of the document.

### **16.02 COMPUTATION OF TIME**

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

### **16.03 CORRECTION PERIOD**

A. Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time period relates only to the specific obligations under the Contract Documents which may be sought to be enforced, not to the time within

which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work.

#### **16.04 GENERAL**

A. Should Owner or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is responsible, the injured party shall notify the other party within a reasonable time of the first observance of such injury or damage.

B. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by Paragraphs 5.05, 6.05, 6.07, 6.11.B, 6.11D, 13.01.A, 13.06.A, 13.07.A, and 14.03.A and all of the rights and remedies available to Owner and Engineer under the Contract Documents, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any of or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

C. Should Owner determine that Contractor is performing in such a fashion that Contractor will not complete the Project timely, Owner shall give Contractor notice of Owner's determination and Contractor shall have fifteen (15) days from the issuance of Owner's notice within which to correct its performance and to furnish evidence satisfactory to Owner that the Project will be completed timely. In the event that Contractor does not within said fifteen (15) days correct its performance and furnish evidence satisfactory to Owner that the Project will be completed timely, Owner shall have the right to remove the Contractor and retain a replacement contractor to complete the Project. Owner may thereupon withhold all payments to Contractor until the replacement contractor has completed the Project and then determine what amounts, if any, are due Contractor.

### **PART 17 ADDRESSES**

#### **17.01 OWNER**

A. Owner is the quasi-municipal corporation and political subdivision of the State of Colorado named in the Agreement acting through its duly authorized agents. All notices, letters and communications directed to



Owner shall be addressed and delivered to Owner, with one (1) copy to Engineer, at the addresses listed below:

Owner Address: Cimarron Metropolitan District  
370 Interlocken Blvd Suite 500  
Broomfield, CO 80021  
Phone: (303) 439-6029  
Email: l.johnson@claconnect.com  
Attn: Lisa Johnson

with a copy to: CEGR Law  
44 Cook Street, Suite 620  
Denver, CO 80206  
Phone: 303-218-7200  
Email: mruhland@cegrlaw.com  
Attn: Matt Ruhland

## **17.02 ENGINEER**

A. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by the Engineer named in the Agreement and its duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to Engineer at the address set forth in Paragraph 17.01.D. in the Agreement.

## **17.03 CONTRACTOR/SURETY**

A. The business addresses of Contractor given in the Bid Form and Contractor's office at the Site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered. The business address of the Sureties as stated on the Bid Bond, the Performance Bond, and the Labor and Materials Payment Bond are hereby designated as the places to which all notices, letters, and other communications to such Sureties will be delivered.

## **17.04 CHANGE OF ADDRESS**

A. Either Owner, Contractor, Engineer, or Surety may change its address at any time by an instrument in writing delivered to the other parties.

## **PART 18 LIQUIDATED DAMAGES**

A. Time is an essential condition of the Contract. In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Contract Documents within the specified time limits set forth in Part 5 of the Agreement for such performance and

completion or within such further time as, in accordance with the provisions of this Contract, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the Owner for each and every day of the additional time in excess of the specified time limits and any granted extension thereof, the sum set forth in Part 5 of the Agreement as liquidated damages and not as a penalty. The parties agree that Owner will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The Owner shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due to the Contractor, or in manner set forth in Paragraph 21.01 or by either or both of these methods. Should the entire completion and final acceptance of the Work herein embraced, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that aside from any other penalty or damage, all costs of the engineering, observation and inspection on behalf of the Owner which are incurred after the specified time limits have elapsed may be charged to the Contractor and be deducted from any estimate or payment otherwise due and payable to him.

B. In case of joint responsibility for delay in the final completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one contractor for the delay shall be determined by, and in the judgment of, Engineer.

## **PART 19      EXISTING UNDERGROUND INSTALLATIONS**

A. Existing underground installations such as water lines, gas lines, sewers, telephone lines, power lines, or similar concealed structures in the vicinity of the Work are indicated on the Drawings only to the extent such information was made available to or discovered by Engineer in preparing the Drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. The Contractor acknowledges the inherent risk associated with the location of such installations, and it shall not seek to hold the Owner or Engineer responsible for any damages or delays in the event of any discrepancies associated with such installations. Generally, service connections are not indicated on the Drawings.

B. Contractor shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the Owners thereof and prospecting. Contractor shall use its own information and shall not rely upon any information indicated on the Drawings concerning existing underground

installations. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity.

C. The General Conditions provisions regarding Unforeseen Physical Conditions do not apply to the existing underground installations indicated in the preceding paragraphs. Any delay, additional Work, or extra cost to Contractor caused by underground existing installations shall not constitute a claim for extra Work, additional payment, or damages.

## **PART 20 STREAMLINED SPECIFICATIONS**

A. These Specifications are written in the streamlined or declarative style, utilizing incomplete sentences. Omissions of such words and phrases "The Contractor shall," "in conformity therewith," "shall be," "as shown on the Drawings," "a," "an," "the," and "all" are intentional in streamlined sections. Omitted words shall be supplied by inference in the same manner as when a note appears on the Drawings. The omission of such words shall not relieve the Contractor from providing all items and work described herein or indicated on the Drawings.

## **PART 21 HANDLING OF DISPUTES**

### **21.01 DISPUTES**

A. Unless otherwise mutually agreed in writing by Owner and the Contractor, all claims, disputes and controversies arising out of or relating to this Owner-Contractor Agreement or the breach thereof (collectively "**Dispute**") shall be resolved as follows:

Owner and Contractor shall, upon either party's written request sent certified mail, attempt to resolve the Dispute by non-binding mediation which will be conducted in accordance with the then effective Construction Industry Mediation Rules of the American Arbitration Association ("**AAA**") subject to modifications set forth herein. The parties shall jointly appoint a mutually acceptable mediator, but if they have not so appointed a mediator within ten (10) days after the written request for mediation is received by the recipient party, the AAA shall, upon written request of either party, appoint the mediator. The parties shall share equally in the costs of the mediator's fees and expenses and the AAA's fees and expenses.

In the event the Dispute is not resolved by such mediation within thirty (30) days after the date the written request for mediation is received by the recipient party, the Dispute shall be decided by arbitration in accordance within the then effective Construction Industry Arbitration Rules of the AAA, subject to the modifications set forth herein. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable

statutes of limitation. Any arbitration arising out of or relating to this Owner-Contractor Agreement, the Project, the Work, the Contract Documents, or the breach thereof may include by consolidation, joinder or in any other manner, at the Owner's option, any other entities or persons whom the Owner believes to be substantially involved in a common question of fact or law. In addition to any other damages or relief due, the arbitrator shall award to the prevailing party its reasonable attorney's fees, costs, and expenses payable by and from the non-prevailing party.

All mediation and arbitration proceedings shall be held in Jefferson County, Colorado, or such other place as the Owner may designate, and shall be conducted, and final dispositions shall be made, in accord with the laws of the State of Colorado.

B. The Contractor shall continue to perform the Work and adhere to the Contractor's construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

C. Engineer shall not be deemed or considered a third party beneficiary of the Agreement or Contract Documents, nor a party thereto.

## **PART 22 DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE AUTHORITY OF THE OWNER'S REPRESENTATIVE**

### **22.01 DESCRIPTION**

A. The Owner's Representative is the Owner's agent only for those purposes expressly authorized under the Contract Documents, and shall act as directed by and under the supervision of Owner. It shall confer with Owner regarding its actions. Its dealings in matters pertaining to the on-site work will in general be only with Engineer and Contractor. Its dealings with Subcontractors will only be through Contractor or its superintendent.

B. Owner shall provide Contractor with written notice of any change in the Owner's Representative.

### **22.02 DUTIES AND RESPONSIBILITIES**

#### **A. CONFERENCES:**

1. Attend Preconstruction Conferences and regular project meetings. Arrange a schedule of progress meetings and other job conferences as required and notify in advance those expected to attend. Conduct meetings and maintain and circulate copies of minutes thereof.

**B. LIAISON:**

1. Serve as Owner's liaison with Contractor and Engineer, working to help expedite the project to assure the scheduling requirements are met.

**C. MODIFICATIONS:**

1. Consider Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.

**D. REPORTS:**

1. Furnish Owner with periodic reports of progress of work and of Contractor's compliance with the approved progress schedule, schedule of Shop Drawing submissions, and other schedules.
2. Consult with Owner in advance of scheduled major tests, inspections, or start of important phases of work.

**E. PAYMENT REQUISITIONS:**

1. In cooperation with Engineer, review Application for Payment with the Contractor for compliance with the established procedure for its submission and forward it with recommendation to the Owner for payment.

**22.03 LIMITATIONS OF AUTHORITY**

A. Owner's Representative shall be limited in authority except upon written instructions of Owner as follows:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment, modifications or Change Orders.
2. Shall not undertake any of the responsibilities of Contractor, Subcontractor or Contractor's superintendent.
3. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.

**PART 23 SECTION 01200 SUSPENSION AND DEBARMENT PROCEDURE****23.01 PURPOSE AND APPLICABILITY**

A. The purpose of this Section is to set forth standards and procedures to be followed by the Owner for debarring or suspending persons or entities who are or may become a Bidder, Successful Bidder, or Contractor.

B. It shall be the responsibility of the Owner to administer the rules.

C. The rules shall govern the debarment or suspension of persons from performing any work for, submitting bids for, or otherwise in any manner participating in public projects under contract with the Owner.

### **23.02 CAUSES FOR SUSPENSION**

A. When the Owner has reasonable grounds to believe that the public health, safety, and welfare imperatively requires such action, the Owner may immediately suspend a Bidder, Successful Bidder, or Contractor prior to debarment proceedings from performing work or otherwise participating in public projects not already under contract and from submitting bids on public projects upon adequate evidence that a cause for debarment under Section 01200 may exist. Indictment on criminal charges shall constitute *per se* adequate evidence for purposes of suspension actions.

### **23.03 CAUSES FOR DEBARMENT**

A. Debarment may be imposed by the Owner for:

1. Conviction of or civil judgment for:

(a) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public project;

(b) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft;

(c) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging or any other violation of federal or state antitrust laws that relates to the submission of bid or proposals; or

(d) Commission of any other offense indicating a lack of business integrity or honesty.

2. A serious violation of the terms of a contract on a public project, such as:

- (a) A willful or material failure to perform in accordance with the terms of a contract on a public project;
  - (b) A history of substantial noncompliance with the terms of contracts on public projects; or
  - (c) A willful and material violation of a statutory or regulatory provision or requirement applicable to a contract on a public project.
3. Any of the following causes:
- (a) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for in Section 01200;
  - (b) Knowingly employing or doing business with a debarred, suspended or otherwise ineligible person, in connection with a public project;
  - (c) Conduct indicating a lack of business integrity or honesty in bidding or performing public projects;
  - (d) Submission of false or deceptive information or statements in connection with prequalification, bidding or performance of a public project;
  - (e) Failure to pay a substantial debt (including disallowed costs and overpayments) owed to any federal or state agency or instrumentality, but not including amounts owed under the Internal Revenue Code, provided the debt is uncontested by the debtor or, if contested, that the debtor's legal and administrative remedies have been exhausted;
  - (f) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action; or
  - (g) Any other cause so serious in nature that Owner has reasonable grounds to believe that the public health, welfare, or safety imperatively requires debarment.

## **23.04 PROCEDURES FOR SUSPENSION AND DEBARMENT**

A. Anyone may contact the Owner, Owner's Representative, or Engineer concerning the existence of a cause for Debarment. If the Owner, Owner's Representative, or Engineer becomes aware of information warranting Suspension or Debarment, as set forth in this

Section 01200, then Suspension or Debarment or both may be initiated by the Owner sending a Notice of intent to suspend or debar to the affected Bidder, Successful Bidder, or Contractor (upon such Notice, referred to as the "Respondent"). A Notice of intent to suspend or debar, or both, shall be sent to the Respondent by certified mail, return receipt requested. The Notice shall include a written statement of reasons for and the effect of the Suspension or proposed Debarment and inform the Respondent of the right of appeal to the Owner.

B. The Respondent may appeal the Notice of intent to suspend or debar, or both. Any such appeal must be written and must be received by the Owner within fourteen calendar days of the date the Respondent received the Notice. If no appeal is received as provided herein, the Respondent shall be suspended and/or debarred in accordance with the Notice.

C. A hearing before the Owner shall be commenced within thirty calendar days of receipt of an appeal. At the hearing the Respondent shall present any information it feels is sufficient to prevent Suspension or Debarment. The Owner shall consider this information and render a decision within ten (10) calendar days after the hearing, and such decision shall be final. The appeal procedures described in this Section are the exclusive procedures for determining the outcome and remedy of an appeal. The Administrative Procedure Act (Title 24, Article 4, C.R.S.) shall not apply to this Section 01200, including any protests, appeals, or hearings conducted thereunder.

### **23.05** DECISION ON DEBARMENT

A. Following reasonable inquiry to determine whether a Respondent has engaged in activities which are cause for debarment, the Owner may debar the Respondent. A Respondent may be suspended or debarred for a period of time commensurate with the seriousness of the offense, subject to the limitations set forth under Sub-Section VII of Section 01200.

### **23.06** SETTLEMENT AND VOLUNTARY EXCLUSION

A. A Respondent and the Owner may enter into a settlement of a Debarment action, pursuant to which Respondent may agree not to participate in public projects with the Owner for a stipulated period of time.

### **23.07** LENGTH OF DEBARMENT

A. Debarment may be for a term of up to three (3) calendar years. Credit may be given for any periods of suspension. The following criteria may be considered in making any decision as to length of debarment:

1. Degree of culpability;



2. Seriousness of the offense or conduct;
3. Restitution of damages to the Owner;
4. Cooperation in the investigation of other bidding or performance violations;
5. Disassociation with those involved in bidding or performance violations;
6. Whether a lengthy debarment is required for the protection of the Owner.

B. If the Respondent submits no appeal, the debarment shall automatically be for three years.

### **23.08 SCOPE OF DEBARMENT AND SUSPENSION**

A. Suspension or debarment of a person constitutes suspension or debarment of all their divisions and other organizational elements from bidding or performing work on all public projects with the Owner unless the suspension or debarment decision is limited by its terms to one or more specifically identified individuals, organizational elements, or to specific types of public projects. The suspension or debarment may include any affiliate of the Respondent that is (1) specifically named, and (2) given Notice of the proposed debarment and an opportunity to respond.

B. For purposes of determining the scope of suspension or debarment, conduct may be imputed as follows:

1. Conduct imputed to a Respondent. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other Individual associated with a Respondent may be imputed to the Respondent when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Respondent, or with the Respondent's knowledge, approval, or acquiescence. The Respondent's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.
2. Conduct imputed to individuals associated with the Respondent. The fraudulent, criminal, or other seriously improper conduct of a Respondent maybe imputed to any officer, director, shareholder, partner, employee, or other Individual associated with the Respondent who participated in, knew of, or had reason to know of the Respondent's conduct.

3. Conduct of one Respondent imputed to other members in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one Respondent in a joint venture or similar arrangement may be imputed to other members if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of the members. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

**END OF SECTION**

---

## **SUPPLEMENTARY CONDITIONS**

### **PART 2 SCHEDULES**

L. Schedules required by Part 14.01 A may be handwritten, in graphic or text form.

### **WARRANTY START DATE**

The effective start date of the **two year** warranty period is the date that Owner or another public entity as may be appropriate finally accepts improvements for the required warranty period. (See General Conditions Part 14.10 A).

### **SHOP DRAWINGS**

Shop drawings to be provided prior to commencement of work.

**END OF SECTION**

**DRAWINGS, PLANS, AND/OR REPORTS**

## **CIMARRON METROPOLITAN DISTRICT CANDELAS SLOPE FAILURE RETICULATED MICRO-PILE WALL**

### **General Description and Scope of Work:**

The Work generally consists of furnishing all labor, materials, equipment, and any and all other items necessary to complete the Candelas Slope Failure Reticulated Micro-Pile Wall Project, in accordance with Contract Documents including the plans and specifications.

A description of the Work to be performed includes but is not limited to the design & installation of a reticulated micro-pile wall. The exact quantities included in this proposal will be as reflected on Coggins & Sons drawings when issued and shall be the basis for quantity and scope of our work included in the subcontract. All quantities, drill lengths, hole diameters and casing lengths have been based per documents mentioned above. One mobilization.

### **Plans:**

#### **Plans entitled:**

- (a) Candelas Filing 1A6 Concept Grading, by Martin and Martin Consulting Engineers, dated May 16, 2023, and consisting of 5 sheets.
- (b) Candelas Filing 1 Structural Drawings, by Martin/Martin Consulting Engineers, dated April 30, 2012, and consisting of 1 sheet.
- (c) Candelas Bid Revision 00, by Coggins and Sons Inc., and consisting of 3 sheets.

#### **Geotechnical reports:**

- (a) Candelas, Filing No. 1 Retaining Walls Progress Report No.5, by CTL Thompson, dated April 13, 2023, and consisting of 38 pages.

**MODIFICATIONS, CHANGE  
ORDERS, FIELD ORDERS,  
LIEN WAIVERS**

### CHANGE ORDER

**Project:** \_\_\_\_\_ **Date of Issuance:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **METROPOLITAN DISTRICT** **Change Order No.:** \_\_\_\_\_  
**Address:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Owner's Representative:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

You are directed to make the following changes in the Contract Documents:

**Description:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Purpose of Change Order:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attachments (List Documents Supporting Change):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**CHANGE IN CONTRACT PRICE:**

**CHANGE IN CONTRACT TIME:**

Original Contract Price:

Original Contract Time:

\$

(days or dates)

Previous Change Orders:

Net Change from Previous Change Order:

No. \_\_\_\_ to No. \_\_\_\_

(days)

\$

Contract Price Prior to this Change Order:

Contract Time Prior to this Change Order:

\$

(days or date)

Net Increase of this Change Order:

Net Increase of this Change Order:

\$

(days)

Net Decrease of this Change Order:

\$

Net Change of this Change Order:

\$

Contract Price with All Approved Change Orders:

\$

Net Decrease of this Change Order:

(days)

Net Change of this Change Order:

(days)

Contract Time with all Approved Change Orders:

(days or date)

---

RECOMMENDED:

APPROVED:

APPROVED:

BY: \_\_\_\_\_  
Engineer

By: \_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Contractor

**END OF SECTION**



**CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PROGRESS PAYMENT**

TO WHOM IT MAY CONCERN: **Coggins and Sons Inc.**, (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Slope Failure Repair Reticulated Micro-Pile Wall (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of partial payment in the sum of \$ \_\_\_\_\_ (the “**Partial Payment**”), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the partial payment received. This waiver and release shall only be effective as of the date the Partial Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Progress Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: Coggins and Sons, Inc.

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

### UNCONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PAYMENT RECEIVED

TO WHOM IT MAY CONCERN: The undersigned **Coggins and Sons, Inc.**, (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Slope Failure Reticulated Micro-Pile Wall (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a partial payment in the sum of \$\_\_\_\_\_ (the “**Partial Payment**”), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the Partial Payment.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Partial Waiver of Claims for Payment Received. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: Coggins and Sons, Inc.

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR FINAL PAYMENT**

TO WHOM IT MAY CONCERN: The undersigned **Coggins and Sons, Inc.**, (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Slope Failure Reticulated Micro-Pile Wall (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of final payment in the sum of \$\_\_\_\_\_ (the “**Final Payment**”), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the final payment received. This waiver and release shall only be effective as of the date the Final Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: Coggins and Sons, Inc.

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## UNCONDITIONAL WAIVER OF CLAIMS FOR FINAL PAYMENT

TO WHOM IT MAY CONCERN: The undersigned **Coggins and Sons, Inc.**, (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the Candelas Slope Failure Reticulated Micro-Pile Wall (“**Project**”) located in Jefferson County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a final payment in the sum of \$\_\_\_\_\_ (the “**Final Payment**”), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: Coggins and Sons, Inc.

Signed: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**END OF SECTION**

## NOTICE OF FINAL PAYMENT

**NOTICE** is hereby given that the **CIMARRON METROPOLITAN DISTRICT** of Jefferson County, Colorado, will make final payment at \_\_\_\_\_, Colorado, on \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_.m. to \_\_\_\_\_ of \_\_\_\_\_, of \_\_\_\_\_, Colorado for all work done by said Contractor(s) in construction or work on ([project description], performed within \_\_\_\_\_, County of \_\_\_\_\_, State of Colorado.

Any person, co-partnership, association of persons, company or corporation that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractors or their subcontractors, in or about the performance of the work contracted to be done or that supplies rental machinery, tools, or equipment to the extent used in the prosecution of the work, and whose claim therefor has not been paid by the contractors or their subcontractors, at any time up to and including the time of final settlement for the work contracted to be done, is required to file a verified statement of the amount due and unpaid, and an account of such claim, to Cimarron Metropolitan District, \_\_\_\_\_ on or before the date and time hereinabove shown for final payment. Failure on the part of any claimant to file such verified statement of claim prior to such final settlement will release Cimarron Metropolitan District, its directors, officers, agents, and employees, of and from any and all liability for such claim.

### BY ORDER OF THE BOARD OF DIRECTORS CIMARRON METROPOLITAN DISTRICT

By:  /s/ \_\_\_\_\_  
Secretary

First Publication: \_\_\_\_\_, 20\_\_\_\_

Last Publication: \_\_\_\_\_, 20\_\_\_\_

---

(Name of Newspaper)

**END OF SECTION**

## **PROJECT COST**



Caisson Drilling, Excavation Shoring, Tieback Anchors

## EARTH RETENTION PROPOSAL

July 14, 2023

Brian Daly  
 Cimmaron Metropolitan District  
 355 Union Boulevard  
 Lakewood, CO 80228  
 720-635-0778  
[bdaly@mylandsteward.com](mailto:bdaly@mylandsteward.com)

RE: Candelas Slide  
 Arvada, CO

This proposal has been based on Martin/Martin for Bid Documents dated 5/16/23 and a site soils investigation provided by CTL Thompson dated 4/26/23.

### A. PROPOSAL INCLUDES AND IS CONTINGENT UPON THE FOLLOWING:

1. The design & installation of a **reticulated micro-pile wall**.
2. **The exact quantities included in this proposal will be as reflected on Coggins & Sons drawings when issued and shall be the basis for quantity and scope of our work included in the subcontract.**
3. All quantities, drill lengths, hole diameters and casing lengths have been based per documents mentioned above.
4. **All demo, excavation and access to drill locations by others prior to installation.**
5. The **current price and availability of materials** at the time this proposal has been issued and is subject to schedule and or price modifications if shortages and/or price increases occur. Coggins & Sons Inc. reserves the right to re-evaluate the material prices once we have received a letter of intent.
6. One mobilization.

### B. PROPOSAL EXCLUDES THE FOLLOWING AND SHALL BE LISTED UNDER EXCLUSIONS IN ANY SUBCONTRACT ENTERED INTO:

1. **Water Source.**
2. **Ready Block wall (by others).**
3. **Shotcrete.**
4. **Protection of existing structure. Contractor must make any provisions necessary to protect the existing structure from standard drilling and grouting operations.**
5. **Removal of drilling spoils from the site. Spoils will be stockpiled adjacent to drilling location (clean up by others).**
6. **Excess grout will be stockpiled adjacent to drill location (Clean up by others).**
7. **Utility Conflicts:** Costs for utility conflicts which may interfere with the earth retention or tieback installation.
8. **Potholing for utilities:** "Potholing" for such utilities will be invoiced at cost plus (15%). This also will include any time for the Supervisor or labor time required to accurately locate utilities and any additional time required will be paid per Coggins & Sons attached rates.

9. **Removal, relocation or protection of any existing utility above or below ground which may interfere with the installation of the earth retention system.**
10. **Power lines closer than legally permissible are to be removed or de-energized.**
11. **Private locates and / or video camera of existing utilities.**
12. **Damage to existing sewer laterals:** Damage to sewer laterals that are in conflict with the earth retention installation. Laterals are to be disconnected and capped at the main line prior to construction. Contractor to provide video to Coggins & Sons showing this work has been performed.
13. Any earth retention requirements.
14. **Construction Site de-watering:** Site de-watering shall be performed (by others, if required) prior to the start of the shoring installation.
15. **Credit given for OCIP / CCIP insurance program. Coggins & Sons, Inc. will provide a credit for these programs only in the amount provided by our insurance carrier. Coggins & Sons will only be responsible for our current deductible required by our insurance carrier of \$5,000.00. Additional deductible amounts are the responsibility of the contractor. No credits or deducts will be provided for excess / umbrella coverage.**
16. Project specific drug testing and or orientation will be invoiced at cost plus 15%. All badging and or background checks will be invoiced at cost plus 15%.
17. **Permits:** The cost of any fees, permits, monitoring, surveys, or easements associated with the project.
18. **Layout:** Layout of micro-piles will be provided (by others) at center of pile and include two 5'-0" offsets 90 degrees from each other.
19. **Materials testing:** if needed, shall be provided by others at no additional cost to Coggins & Sons Inc.
20. **All Excavation:** Contractor and / or excavation contractor shall provide safe access for all equipment, and material moving under their own power to and from each work location. This includes all demo & access to pile locations and cuts shall be made no greater than 5'-0" in height or less if ground conditions dictate. Excavator shall work in close coordination with Coggins & Sons Inc. as not to cause delay to the micro-pile operations.
21. **Obstruction removal:** Obstruction removal during drilling operations will be invoiced at **\$650.00 / hr.** plus 15 % on all materials (flow fill etc.).
22. **Removal of all materials once installed.**
23. **Any costs associated with drilling through and / or handling of contaminated soils.**
24. **Street Cleaning:** Full time safety representative, fencing, sanitary facilities, trash dumpsters, traffic control, and street cleaning.
25. **Concrete wash out:** Contractor shall provide concrete wash out and / or Eco-pans at no additional cost to Coggins & Sons.
26. **Removal of drilling spoils from the site.**
27. **Overtime.** This proposal has been based on a five-day work week 8 hour per day.
28. **Protection of existing structures. Protection of existing structures by others at no additional charge to Coggins & Sons.**
29. Cleanup during and after pile installation. The contractor should carry an allowance for this. All drill spoils will be stockpiled adjacent to drill location. Removal by others.

#### C. BID QUALIFICATIONS

1. Any delays caused by others will be invoiced at the rates per the attached sheet for equipment and personnel.
2. **Parking for one company truck per drill rig on site shall be allowed by the contractor. This will be required to maintain up keep and drilling operations.**
3. **The duration for the Micro-Pile Installation scope of work is 25 working days excluding delays caused by others, weather, drilling through manmade obstructions and unforeseen conditions.**
4. A bond will be furnished, if required, with premium to be paid for by others prior to mobilization. A bond rate of .09% to the final contract amount will apply.
5. If additional engineering is required, after drawings have been issued, this shall be invoiced at the rate of \$190.00 / hr. This includes all time to adjust anchor locations for utility conflicts as mentioned in paragraph B item #1.



6. The governing law of the subcontract shall be by the state of Colorado.
7. A minimum two weeks, upon receiving a letter of intent, until final stamped micro-pile drawing can be issued.
8. Prior to the acceptance of this proposal, Coggins & Sons Inc. would enjoy the opportunity to review this proposal and scope of work.

**LUMP SUM COST****\$255,963.00****(BASED ON THE ABOVE QUALIFICATIONS)**

Sincerely,

Coy Coggins

[ccoggins@cogginsandsons.com](mailto:ccoggins@cogginsandsons.com)

9512 Titan Park Circle

Littleton, CO 80125

(303) 791-9911 / Fax: (303) 791-0967



**COGGINS & SONS, INC.**

**Caisson Drilling, Excavation Shoring, Tieback Anchors**

**COGGINS & SONS, INC.**

**EQUIPMENT AND PERSONNEL HOURLY/STANDBY RATES**

|                        |                                    |          |          |
|------------------------|------------------------------------|----------|----------|
|                        | 100 TON LINKBELT/WATSON 6000       | \$250.00 | Per Hour |
|                        | 80 TON LINKBELT/STEVENS ATTACHMENT | \$210.00 | Per Hour |
|                        | SOIL MEC 516 CAISSON DRILL         | \$230.00 | Per Hour |
|                        | WATSON 3100 DRILL                  | \$225.00 | Per Hour |
|                        | CAT IT OR KAMATSU LOADER           | \$75.00  | Per Hour |
|                        | SKID LOADERS                       | \$45.00  | Per Hour |
|                        | BERETTA T-43 (Low Clearance)       | \$223.75 | Per Hour |
|                        | BOOM TRUCK                         | \$65.00  | Per Hour |
|                        | TIEBACK DRILL                      | \$210.00 | Per Hour |
|                        | SOIL MEC SM 405 DRILL              | \$220.00 | Per Hour |
|                        | IR 400 AIR COMPRESSOR              | \$65.00  | Per Hour |
|                        | IR 900 AIR COMPRESSOR              | \$125.00 | Per Hour |
|                        | REED 4050B SHOTCRETE PUMP          | \$92.50  | Per Hour |
|                        | HIGH SHEAR GROUT PLANT             | \$42.50  | Per Hour |
|                        | SUPERINTENDENT                     | \$72.30  | Per Hour |
|                        | DRILL OPERATOR                     | \$65.00  | Per Hour |
|                        | LOADER OPERATOR                    | \$61.50  | Per Hour |
|                        | OILER                              | \$59.00  | Per Hour |
|                        | LABORER                            | \$52.25  | Per Hour |
|                        | WELDER                             | \$61.75  | Per Hour |
|                        | MECHANIC                           | \$95.00  | Per Hour |
|                        | SHOTCRETE NOZZLEMAN                | \$53.50  | Per Hour |
|                        | STRUCTURAL ENGINEER                | \$140.00 | Per Hour |
|                        | CADD DRAFTSMAN                     | \$65.00  | Per Hour |
| <b>Overtime Charge</b> |                                    |          |          |
| \$28.20                |                                    |          |          |
| \$24.25                |                                    |          |          |
| \$23.70                |                                    |          |          |
| \$22.52                |                                    |          |          |
| \$19.77                |                                    |          |          |
| \$23.84                |                                    |          |          |
| \$117.52               |                                    |          |          |
| \$19.75                |                                    |          |          |

**THESE EQUIPMENT RATES DO NOT INCLUDE USE OF SPECIALIZED TOOLS SUCH AS CARBIDE ROCK TOOLS.**

**PER DIEM FOR EMPLOYEES IS NOT INCLUDED IN THE ABOVE RATES THE CHARGE RATE FOR PER DIEM IS \$112.00 PER DAY PER MAN**

**Mar-17**

**PROJECT SCHEDULE – EXHIBIT B**

**PROJECT SPECIFICATIONS - EXHIBIT C**

## PROJECT SPECIFICATIONS – GENERAL

Measurement and payment for all unit items included in this contract are delineated in this section.

All materials used, installations and tests performed shall conform to the latest City of Arvada Specifications. If any materials or installations are not specified by the City of Arvada, industry standards shall be used. The Owner or City of Arvada shall be the sole judge of the Industry Standard to be used.

Collectively the unit items presented in the Bid Proposal shall be considered to be all items necessary to complete the Project in accordance with the Contract Documents. Any items not included in the Bid Form, needed to complete the Project according to the Contract Documents, shall be considered incidental to the Contract Price.

As a convenience to the Contractor descriptions of certain unit items contain references to incidental material, labor or work that is required to complete the item; however additional items, materials, labor or work may be required to complete the item. These additional items, material, labor or work shall be considered incidental to the unit item. The item shall be measured and paid on the unit basis presented for each item; payment shall be at the contract price per unit of measure, complete and in-place, according to the Contract Documents. Payment at the unit price stated in the Bid Form shall be considered full compensation for furnishing all labor, materials, equipment, incidentals, and any other work, necessary to complete the items in place as specified in the Contract Documents.

Contractor shall protect all existing erosion and sediment control measures installed by others and shall promptly replace or maintain all items disturbed during his work at no additional cost to the Owner. Such Erosion Control items include, but are not limited to concrete washouts, tracking pads, silt fence, erosion control logs, and rock socks. Additionally, the Contractor shall not enter restricted areas within the Project. Any damage or disturbance to existing conditions within or at the restricted areas shall be promptly corrected and returned to original condition by the Contractor at no additional cost to the Owner.

The Contractor shall be reimbursed at cost for all fees and permits required by the City of Arvada and/or any other governmental agency.

### MOBILIZATION, INSURANCE AND BONDS

**Mobilization and Insurance.** This work shall include all mobilization of all personnel, equipment, contractor field trailers, field offices and supplies at the project site in preparation for work on the Project. This item shall include the establishment of sanitary and other necessary facilities, and all other costs incurred or labor and operations which must be performed prior to beginning items of work for the Project. It is anticipated this work will require multiple Contractor mobilizations. Mobilization and insurance are considered to be incidental to the Reticulated Micro-Pile Wall lump sum cost and will be paid according to the following schedule of payments:

**Bonds** This item will be paid as a Lump Sum item. This item shall include the Contractor's cost for obtaining and maintaining Bonds and Insurance in accordance with the Contract Documents. Bonds shall be paid at 100% in the first Pay Application after Bonds and Insurance Certificates have been submitted, in accordance with the Contract Documents.

**Reticulated Micro-Pile Wall.** This item will be paid as a Lump Sum item.

| PAYMENT DUE     | PERCENT OF CONTRACT COMPLETE |
|-----------------|------------------------------|
| 50% of Lump Sum | 50%                          |
| 25% of Lump Sum | 75%                          |
| 25% of Lump Sum | 100%                         |

Payment will be made under:

**Pay Item**

**Mobilization/Insurance**

**Bonds**

**Reticulated Micro- Pile Wall**

**Pay Unit**

**Lump Sum**

**Lump Sum**

**Lump Sum**

END OF SECTION

# CIMARRON METRO DISTRICT PROFESSIONAL SERVICES AGREEMENT TASK ORDER

**AGREEMENT TITLE** Service Agreement for Candelas

**AGREEMENT NO.** AZ - 01      **AGREEMENT DATE** 2/9/2011      **TASK ORDER NO.** 19

**CONSULTANT** Aztec Consultants, Inc

**TASK ORDER REFERENCE:** Task Order 19 Submittal

**TASK ORDER NAME:** Tract A4 - Candelas Slope Failure Repairs/Monitoring

**METRO DISTRICT PROJECT ENGINEER:** IDES LLC Brandon Collins

**BASIS OF COMPENSATION:** NTE contract amount of \$10,000 for Survey - Monitoring and Failure Repairs

**SCHEDULE:** As required

**AGREEMENT PRICE RECONCILIATION:**

**Previously Approved Change Orders/Amendments/Task Orders** \$ 2,132,747.00

**Task Order Price – Task Order No. 19** \$ 10,000.00

**Total of Agreement Prices including this Task Order** \$ 2,142,747.00

**AGREEMENT TERMS AND CONDITIONS**

All other terms and conditions of the Agreement remain unchanged and in full force and effect.

This Task Order constitutes written assurance by the Metro District (if a Metro District Agreement) that lawful appropriations have been made to cover the cost of the Task Order, pursuant to Section 24-91-103.6, C.R.S.

**APPROVALS REQUIRED:**

To be effective, this Task Order must be approved according to the Agreement.

Recommended by Brandon Collins, PE      Date 8/14/23

Approved by Approved, Brian Daly      Date 8/24/2023

The undersigned agrees to the above terms and conditions:

AZTEC CONSULTANTS  
Consultant

[Signature]  
Authorized Agent

8.16.23  
Date

Project Manager  
Title



August 09, 2023

Tanna Boisvert  
IDES  
c/o Capital Consultants Management Corp.  
1626 Cole Blvd, Suite 125  
Lakewood CO 80401

Re: Proposal to Provide Surveying Services for:  
**Cimarron Tract A4**

**Tanna,**

AzTec Consultants, Inc. is pleased to submit this proposal to provide surveying services for the **Cimarron Tract A4** project located in Arvada, Jefferson County, Colorado. The following outlines our Scope of Services, Fee, General Terms and Conditions.

### Scope of Services

#### **Miscellaneous Survey- see notes (CS)**

- Provide a field crew for slope monitoring. Not to exceed \$10,000





### Fee

The Client agrees to pay AzTec Consultants compensation for services performed on a fixed fee basis, except as noted. The fees quoted herein will be used as a guide in determining the percentage of work completed by AzTec, where applicable. Progress billings will be made towards the end of each month for services performed during that period. All bills are due and payable upon receipt of invoice. All amounts shown below are to be considered as lump sum fee(s), unless otherwise noted.

| Item                                 | Amount             |
|--------------------------------------|--------------------|
| Miscellaneous Survey- see notes (CS) | \$10,000.00        |
| <b>Total</b>                         | <b>\$10,000.00</b> |



### Exclusions

The following items are specifically excluded from this proposal. If sufficient time is given, fees for these items can be provided prior to start of services.

1. Any item not listed on the Scope of Services.

### Alleged Errors/Mistakes

Should the accuracy or interpretation of any stake be questioned, it shall be the owner's responsibility to immediately notify the surveyor. We will reset, at our own expense, any stake which we find to be incorrect. We do, however; reserve the right to charge additional monies for time spent checking stakes which we find to be correct. The owner and contractor shall not hold the surveyor responsible for any staking error unless the allegedly incorrect stake is preserved undisturbed for our examination

### General Terms

It is understood and agreed between the parties that the total fee as described herein is for the scope of services as set forth herein. If unforeseen field conditions exist, assumptions of this proposal are not met, or additional services are requested by **IDES (Client)**, the scope of the additional services and a lump sum fee will be determined, and a change order will be prepared and sent to Client describing the scope and fees of the additional services requested. Work on the additional services will not commence until written authorization to proceed is received via standard mail, facsimile or e-mail. The attached General Terms and Conditions will be made a part of this agreement unless AzTec Consultants and Client have a "Master Service Agreement" in place.

We look forward to being a part of your team for this project. Please call if you have any questions.

Sincerely,

**AzTec Consultants, Inc.**



**Paul Halpin**

Approved and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by

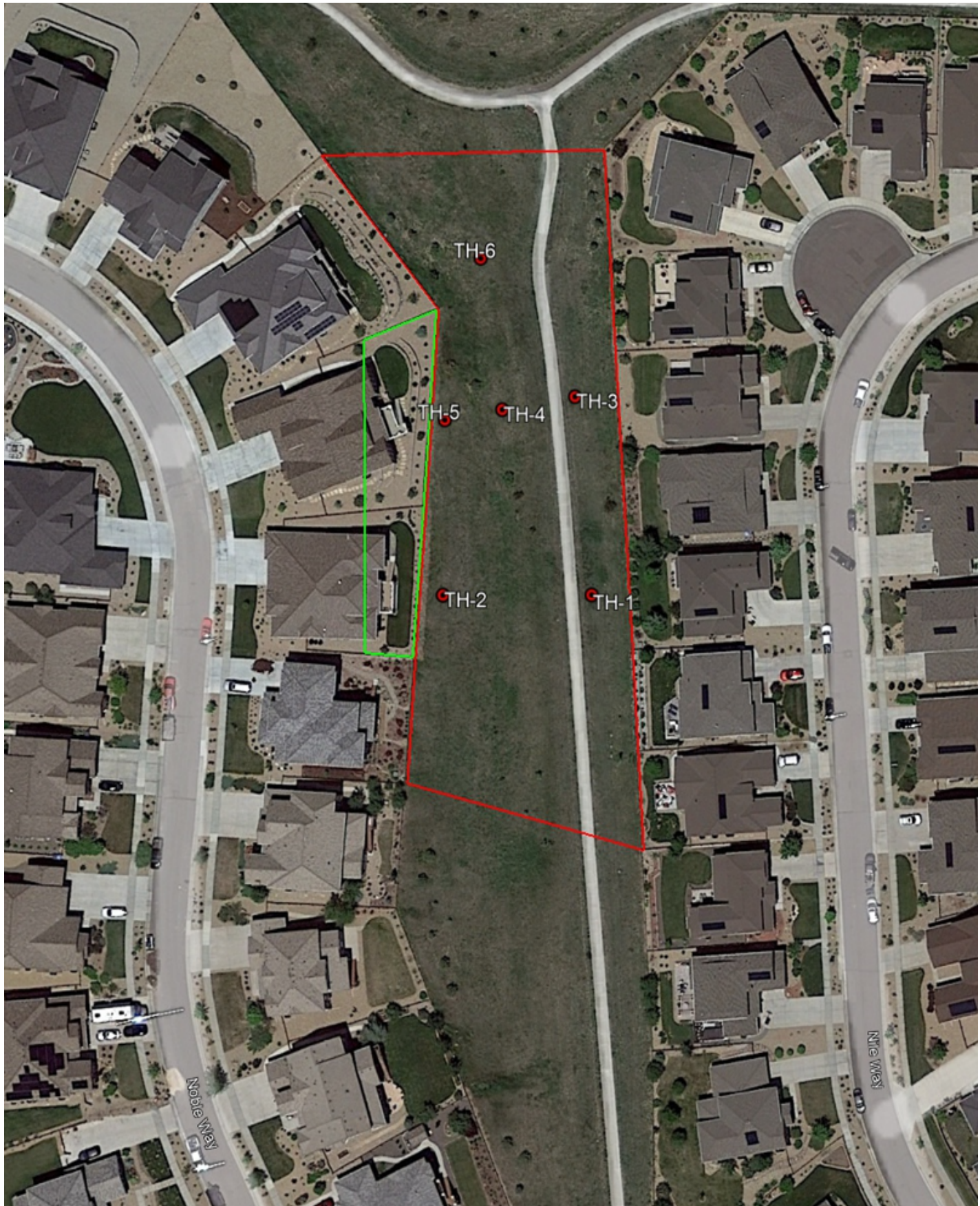
\_\_\_\_\_  
(Signature)

\_\_\_\_\_ for \_\_\_\_\_  
(Title) (Client name)





**EXHIBIT**





## General Terms and Conditions

### **ARTICLE I. CONSULTANT SERVICES**

1.1 STANDARD OF CARE: CONSULTANT shall perform its services in a manner consistent with that degree of knowledge and skill ordinarily used by members of the same profession practicing at the same time under the same or similar circumstances.

### **ARTICLE 2. PAYMENT**

2.1 INVOICING: CLIENT agrees to pay CONSULTANT interim compensation for the work performed. Invoices will be sent on a monthly basis and payment is due upon receipt

2.2 EXTRA WORK: It is understood and agreed between the parties that the price is for the services set forth in the "Scope of Work". If additional services are requested by CLIENT, work will not commence until a signed CHANGE ORDER stating the additional services and the agreed upon price.

### **ARTICLE 3. INSURANCE**

3.1 CONSULTANT shall secure and maintain throughout the full period of this Agreement sufficient insurance to protect it adequately from claims under applicable Workmen's Compensation Acts and for errors or omissions which may cause a claim for bodily injury, death or property damage as may arise from the performance of services under this Agreement. CONSULTANT will, upon request, file certification of such insurance with CLIENT or his authorized representative.

### **ARTICLE 4. WARRANTY, LIMITATION OF PROFESSIONAL LIABILITY**

4.1 CONSULTANT makes no warranty, either expressed or implied, as to his findings, recommendations, plans, specifications, or professional advice except that the work was performed consistent with the Standard of Care.

4.2 LIMITATION OF LIABILITY: CLIENT agrees to the fullest extent permitted by law, to limit CONSULTANT'S and its employees' total aggregate liability to CLIENT for all injuries, claims, losses and damages arising out of or relating to the services performed by CONSULTANT, from any and all causes including but not limited to negligence, breach of contract or any other legal or equitable theory, to \$100,000.

4.3 BACK CHARGES: The CLIENT shall notify the CONSULTANT immediately of any alleged errors and subsequent back charges. The CONSULTANT, with the cooperation of the CLIENT, will immediately investigate such allegations to rightfully determine the degree of responsibility that should be borne by the CONSULTANT.

If surveying errors are alleged, the stakes must be preserved, whenever possible, in an undisturbed condition. If the stakes are not protected in said condition and a review of the surveying notes by CLIENT and CONSULTANT indicates correct staking procedure, then the stakes will be presumed to be correct.

### **ARTICLE 5. CORPORATE PROTECTION**

5.1 It is intended by the parties to this Agreement that the CONSULTANT'S services in connection with the Project shall not subject the CONSULTANT'S individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the CLIENT agrees that as the CLIENT'S sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Colorado corporation, and not against any of the CONSULTANT'S individual employees, officers or director.

### **ARTICLE 6. THIRD PARTY BENEFICIARIES**

**6.1 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or CONSULTANT. CONSULTANT's services are performed solely for CLIENT's benefit and no other party or entity shall have any claim against CONSULTANT because of this Agreement or the performance or nonperformance of services hereunder**



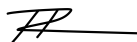


**Cimarron Metropolitan District  
Candelas Filing 1  
Mailbox Kiosk Relocation  
Bid Schedule**

**Contractor:** Colorado Custom Rock Corp  
4963 Kelso Rd  
Boulder, CO 80301

**Owner: Cimarron Metropolitan District**  
c/o McGeady Becher  
450 E. 17th Avenue, Suite 400  
Denver, CO 80203

| Item Code                     | Item Description  | Unit | Qty | Unit Price | Extension          |
|-------------------------------|---|------|-----|------------|--------------------|
| <b>General Items</b>          |   |      |     |            |                    |
| 1                             | Mobilization & Insurance  | LS   | 1   |            | \$1,200.00         |
| 2                             | Bonds 3% if needed  | LS   | 1   |            | \$1,044.35         |
| <b>Subtotal General Items</b> |   |      |     |            | <b>\$2,244.35</b>  |
| <b>Mailbox Kiosk</b>          |   |      |     |            |                    |
| 3                             | Demo Non Resuable Portions of Kiosk   | EA   | 1   |            | \$3,800.00         |
| 4                             | New CMU base  | EA   | 1   |            | \$2,380.00         |
| 5                             | New precast caps  | EA   | 1   |            | \$3,890.00         |
| 6                             | Reset exising posts in new footer   | EA   | 1   |            | \$3,190.00         |
| 7                             | Install all other Components not Reusable   | EA   | 1   |            | \$3,357.00         |
| 8                             | Install only new Mailboxes *supply by others  | EA   | 1   |            | \$1,800.00         |
| <b>Subtotal Mailbox Kiosk</b> |   |      |     |            | <b>\$18,417.00</b> |
| <b>Total</b>                  |   |      |     |            | <b>\$20,661.35</b> |
| <b>Alternate</b>              |   |      |     |            |                    |
| 9                             | Demo Existing Kiosk   | EA   | 1   |            | \$0.00             |
| 10                            | Install at New Location   | EA   | 1   |            | \$0.00             |
| 11                            | Temporary Solar Lighting  | EA   | 1   |            | \$0.00             |
| 12                            | Permanent Solar Lighting  | EA   | 1   |            | \$845.60           |
| 13                            | Temporary Mailbox Relocation  | EA   | 1   |            | \$877.50           |
| 14                            | Concrete pad from Mailbox to Sidewalk   | EA   | 1   |            | \$5,350.00         |
|                               | **footer if needed as it is not noted on this price sheet<br>(footer pricing includes excavation) | EA   | 1   |            | \$4,292.00         |
| <b>Subtotal Alternate</b>     |   |      |     |            | <b>\$11,365.10</b> |

Contractor Representative: 

Title: CEO

Date: August 30, 2023

## CHANGE ORDER

**Project:** Candelas Slope Failure Repair Storm Sewer and Drains

**Date of Issuance:** 7/20/2023

**Owner:** **CIMARRON METROPOLITAN DISTRICT**      **Change Order No.:** 2

**Address:** 8390 E. Crescent Parkway, Suite 300 Greenwood Village, CO 80111

**Contractor:** CJBs Excavating

**Owner's Representative:** IDESLLC

You are directed to make the following changes in the Contract Documents:

Description: Bench construction for Coggins work, and Bond cost reimbursement.

Purpose of Change Order: Access for Coggins Equipment needed, contract bond cost reimbursement.

Attachments (List Documents Supporting Change): Proposal for Bench construction for Coggins work \$6,520, Bond reimbursement \$ 8,806.00.

**CHANGE IN CONTRACT PRICE:**

Original Contract Price:  
\$259,003.83

Previous Change Orders:  
No. 0 to No. 1  
\$7,075.00

Contract Price Prior to this Change Order:  
\$266,078.83

Net Increase of this Change Order:  
\$15,326.00

Net Decrease of this Change Order:  
\$0

Contract Price with All Approved Change Orders:  
\$281,404.83

**CHANGE IN CONTRACT TIME:**

Original Contract Time:  
10/15/2023

Net Change from Previous Change Order:  
30 Days

Contract Time Prior to this Change Order:  
30 Days

Net Increase of this Change Order:  
14 Days

Net Decrease of this Change Order:  
0

Contract Time with all Approved Change Orders:  
11/29/2023

RECOMMENDED:

APPROVED:

APPROVED:

BY: \_\_\_\_\_

Engineer

*Approved, Brian Daly*  
By: \_\_\_\_\_

Owner

BY: \_\_\_\_\_

Contractor

**CJB's LLC**

Brighton, CO 80603 US  
 cjblc94@gmail.com

**Estimate**

ADDRESS  
 PM Tanna Boisvert  
 Tanna

ESTIMATE 23-0096  
 DATE 09/01/2023

| DATE | ACTIVITY        | DESCRIPTION  | QTY | RATE     | AMOUNT   |
|------|-----------------|--|-----|----------|----------|
|      | Excavation      | Line item includes the following;<br>Excavate bunch for Coggins, spread dirt in are above mail boxes as discussed in meeting on 8/29.  | 1   | 4,060.00 | 4,060.00 |
|      | Erosion Control | Line item includes the following;<br>Install silt fence at toe of slope to hold back spoils when spreading the dirt in discussed areas.<br>IF BURRIES ARE NEEDED TO HOLD SPOILS BACK CJB'S WILL BILL ACCORDINGLY.  | 1   | 2,460.00 | 2,460.00 |
|      | Exclusions      | Line item includes the following;<br>EXCLUSIONS;<br>CJB's will not take responsibility if something give way on the bench cut in.<br>CJB's will not take responsibility if the dirt that is getting broadcasted in discussed areas causes more slope issues. | 1   | 0.00     | 0.00T    |

-----  
 SUBTOTAL 6,520.00

TAX 0.00

-----  
 TOTAL **\$6,520.00**

Accepted By

Accepted Date



**From:** [Cliff Ball](#)  
**To:** [Tanna Boisvert](#)  
**Subject:** Fwd: Bond Payment  
**Date:** Friday, September 1, 2023 2:24:13 PM

---

Thank you,

Cliff Ball

Owner, CJB's Excavation

(303)981-5967

[cjbllc94@gmail.com](mailto:cjbllc94@gmail.com)

----- Forwarded message -----

From: **Stefan Tauger** <[stauger@allstarfg.com](mailto:stauger@allstarfg.com)>  
Date: Wed, Aug 30, 2023 at 12:39 PM  
Subject: RE: Bond Payment  
To: Cliff Ball <[cjbllc94@gmail.com](mailto:cjbllc94@gmail.com)>  
Cc: Alicia Suarez <[AlSuarez@allstarfg.com](mailto:AlSuarez@allstarfg.com)>, Laurie Krokos <[lkrokos@allstarfg.com](mailto:lkrokos@allstarfg.com)>

Cliff,

Good afternoon,

This email is to confirm the bonding costs associated with your project.

The bond cost paid to the Surety was: \$7,252

The required SBA fee paid was: \$1,554

For a total bonding cost of: \$8,806

Thank You for the business!

## CHANGE ORDER

**Project:** Candelas Slope Failure Repair Storm Sewer and Drains

**Date of Issuance:** 7/20/2023

**Owner:** **CIMARRON METROPOLITAN DISTRICT**      **Change Order No.:** 3

**Address:** 8390 E. Crescent Parkway, Suite 300 Greenwood Village, CO 80111

**Contractor:** CJBs Excavating

**Owner's Representative:** IDESLLC

You are directed to make the following changes in the Contract Documents:

Description: Tract A4 Emergency Drain Installation.

Purpose of Change Order: Drain installation for emergency slope failure remediation.

Attachments (List Documents Supporting Change): Proposal attached

**CHANGE IN CONTRACT PRICE:**

Original Contract Price:

\$259,003.83

Previous Change Orders:

No. 0 to No. 2

\$22,401.00

Contract Price Prior to this Change Order:

\$281,404.83

Net Increase of this Change Order:

\$111,494.00

Net Decrease of this Change Order:

\$0

Contract Price with All Approved Change

Orders:

\$392,898.83

**CHANGE IN CONTRACT TIME:**

Original Contract Time:

10/15/2023

Net Change from Previous Change Order:

30 Days

Contract Time Prior to this Change Order:

44 Days

Net Increase of this Change Order:

30 Days

Net Decrease of this Change Order:

0

Contract Time with all Approved Change

Orders:

12/29/2023

RECOMMENDED:

APPROVED:

APPROVED:

BY: \_\_\_\_\_  
Engineer

By: \_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Contractor

**CJB's LLC**

Brighton, CO 80603 US  
cjbllc94@gmail.com

**Estimate**

ADDRESS  
PM Tanna Boisvert  
Tanna

ESTIMATE 23-0097  
DATE 09/07/2023

| DATE | ACTIVITY     | DESCRIPTION  | QTY | RATE      | AMOUNT     |
|------|--------------|--|-----|-----------|------------|
|      | Line item #1 | Line item includes the following;<br>-Mobilization of all equipment.   | 1   | 1,500.00  | 1,500.00T  |
|      | Line item #2 | Line item includes the following;<br>-Temp fence.<br>-Signage.<br>-Tracking matt.<br>-Erosion control.<br>-Access road cut in.<br>Clear and grub.<br>-Demo sidewalk in needed areas. | 1   | 12,350.00 | 12,350.00T |
|      | Line item #3 | Line item includes the following;<br>Branch's A,B,C Excavation and backfill.<br>-Labor.<br>-Equipment.<br>-Rock.<br>-Cut off walls.<br>-Trucking for rock import.                    | 1   | 62,364.00 | 62,364.00T |
|      | Line item #4 | Line item includes the following;<br>6' solid drain run with clean outs.<br>-Labor.<br>-Equipment<br>-Bedding.<br>-Cut off wall.<br>-Trucking for rock import.<br>-Pipe materials.   | 1   | 35,280.00 | 35,280.00T |

Estimate DOES NOT INCLUDE;  
Concrete patch back, re-seeding/blanket, pumps if needed, repair of any cracked concrete.

|              |                     |
|--------------|---------------------|
| SUBTOTAL     | 111,494.00          |
| TAX          | 0.00                |
| <b>TOTAL</b> | <b>\$111,494.00</b> |

Accepted By

Accepted Date



1626 Cole Blvd, Suite 125  
Lakewood, CO 80401

# **Cimarron Metro District Verification of District Expenditures For July 2023**

July 13, 2023

Cimarron Metropolitan District  
Attn: Board of Directors  
400 East Simpson Street, Suite 200  
Lafayette, CO 80026

## **DISTRICT ENGINEER'S VERIFICATION OF IMPROVEMENTS AND EXPENDITURES PAID BY THE CIMARRON METROPOLITAN DISTRICT**

### **VERIFICATION FOR JULY 2023**

#### **INTRODUCTION**

Independent District Engineering Services, LLC (Engineer) was hired by the Cimarron Metropolitan District (District) to provide verification of expenditures of the District related to District contracts associated with improvements and services (District Expenditures) for the Candelas Development located in the City of Arvada, Colorado (Project). Some of the District contracts included expenditures for both District-eligible and non-eligible improvements and services. This document summarizes the engineer's approach and findings for such expenditures.

#### **ACTIVITIES CONDUCTED**

To provide verification of all District Expenditures, a review of the relevant District contracts, invoices and pay applications submitted to the District was performed. These were invoices and pay applications submitted to the District and run through the District invoice process. Some of the expenditures were for improvements and services eligible as public expenditures (District Eligible Expenses) and some of the District Expenditures were for improvements and services that are not eligible as public expenditures (Non-Eligible Expenses). A summary was created for District Expenditures, including both District Eligible and Non-Eligible Expenses, and attached as Attachment A.

#### **DISCUSSION**

##### **Review of District Documents and Agreements**

The District Service Plan and the Facilities Funding and Acquisition Agreement between the District and Arvada Residential Partners (Developer) were reviewed to confirm District-eligible improvements and services (District Eligible Improvements). The construction contracts of the District were bid, reviewed, negotiated and awarded through the District under the recommendation of the District Engineer (Construction Contracts). The construction consultant agreements were negotiated and awarded through the District under the recommendation of the District Engineer (Construction Services Agreements). Support consultant agreements have been negotiated and awarded through the District (Service Agreements).

##### **Review of Expenditures**

###### Construction Contracts and Construction Services Agreements

The pay applications and invoices associated with Construction Contracts and Construction Service Agreements are submitted to and reviewed by the District Engineer. The District Engineer also provided site observations to verify that the work being billed for has been completed. Some of the invoices and pay applications contained work that was for District Eligible Improvements as well as improvements and services that are not District Eligible Improvements. The expenditures were allocated between District Eligible Expenses and Non-Eligible Expenses by percentage area, by the type of work being done or by the item being constructed. These allocations are verified to be in accordance with the Service Plan for District Eligible Expenses. These expenditures are shown in Attachment A.



### Service Agreements

Invoices for Service Agreements are submitted directly to the District for approval. These invoices were reviewed by District Engineer to provide a recommendation for verification and allocation of District Eligible Expenses and Non-Eligible Expenses. These expenditures are shown in Attachment A.

### **Classification of Expenditures**

District Expenditures consisted of amounts paid by the District pursuant to Construction Contracts, Construction Service Agreements and Service Agreements evidenced by pay applications and invoices.

Construction Contract expenditures include improvements such as, but not limited to, landscaping, irrigation, fencing, earthwork, erosion control, utilities, concrete, water tank, and pump stations.

Construction Service Agreement expenditures are for the consultants that support the construction such as, but not limited to, survey, storm water inspection, materials testing, design engineer support, district engineer, postings and maintenance, and plan reproductions.

Service Agreement expenditures are for consultants that support the District such as, but not limited to, legal counsel, District management, accounting, planning, publications, and miscellaneous fees.

### **Attachments**

Attachment A shows all the District Expenditures submitted to the District. This shows the allocation of District Expenditures between verified District Eligible Expenses and Non-Eligible Expenses. Attachment B shows the Expenditures by category.

### **SUMMARY AND RECOMMENDATION**

After completing the activities identified, in our professional opinion, we have concluded the following:

1. In our professional opinion, the District Expenditures were reviewed and found to be reasonable and comparable to other similar projects in the Denver metropolitan area. O&M Expenditures were not reviewed by the Engineer.
2. At this time and based upon the information provided, we find **\$77,043.79** of the District Expenditures were appropriately classified as District Eligible Expenses. This includes reconciliations as stated on Attachment A for McGeady Becher PC.
3. At this time and based upon the information provided, we find **\$0.00** of the District Expenditures were appropriately classified as Non-Eligible Expenses.

Should you have any questions or require further information please feel free to contact me.

Respectfully Submitted,  
Independent District Engineering Services, LLC

*Brandon Collins, PE*

Brandon Collins, PE  
Attachments



# Attachments A and B District Expenditures

**Cimarron Metropolitan District  
July 2023 Expenditures**

| Vendor                          | Invoice ID           | Invoice Date | Description  | Invoiced Amount    | District Expenditures | Non Eligible Expenses |
|---------------------------------|----------------------|--------------|--|--------------------|-----------------------|-----------------------|
| GPMB, LLC                       | GPMB-bill-220        | 6/30/23      | Slope Stability (Inv. #220)  | \$12,256.00        | \$12,256.00           | \$0.00                |
| GPMB, LLC                       | GPMB-bill-221        | 6/30/23      | Slope Stability (Inv. #221)  | \$17,840.00        | \$17,840.00           | \$0.00                |
| Martin/Martin                   | 2023-07 CMD MM Inv   | 6/22/23      | Slope Stability (Inv. #22518.C.11-00004, 22518.C.11-00009, 22518.C.11-00010) | \$25,778.00        | \$25,778.00           | \$0.00                |
| IDES, LLC                       | 2023-07 CMD IDES Inv | 6/30/23      | District Engineering (Inv. #059922)  | \$13,236.25        | \$13,236.25           | \$0.00                |
| Stewardship Land Services, Ltd. | CMD-SLS1072          | 7/3/23       | Monthly PM Services (Inv. #1072)   | \$7,000.00         | \$7,000.00            | \$0.00                |
| SWAP, LLC                       | 2023-07 CMD SWAP Inv | 6/30/23      | Monthly PM Services (Inv. #08583)  | \$946.54           | \$946.54              | \$0.00                |
| <b>Subtotal Expenditures</b>    |                      |              |  | <b>\$77,043.79</b> | <b>\$77,043.79</b>    | <b>\$0.00</b>         |

**From Attachment A of Facilities Acquisition**

| Vendor                                 | Invoice ID | Invoice Date | Description | Invoiced Amount | District Expenditures | Non Eligible Expenses |
|--|------------|--------------|-------------|-----------------|-----------------------|-----------------------|
| None                                   |            |              |             | \$0.00          | \$0.00                | \$0.00                |
| <b>Subtotal Facilities Acquisition</b> |            |              |             | <b>\$0.00</b>   | <b>\$0.00</b>         | <b>\$0.00</b>         |

**Total** **\$77,043.79**      **\$77,043.79**      **\$0.00**

**Summary of Previous Expenditures**

| Description                  | Invoiced Amount         | District Portion        | Developer Portion     |
|------------------------------|-------------------------|-------------------------|-----------------------|
| April 2011 - December 2011   | \$10,018,871.58         | \$7,891,561.78          | \$2,127,309.82        |
| January 2012 - December 2012 | \$21,070,722.59         | \$18,827,767.00         | \$2,242,964.61        |
| January 2013 - December 2013 | \$24,812,705.10         | \$22,247,147.66         | \$2,565,557.44        |
| January 2014 - December 2014 | \$12,000,207.76         | \$11,452,897.46         | \$547,310.30          |
| January 2015                 | \$817,583.99            | \$731,572.15            | \$86,011.84           |
| Discrepancies Revisions      | \$9,482.69              | \$9,482.69              | \$0.00                |
| February 2015                | \$768,813.61            | \$748,465.23            | \$20,348.38           |
| March 2015                   | \$761,559.31            | \$724,558.19            | \$39,080.95           |
| April 2015                   | \$695,031.32            | \$598,795.42            | \$96,235.90           |
| May 2015                     | \$1,289,783.13          | \$1,211,873.38          | \$77,909.75           |
| June 2015                    | \$720,254.64            | \$702,501.71            | \$17,752.93           |
| July 2015                    | \$1,410,328.33          | \$1,228,705.19          | \$181,623.14          |
| August 2015                  | \$1,315,918.10          | \$1,250,175.96          | \$65,742.14           |
| September 2015               | \$1,721,087.41          | \$1,614,606.50          | \$106,480.91          |
| October 2015                 | \$1,269,621.35          | \$1,206,327.14          | \$63,294.21           |
| November 2015                | \$780,300.14            | \$713,889.71            | \$66,410.43           |
| December 2015                | \$756,598.28            | \$680,563.55            | \$76,034.73           |
| January 2016                 | \$600,728.96            | \$580,315.96            | \$20,413.00           |
| February 2016                | \$570,728.96            | \$562,281.06            | \$8,078.52            |
| March 2016                   | \$1,213,309.14          | \$1,153,979.74          | \$59,329.40           |
| April 2016                   | \$1,434,299.11          | \$1,347,357.20          | \$86,941.91           |
| May 2016                     | \$1,053,203.00          | \$1,017,759.38          | \$35,443.62           |
| June 2016                    | \$1,358,821.77          | \$1,357,524.27          | \$1,297.50            |
| July 2016                    | \$1,734,107.82          | \$1,729,615.31          | \$4,492.51            |
| August 2016                  | \$1,581,590.58          | \$1,575,895.57          | \$5,695.01            |
| September 2016               | \$1,045,381.30          | \$1,018,494.69          | \$26,886.62           |
| October 2016                 | \$921,020.12            | \$919,932.61            | \$26,886.62           |
| November 2016                | \$979,267.13            | \$963,336.63            | \$15,930.50           |
| December 2016                | \$362,198.78            | \$354,583.77            | \$7,615.01            |
| January 2017                 | \$481,301.45            | \$479,205.94            | \$2,095.51            |
| February 2017                | \$357,790.30            | \$357,790.30            | \$0.00                |
| March 2017                   | \$407,004.87            | \$403,102.37            | \$3,902.50            |
| April 2017                   | \$297,364.74            | \$292,531.74            | \$4,833.00            |
| May 2017                     | \$855,818.15            | \$779,616.65            | \$76,201.50           |
| June 2017                    | \$311,745.83            | \$308,023.33            | \$3,722.50            |
| July 2017                    | \$655,654.61            | \$650,351.61            | \$5,303.00            |
| August 2017                  | \$468,181.46            | \$462,258.96            | \$5,922.50            |
| September 2017               | \$672,495.96            | \$671,363.45            | \$1,132.51            |
| October 2017                 | \$555,341.55            | \$553,824.04            | \$1,517.51            |
| November 2017                | \$888,520.58            | \$801,458.31            | \$87,062.27           |
| December 2017                | \$1,419,105.61          | \$1,279,990.58          | \$139,115.03          |
| January 2018                 | \$1,452,290.58          | \$1,145,238.77          | \$307,051.81          |
| February 2018                | \$1,204,019.62          | \$1,062,908.59          | \$141,111.03          |
| March 2018                   | \$1,296,711.15          | \$1,264,028.88          | \$32,682.29           |
| April 2018                   | \$1,805,810.62          | \$1,761,234.91          | \$44,575.71           |
| May 2018                     | \$590,331.09            | \$499,052.97            | \$91,278.12           |
| June 2018                    | \$1,243,153.54          | \$1,159,638.12          | \$83,515.42           |
| July 2018                    | \$858,076.94            | \$855,413.94            | \$2,663.00            |
| August 2018                  | \$1,137,495.17          | \$1,134,539.17          | \$2,956.00            |
| September 2018               | \$662,890.06            | \$662,430.06            | \$460.00              |
| October 2018                 | \$417,140.89            | \$411,100.89            | \$6,040.00            |
| November 2018                | \$613,014.70            | \$606,240.16            | \$6,774.54            |
| December 2018                | \$280,709.08            | \$278,624.08            | \$2,085.00            |
| January 2019                 | \$283,146.40            | \$282,466.40            | \$680.00              |
| February-March 2019          | \$764,290.91            | \$716,820.50            | \$47,470.41           |
| April-May 2019               | \$550,759.42            | \$549,284.42            | \$1,475.00            |
| June-July 2019               | \$332,574.02            | \$328,949.04            | \$3,624.98            |
| August-September 2019        | \$405,944.69            | \$405,944.69            | \$0.00                |
| October-November 2019        | \$181,170.29            | \$181,170.29            | \$0.00                |
| December 2019-January 2020   | \$87,020.64             | \$87,020.64             | \$0.00                |
| February-March 2020          | \$90,414.03             | \$90,414.03             | \$0.00                |
| April-May 2020               | \$185,887.25            | \$185,887.25            | \$0.00                |
| June-July 2020               | \$113,863.62            | \$113,863.62            | \$0.00                |
| August-September 2020        | \$95,615.31             | \$95,615.31             | \$0.00                |
| October-November 2020        | \$395,522.74            | \$395,522.74            | \$0.00                |
| December 2020-January 2021   | \$139,950.99            | \$139,950.99            | \$0.00                |
| February-March 2021          | \$100,248.06            | \$100,248.06            | \$0.00                |
| April 2021                   | \$49,543.21             | \$49,543.21             | \$0.00                |
| May 2021                     | \$24,462.20             | \$24,462.20             | \$0.00                |
| June 2021                    | \$25,481.56             | \$25,481.56             | \$0.00                |
| July 2021                    | \$28,339.82             | \$28,339.82             | \$0.00                |
| August 2021                  | \$50,571.05             | \$50,571.05             | \$0.00                |
| September 2021               | \$86,109.22             | \$86,109.22             | \$0.00                |
| October 2021                 | \$62,010.33             | \$62,010.33             | \$0.00                |
| November 2021                | \$160,983.72            | \$160,983.72            | \$0.00                |
| December 2021                | \$109,144.42            | \$109,144.42            | \$0.00                |
| January 2022                 | \$20,769.74             | \$20,769.74             | \$0.00                |
| February 2022                | \$51,256.30             | \$51,256.30             | \$0.00                |
| March 2022                   | \$26,051.58             | \$26,051.58             | \$0.00                |
| April 2022                   | \$18,980.79             | \$18,980.79             | \$0.00                |
| May 2022                     | \$34,138.10             | \$34,138.10             | \$0.00                |
| June 2022                    | \$136,313.62            | \$136,313.62            | \$0.00                |
| July 2022                    | \$105,454.30            | \$105,454.30            | \$0.00                |
| August 2022                  | \$175,025.57            | \$175,025.57            | \$0.00                |
| September 2022               | \$349,203.96            | \$349,203.96            | \$0.00                |
| October 2022                 | \$46,339.07             | \$46,339.07             | \$0.00                |
| November 2022                | \$96,386.67             | \$96,386.67             | \$0.00                |
| December 2022                | \$81,809.10             | \$81,809.10             | \$0.00                |
| January 2023                 | \$40,600.82             | \$40,600.82             | \$0.00                |
| February 2023                | \$40,989.15             | \$40,989.15             | \$0.00                |
| March 2023                   | \$28,618.60             | \$28,618.60             | \$0.00                |
| April 2023                   | \$46,485.77             | \$46,485.77             | \$0.00                |
| May 2023                     | \$31,647.15             | \$31,647.15             | \$0.00                |
| June 2023                    | \$119,466.09            | \$119,466.09            | \$0.00                |
| July 2023 (Current)          | \$77,043.79             | \$77,043.79             | \$0.00                |
| <b>Total</b>                 | <b>\$117,836,163.24</b> | <b>\$108,079,341.01</b> | <b>\$9,756,822.23</b> |



## Attachment B

### Cimarron Metropolitan District July 2023 Expenditures By Category

| Category                     | District Expenditures | Non Eligible Expenses |
|------------------------------|-----------------------|-----------------------|
| <b>Construction</b>          |                       |                       |
| 313263 SW Management         | \$0.00                | \$0.00                |
| 313272 Overlot Grading       | \$0.00                | \$0.00                |
| 333305 Over-Ex               | \$0.00                | \$0.00                |
| 343415 Concrete              | \$0.00                | \$0.00                |
| 343420 Paving                | \$0.00                | \$0.00                |
| 343460 Traffic Signalization | \$0.00                | \$0.00                |
| 363610 Water                 | \$0.00                | \$0.00                |
| 363642 Water Service Res     | \$0.00                | \$0.00                |
| 363644 Water Service LS      | \$0.00                | \$0.00                |
| 414110 Sewer Trunk           | \$0.00                | \$0.00                |
| 414122 Underdrains           | \$0.00                | \$0.00                |
| 414124 SS Services           | \$0.00                | \$0.00                |
| 434310 Storm Drainage        | \$0.00                | \$0.00                |
| 454510 Electric              | \$0.00                | \$0.00                |
| 454520 Gas                   | \$0.00                | \$0.00                |
| 454554 Electric              | \$0.00                | \$0.00                |
| 515115 Landscaping           | \$0.00                | \$0.00                |
| 515125 Sleeving              | \$0.00                | \$0.00                |
| 515150 Landscape             | \$0.00                | \$0.00                |
| 535310 Rec Center            | \$0.00                | \$0.00                |
| 919100                       | \$0.00                | \$0.00                |
| 999990 Misc                  | \$0.00                | \$0.00                |
| 999999 Retainage             | \$0.00                | \$0.00                |
| <b>Subtotal Construction</b> | <b>\$0.00</b>         | <b>\$0.00</b>         |
| <b>Consulting</b>            |                       |                       |
| 212120 Bonding               | \$0.00                | \$0.00                |
| 222210                       | \$0.00                | \$0.00                |
| 222220 Planning/Engineering  | \$39,947.79           | \$0.00                |
| 222230 Slope Stability       | \$0.00                | \$0.00                |
| 222240 Testing               | \$0.00                | \$0.00                |
| 222250 Survey                | \$0.00                | \$0.00                |
| 222320 Architecture          | \$0.00                | \$0.00                |
| 222330                       | \$0.00                | \$0.00                |
| 252500                       | \$0.00                | \$0.00                |
| 252510 Legal                 | \$30,096.00           | \$0.00                |
| 252580 Professional          | \$0.00                | \$0.00                |
| 260000 District Amenities    | \$0.00                | \$0.00                |
| 31000                        | \$0.00                | \$0.00                |
| 313263 SW Management         | \$0.00                | \$0.00                |
| 717145 Project Management    | \$7,000.00            | \$0.00                |
| 717150 Accounting            | \$0.00                | \$0.00                |
| 999990 Misc                  | \$0.00                | \$0.00                |
| <b>Subtotal Consulting</b>   | <b>\$77,043.79</b>    | <b>\$0.00</b>         |
| <b>Subtotal Capital</b>      | <b>\$77,043.79</b>    | <b>\$0.00</b>         |



1626 Cole Blvd, Suite 125  
Lakewood, CO 80401

# **Cimarron Metro District Verification of District Expenditures For August 2023**

August 9, 2023

Cimarron Metropolitan District  
 Attn: Board of Directors  
 400 East Simpson Street, Suite 200  
 Lafayette, CO 80026

## **DISTRICT ENGINEER'S VERIFICATION OF IMPROVEMENTS AND EXPENDITURES PAID BY THE CIMARRON METROPOLITAN DISTRICT**

### **VERIFICATION FOR AUGUST 2023**

#### **INTRODUCTION**

Independent District Engineering Services, LLC (Engineer) was hired by the Cimarron Metropolitan District (District) to provide verification of expenditures of the District related to District contracts associated with improvements and services (District Expenditures) for the Candelas Development located in the City of Arvada, Colorado (Project). Some of the District contracts included expenditures for both District-eligible and non-eligible improvements and services. This document summarizes the engineer's approach and findings for such expenditures.

#### **ACTIVITIES CONDUCTED**

To provide verification of all District Expenditures, a review of the relevant District contracts, invoices and pay applications submitted to the District was performed. These were invoices and pay applications submitted to the District and run through the District invoice process. Some of the expenditures were for improvements and services eligible as public expenditures (District Eligible Expenses) and some of the District Expenditures were for improvements and services that are not eligible as public expenditures (Non-Eligible Expenses). A summary was created for District Expenditures, including both District Eligible and Non-Eligible Expenses, and attached as Attachment A.

#### **DISCUSSION**

##### **Review of District Documents and Agreements**

The District Service Plan and the Facilities Funding and Acquisition Agreement between the District and Arvada Residential Partners (Developer) were reviewed to confirm District-eligible improvements and services (District Eligible Improvements). The construction contracts of the District were bid, reviewed, negotiated and awarded through the District under the recommendation of the District Engineer (Construction Contracts). The construction consultant agreements were negotiated and awarded through the District under the recommendation of the District Engineer (Construction Services Agreements). Support consultant agreements have been negotiated and awarded through the District (Service Agreements).

##### **Review of Expenditures**

###### Construction Contracts and Construction Services Agreements

The pay applications and invoices associated with Construction Contracts and Construction Service Agreements are submitted to and reviewed by the District Engineer. The District Engineer also provided site observations to verify that the work being billed for has been completed. Some of the invoices and pay applications contained work that was for District Eligible Improvements as well as improvements and services that are not District Eligible Improvements. The expenditures were allocated between District Eligible Expenses and Non-Eligible Expenses by percentage area, by the type of work being done or by the item being constructed. These allocations are verified to be in accordance with the Service Plan for District Eligible Expenses. These expenditures are shown in Attachment A.



### Service Agreements

Invoices for Service Agreements are submitted directly to the District for approval. These invoices were reviewed by District Engineer to provide a recommendation for verification and allocation of District Eligible Expenses and Non-Eligible Expenses. These expenditures are shown in Attachment A.

### **Classification of Expenditures**

District Expenditures consisted of amounts paid by the District pursuant to Construction Contracts, Construction Service Agreements and Service Agreements evidenced by pay applications and invoices.

Construction Contract expenditures include improvements such as, but not limited to, landscaping, irrigation, fencing, earthwork, erosion control, utilities, concrete, water tank, and pump stations.

Construction Service Agreement expenditures are for the consultants that support the construction such as, but not limited to, survey, storm water inspection, materials testing, design engineer support, district engineer, postings and maintenance, and plan reproductions.

Service Agreement expenditures are for consultants that support the District such as, but not limited to, legal counsel, District management, accounting, planning, publications, and miscellaneous fees.

### **Attachments**

Attachment A shows all the District Expenditures submitted to the District. This shows the allocation of District Expenditures between verified District Eligible Expenses and Non-Eligible Expenses. Attachment B shows the Expenditures by category.

### **SUMMARY AND RECOMMENDATION**

After completing the activities identified, in our professional opinion, we have concluded the following:

1. In our professional opinion, the District Expenditures were reviewed and found to be reasonable and comparable to other similar projects in the Denver metropolitan area. O&M Expenditures were not reviewed by the Engineer.
2. At this time and based upon the information provided, we find **\$98,965.13** of the District Expenditures were appropriately classified as District Eligible Expenses. This includes reconciliations as stated on Attachment A for McGeady Becher PC.
3. At this time and based upon the information provided, we find **\$0.00** of the District Expenditures were appropriately classified as Non-Eligible Expenses.

Should you have any questions or require further information please feel free to contact me.

Respectfully Submitted,  
Independent District Engineering Services, LLC

*Brandon Collins, PE*

Brandon Collins, PE  
Attachments



# Attachments A and B District Expenditures

**Cimarron Metropolitan District  
August 2023 Expenditures**

| Vendor                               | Invoice ID                    | Invoice Date | Description                              | Invoiced Amount    | District Expenditures | Non Eligible Expenses |
|--------------------------------------|-------------------------------|--------------|--|--------------------|-----------------------|-----------------------|
| Aztec Consultants                    | 2023-08 CMD Aztec Inv         | 7/10/23      | Slope Stability (Inv. #148327)           | \$900.00           | \$900.00              | \$0.00                |
| Brownstein Hyatt Farber Schreck, LLP | CMD-BRO-940436                | 6/7/23       | Warranty Dispute (Inv. #940436)          | \$43,770.20        | \$43,770.20           | \$0.00                |
| Brownstein Hyatt Farber Schreck, LLP | CMD-BRO-940451                | 6/7/23       | Warranty Dispute (Inv. #940451)          | \$17,172.26        | \$17,172.26           | \$0.00                |
| Brownstein Hyatt Farber Schreck, LLP | CMD-BRO-946681                | 7/20/23      | Warranty Dispute (Inv. #946681)          | \$24.00            | \$24.00               | \$0.00                |
| CTL Thompson                         | CMD-CTL672800                 | 7/24/23      | Slope Stability (Inv. #672800)           | \$8,798.75         | \$8,798.75            | \$0.00                |
| GPMB, LLC                            | CMD-GPMB265                   | 7/31/23      | Slope Stability (Inv. #265)              | \$5,890.00         | \$5,890.00            | \$0.00                |
| GPMB, LLC                            | CMD-GPMB266                   | 7/31/23      | Slope Stability (Inv. #266)              | \$2,138.00         | \$2,138.00            | \$0.00                |
| Ground Engineering                   | CMD-Ground Eng-20230711122339 | 7/11/23      | Slope Stability (Inv. #233560-0-2)       | \$7,739.00         | \$7,739.00            | \$0.00                |
| IDES LLC                             | 2023-08 CMD IDES Inv          | 7/31/23      | District Engineering (Inv. #059923)      | \$6,388.02         | \$6,388.02            | \$0.00                |
| Martin/Martin                        | 2023-08 CMD MM Inv            | 7/14/23      | Slope Stability (Inv. #22518.C.11-00011) | \$2,680.00         | \$2,680.00            | \$0.00                |
| Stewardship Land Services, Ltd.      | CMD-SLS1077                   | 8/3/23       | Monthly PM Services (Inv. #1077)         | \$7,000.00         | \$7,000.00            | \$0.00                |
| SWAP, LLC                            | 2023-08 CMD SWAP Inv          | 7/31/23      | Monthly PM Services (Inv. #08584)        | \$919.90           | \$919.90              | \$0.00                |
| <b>Subtotal Expenditures</b>         |                               |              |  | <b>\$98,965.13</b> | <b>\$98,965.13</b>    | <b>\$0.00</b>         |

**From Attachment A of Facilities Acquisition**

| Vendor                                 | Invoice ID | Invoice Date | Description | Invoiced Amount | District Expenditures | Non Eligible Expenses |
|--|------------|--------------|-------------|-----------------|-----------------------|-----------------------|
| None                                   |            |              |             | \$0.00          | \$0.00                | \$0.00                |
| <b>Subtotal Facilities Acquisition</b> |            |              |             | <b>\$0.00</b>   | <b>\$0.00</b>         | <b>\$0.00</b>         |

Total

**\$98,965.13      \$98,965.13      \$0.00**

**Summary of Previous Expenditures**

| Description                  | Invoiced Amount         | District Portion        | Developer Portion     |
|------------------------------|-------------------------|-------------------------|-----------------------|
| April 2011 - December 2011   | \$10,018,871.58         | \$7,891,581.78          | \$2,127,309.82        |
| January 2012 - December 2012 | \$21,070,722.69         | \$18,821,707.00         | \$2,249,015.61        |
| January 2013 - December 2013 | \$24,812,705.10         | \$22,247,147.66         | \$2,565,557.44        |
| January 2014 - December 2014 | \$12,000,207.76         | \$11,452,897.46         | \$547,310.30          |
| January 2015                 | \$817,583.99            | \$731,572.15            | \$86,011.84           |
| Discrepancies Revisions      | -\$9,482.69             | -\$9,482.69             | \$0.00                |
| February 2015                | \$768,813.61            | \$748,465.23            | \$20,348.38           |
| March 2015                   | \$761,559.31            | \$724,558.19            | \$39,080.95           |
| April 2015                   | \$695,031.32            | \$598,730.00            | \$96,299.90           |
| May 2015                     | \$1,289,783.13          | \$1,211,873.36          | \$77,909.75           |
| June 2015                    | \$720,254.64            | \$702,501.71            | \$17,752.93           |
| July 2015                    | \$1,410,328.33          | \$1,228,705.19          | \$181,623.14          |
| August 2015                  | \$1,315,918.10          | \$1,250,175.96          | \$65,742.14           |
| September 2015               | \$1,721,087.41          | \$1,614,606.50          | \$106,480.91          |
| October 2015                 | \$1,269,621.35          | \$1,206,327.14          | \$63,294.21           |
| November 2015                | \$780,300.14            | \$713,889.71            | \$66,410.43           |
| December 2015                | \$756,598.28            | \$680,563.55            | \$76,034.73           |
| January 2016                 | \$800,728.96            | \$580,315.96            | \$220,413.00          |
| February 2016                | \$570,728.96            | \$562,281.06            | \$8,076.52            |
| March 2016                   | \$1,213,309.14          | \$1,153,979.74          | \$59,329.40           |
| April 2016                   | \$1,434,299.11          | \$1,347,357.20          | \$86,941.91           |
| May 2016                     | \$1,053,203.00          | \$1,017,759.38          | \$35,443.62           |
| June 2016                    | \$1,356,821.77          | \$1,357,524.27          | \$1,287.50            |
| July 2016                    | \$1,734,107.82          | \$1,729,615.81          | \$4,492.01            |
| August 2016                  | \$1,581,590.58          | \$1,575,895.57          | \$5,695.01            |
| September 2016               | \$1,045,381.30          | \$1,018,494.69          | \$26,886.62           |
| October 2016                 | \$921,020.12            | \$919,932.61            | \$26,886.62           |
| November 2016                | \$979,267.13            | \$963,336.63            | \$15,930.50           |
| December 2016                | \$362,198.78            | \$354,583.77            | \$7,615.01            |
| January 2017                 | \$481,190.45            | \$479,295.94            | \$2,005.51            |
| February 2017                | \$357,790.30            | \$357,790.30            | \$0.00                |
| March 2017                   | \$407,004.87            | \$403,102.37            | \$3,902.50            |
| April 2017                   | \$297,364.74            | \$292,531.74            | \$4,833.00            |
| May 2017                     | \$855,818.15            | \$779,616.65            | \$76,201.50           |
| June 2017                    | \$311,745.83            | \$308,023.33            | \$3,722.50            |
| July 2017                    | \$655,654.61            | \$650,351.61            | \$3,722.50            |
| August 2017                  | \$469,161.46            | \$460,258.98            | \$5,922.50            |
| September 2017               | \$672,495.96            | \$671,183.45            | \$1,312.51            |
| October 2017                 | \$555,341.55            | \$553,824.04            | \$1,517.51            |
| November 2017                | \$888,520.58            | \$801,458.31            | \$87,062.27           |
| December 2017                | \$1,419,105.61          | \$1,279,990.58          | \$139,115.03          |
| January 2018                 | \$1,452,290.58          | \$1,145,238.77          | \$307,051.81          |
| February 2018                | \$1,204,019.62          | \$1,062,806.59          | \$141,213.03          |
| March 2018                   | \$1,296,711.15          | \$1,264,028.86          | \$32,682.29           |
| April 2018                   | \$1,805,610.62          | \$1,761,230.61          | \$44,379.91           |
| May 2018                     | \$590,331.09            | \$499,052.97            | \$91,278.12           |
| June 2018                    | \$1,243,153.64          | \$1,159,638.12          | \$83,515.42           |
| July 2018                    | \$858,076.94            | \$855,413.94            | \$2,663.00            |
| August 2018                  | \$1,137,495.17          | \$1,134,539.17          | \$2,956.00            |
| September 2018               | \$662,890.06            | \$662,430.06            | \$460.00              |
| October 2018                 | \$417,140.89            | \$411,100.89            | \$6,040.00            |
| November 2018                | \$613,014.70            | \$606,244.16            | \$6,770.54            |
| December 2018                | \$280,709.08            | \$278,624.08            | \$2,085.00            |
| January 2019                 | \$283,146.40            | \$282,466.40            | \$680.00              |
| February-March 2019          | \$764,290.91            | \$716,820.50            | \$47,470.41           |
| April-May 2019               | \$550,759.42            | \$549,284.42            | \$1,475.00            |
| June-July 2019               | \$332,574.02            | \$328,949.04            | \$3,624.98            |
| August-September 2019        | \$405,944.69            | \$405,944.69            | \$0.00                |
| October-November 2019        | \$181,170.28            | \$181,170.28            | \$0.00                |
| December 2019-January 2020   | \$87,020.64             | \$87,020.64             | \$0.00                |
| February-March 2020          | \$90,414.03             | \$90,414.03             | \$0.00                |
| April-May 2020               | \$185,887.25            | \$185,887.25            | \$0.00                |
| June-July 2020               | \$113,863.62            | \$113,863.62            | \$0.00                |
| August-September 2020        | \$95,615.31             | \$95,615.31             | \$0.00                |
| October-November 2020        | \$395,522.74            | \$395,522.74            | \$0.00                |
| December 2020-January 2021   | \$139,950.99            | \$139,950.99            | \$0.00                |
| February-March 2021          | \$100,248.06            | \$100,248.06            | \$0.00                |
| April 2021                   | \$49,543.21             | \$49,543.21             | \$0.00                |
| May 2021                     | \$24,462.20             | \$24,462.20             | \$0.00                |
| June 2021                    | \$25,481.56             | \$25,481.56             | \$0.00                |
| July 2021                    | \$28,339.82             | \$28,339.82             | \$0.00                |
| August 2021                  | \$50,571.05             | \$50,571.05             | \$0.00                |
| September 2021               | \$86,109.22             | \$86,109.22             | \$0.00                |
| October 2021                 | \$62,010.33             | \$62,010.33             | \$0.00                |
| November 2021                | \$160,983.72            | \$160,983.72            | \$0.00                |
| December 2021                | \$109,144.42            | \$109,144.42            | \$0.00                |
| January 2022                 | \$20,769.74             | \$20,769.74             | \$0.00                |
| February 2022                | \$51,256.30             | \$51,256.30             | \$0.00                |
| March 2022                   | \$26,051.58             | \$26,051.58             | \$0.00                |
| April 2022                   | \$18,980.79             | \$18,980.79             | \$0.00                |
| May 2022                     | \$34,138.10             | \$34,138.10             | \$0.00                |
| June 2022                    | \$136,313.62            | \$136,313.62            | \$0.00                |
| July 2022                    | \$105,454.30            | \$105,454.30            | \$0.00                |
| August 2022                  | \$175,025.57            | \$175,025.57            | \$0.00                |
| September 2022               | \$349,203.96            | \$349,203.96            | \$0.00                |
| October 2022                 | \$46,339.07             | \$46,339.07             | \$0.00                |
| November 2022                | \$95,386.67             | \$95,386.67             | \$0.00                |
| December 2022                | \$61,009.10             | \$61,009.10             | \$0.00                |
| January 2023                 | \$40,600.82             | \$40,600.82             | \$0.00                |
| February 2023                | \$40,989.15             | \$40,989.15             | \$0.00                |
| March 2023                   | \$28,618.60             | \$28,618.60             | \$0.00                |
| April 2023                   | \$46,485.77             | \$46,485.77             | \$0.00                |
| May 2023                     | \$31,647.15             | \$31,647.15             | \$0.00                |
| June 2023                    | \$119,466.09            | \$119,466.09            | \$0.00                |
| July 2023                    | \$7,043.79              | \$7,043.79              | \$0.00                |
| August 2023 (Current)        | \$98,965.13             | \$98,965.13             | \$0.00                |
| <b>Total</b>                 | <b>\$117,935,128.37</b> | <b>\$108,178,306.14</b> | <b>\$9,782,758.34</b> |

## Attachment B

### Cimarron Metropolitan District August 2023 Expenditures By Category

| Category                     | District Expenditures | Non Eligible Expenses |
|------------------------------|-----------------------|-----------------------|
| <b>Construction</b>          |                       |                       |
| 313263 SW Management         | \$0.00                | \$0.00                |
| 313272 Overlot Grading       | \$0.00                | \$0.00                |
| 333305 Over-Ex               | \$0.00                | \$0.00                |
| 343415 Concrete              | \$0.00                | \$0.00                |
| 343420 Paving                | \$0.00                | \$0.00                |
| 343460 Traffic Signalization | \$0.00                | \$0.00                |
| 363610 Water                 | \$0.00                | \$0.00                |
| 363642 Water Service Res     | \$0.00                | \$0.00                |
| 363644 Water Service LS      | \$0.00                | \$0.00                |
| 414110 Sewer Trunk           | \$0.00                | \$0.00                |
| 414122 Underdrains           | \$0.00                | \$0.00                |
| 414124 SS Services           | \$0.00                | \$0.00                |
| 434310 Storm Drainage        | \$0.00                | \$0.00                |
| 454510 Electric              | \$0.00                | \$0.00                |
| 454520 Gas                   | \$0.00                | \$0.00                |
| 454554 Electric              | \$0.00                | \$0.00                |
| 515115 Landscaping           | \$0.00                | \$0.00                |
| 515125 Sleeving              | \$0.00                | \$0.00                |
| 515150 Landscape             | \$0.00                | \$0.00                |
| 535310 Rec Center            | \$0.00                | \$0.00                |
| 919100                       | \$0.00                | \$0.00                |
| 999990 Misc                  | \$0.00                | \$0.00                |
| 999999 Retainage             | \$0.00                | \$0.00                |
| <b>Subtotal Construction</b> | <b>\$0.00</b>         | <b>\$0.00</b>         |
| <b>Consulting</b>            |                       |                       |
| 212120 Bonding               | \$0.00                | \$0.00                |
| 222210                       | \$0.00                | \$0.00                |
| 222220 Planning/Engineering  | \$9,987.92            | \$0.00                |
| 222230 Slope Stability       | \$23,537.75           | \$0.00                |
| 222240 Testing               | \$0.00                | \$0.00                |
| 222250 Survey                | \$900.00              | \$0.00                |
| 222320 Architecture          | \$0.00                | \$0.00                |
| 222330                       | \$0.00                | \$0.00                |
| 252500                       | \$0.00                | \$0.00                |
| 252510 Legal                 | \$64,539.46           | \$0.00                |
| 252580 Professional          | \$0.00                | \$0.00                |
| 260000 District Amenities    | \$0.00                | \$0.00                |
| 31000                        | \$0.00                | \$0.00                |
| 313263 SW Management         | \$0.00                | \$0.00                |
| 717145 Project Management    | \$0.00                | \$0.00                |
| 717150 Accounting            | \$0.00                | \$0.00                |
| 999990 Misc                  | \$0.00                | \$0.00                |
| <b>Subtotal Consulting</b>   | <b>\$98,965.13</b>    | <b>\$0.00</b>         |
| <b>Subtotal Capital</b>      | <b>\$98,965.13</b>    | <b>\$0.00</b>         |

# **Cimarron Metro District Verification of District Expenditures For September 2023**



September 11, 2023

Cimarron Metropolitan District  
Attn: Board of Directors  
400 East Simpson Street, Suite 200  
Lafayette, CO 80026

## **DISTRICT ENGINEER'S VERIFICATION OF IMPROVEMENTS AND EXPENDITURES PAID BY THE CIMARRON METROPOLITAN DISTRICT**

### **VERIFICATION FOR SEPTEMBER 2023**

#### **INTRODUCTION**

Independent District Engineering Services, LLC (Engineer) was hired by the Cimarron Metropolitan District (District) to provide verification of expenditures of the District related to District contracts associated with improvements and services (District Expenditures) for the Candelas Development located in the City of Arvada, Colorado (Project). Some of the District contracts included expenditures for both District-eligible and non-eligible improvements and services. This document summarizes the engineer's approach and findings for such expenditures.

#### **ACTIVITIES CONDUCTED**

To provide verification of all District Expenditures, a review of the relevant District contracts, invoices and pay applications submitted to the District was performed. These were invoices and pay applications submitted to the District and run through the District invoice process. Some of the expenditures were for improvements and services eligible as public expenditures (District Eligible Expenses) and some of the District Expenditures were for improvements and services that are not eligible as public expenditures (Non-Eligible Expenses). A summary was created for District Expenditures, including both District Eligible and Non-Eligible Expenses, and attached as Attachment A.

#### **DISCUSSION**

##### **Review of District Documents and Agreements**

The District Service Plan and the Facilities Funding and Acquisition Agreement between the District and Arvada Residential Partners (Developer) were reviewed to confirm District-eligible improvements and services (District Eligible Improvements). The construction contracts of the District were bid, reviewed, negotiated and awarded through the District under the recommendation of the District Engineer (Construction Contracts). The construction consultant agreements were negotiated and awarded through the District under the recommendation of the District Engineer (Construction Services Agreements). Support consultant agreements have been negotiated and awarded through the District (Service Agreements).

##### **Review of Expenditures**

###### Construction Contracts and Construction Services Agreements

The pay applications and invoices associated with Construction Contracts and Construction Service Agreements are submitted to and reviewed by the District Engineer. The District Engineer also provided site observations to verify that the work being billed for has been completed. Some of the invoices and pay applications contained work that was for District Eligible Improvements as well as improvements and services that are not District Eligible Improvements. The expenditures were allocated between District Eligible Expenses and Non-Eligible Expenses by percentage area, by the type of work being done or by the item being constructed. These allocations are verified to be in accordance with the Service Plan for District Eligible Expenses. These expenditures are shown in Attachment A.



### Service Agreements

Invoices for Service Agreements are submitted directly to the District for approval. These invoices were reviewed by District Engineer to provide a recommendation for verification and allocation of District Eligible Expenses and Non-Eligible Expenses. These expenditures are shown in Attachment A.

### **Classification of Expenditures**

District Expenditures consisted of amounts paid by the District pursuant to Construction Contracts, Construction Service Agreements and Service Agreements evidenced by pay applications and invoices.

Construction Contract expenditures include improvements such as, but not limited to, landscaping, irrigation, fencing, earthwork, erosion control, utilities, concrete, water tank, and pump stations.

Construction Service Agreement expenditures are for the consultants that support the construction such as, but not limited to, survey, storm water inspection, materials testing, design engineer support, district engineer, postings and maintenance, and plan reproductions.

Service Agreement expenditures are for consultants that support the District such as, but not limited to, legal counsel, District management, accounting, planning, publications, and miscellaneous fees.

### **Attachments**

Attachment A shows all the District Expenditures submitted to the District. This shows the allocation of District Expenditures between verified District Eligible Expenses and Non-Eligible Expenses. Attachment B shows the Expenditures by category.

### **SUMMARY AND RECOMMENDATION**

After completing the activities identified, in our professional opinion, we have concluded the following:

1. In our professional opinion, the District Expenditures were reviewed and found to be reasonable and comparable to other similar projects in the Denver metropolitan area. O&M Expenditures were not reviewed by the Engineer.
2. At this time and based upon the information provided, we find **\$58,118.77** of the District Expenditures were appropriately classified as District Eligible Expenses. This includes reconciliations as stated on Attachment A for McGeady Becher PC.
3. At this time and based upon the information provided, we find **\$0.00** of the District Expenditures were appropriately classified as Non-Eligible Expenses.

Should you have any questions or require further information please feel free to contact me.

Respectfully Submitted,  
Independent District Engineering Services, LLC

*Brandon Collins, PE*

Brandon Collins, PE  
Attachments



# Attachments A and B District Expenditures

**Cimarron Metropolitan District  
September 2023 Expenditures**

| Vendor                          | Invoice ID            | Invoice Date | Description                              | Invoiced Amount    | District Expenditures | Non Eligible Expenses |
|---------------------------------|-----------------------|--------------|--|--------------------|-----------------------|-----------------------|
| Aztec Consultants               | 2023-09 CMD Aztec Inv | 8/7/23       | Slope Stability (Inv. #149878)           | \$300.00           |                       | \$0.00                |
| CTL Thomsson                    | CMD-CTL676014         | 8/31/23      | Slope Stability (Inv. #676014)           | \$4,355.00         | \$4,355.00            | \$0.00                |
| CJBs Excavating                 | 2023-09 DM CJBs PA1   | 8/30/23      | Slope Stability (Pay Application #1)     | \$20,368.95        | \$20,368.95           | \$0.00                |
| Ground Engineering              | CMD-GROUND 233560.0-3 | 8/17/23      | Slope Stability (Inv. #233560.0-3)       | \$190.00           | \$190.00              | \$0.00                |
| IDES LLC                        | 2023-09 CMD IDES Inv  | 8/31/23      | District Engineering (Inv. #059924)      | \$19,167.32        | \$19,167.32           | \$0.00                |
| Marlin/Martin                   | 2023-09 CMD MM Inv    | 8/15/23      | Slope Stability (Inv. #22518.C.11-00012) | \$2,420.00         | \$2,420.00            | \$0.00                |
| Stewardship Land Services, Ltd. | CMD-SLS1081           | 9/1/23       | Monthly PM Services (Inv. #1081)         | \$10,000.00        | \$10,000.00           | \$0.00                |
| SWAP, LLC                       | 2023-09 CMD SWAP Inv  | 8/31/23      | Monthly PM Services (Inv. #08585)        | \$717.50           | \$717.50              | \$0.00                |
| <b>Subtotal Expenditures</b>    |                       |              |  | <b>\$58,118.77</b> | <b>\$58,118.77</b>    | <b>\$0.00</b>         |

**From Attachment A of Facilities Acquisition**

| Vendor                                 | Invoice ID | Invoice Date | Description | Invoiced Amount | District Expenditures | Non Eligible Expenses |
|--|------------|--------------|-------------|-----------------|-----------------------|-----------------------|
| None                                   |            |              |             | \$0.00          | \$0.00                | \$0.00                |
| <b>Subtotal Facilities Acquisition</b> |            |              |             | <b>\$0.00</b>   | <b>\$0.00</b>         | <b>\$0.00</b>         |

**Total**

**\$58,118.77      \$58,118.77      \$0.00**

**Summary of Previous Expenditures**

| Description                  | Invoiced Amount         | District Portion        | Developer Portion     |
|------------------------------|-------------------------|-------------------------|-----------------------|
| April 2011 - December 2011   | \$10,018,871.58         | \$7,891,561.78          | \$2,127,309.82        |
| January 2012 - December 2012 | \$21,070,722.59         | \$18,827,767.00         | \$2,242,964.61        |
| January 2013 - December 2013 | \$24,812,705.10         | \$22,247,147.66         | \$2,565,557.44        |
| January 2014 - December 2014 | \$12,000,207.76         | \$11,452,897.46         | \$547,310.30          |
| January 2015                 | \$817,583.99            | \$731,572.15            | \$86,011.84           |
| Discrepancies Revisions      | \$9,482.69              | \$9,482.69              | \$0.00                |
| February 2015                | \$768,813.61            | \$748,465.23            | \$20,348.38           |
| March 2015                   | \$761,559.31            | \$724,558.19            | \$39,080.95           |
| April 2015                   | \$695,031.32            | \$598,795.42            | \$96,235.90           |
| May 2015                     | \$1,289,783.13          | \$1,211,873.38          | \$77,909.75           |
| June 2015                    | \$720,254.64            | \$702,501.71            | \$17,752.93           |
| July 2015                    | \$1,410,328.33          | \$1,228,705.19          | \$181,623.14          |
| August 2015                  | \$1,315,918.10          | \$1,250,175.96          | \$65,742.14           |
| September 2015               | \$1,721,087.41          | \$1,614,606.50          | \$106,480.91          |
| October 2015                 | \$1,269,821.35          | \$1,206,327.14          | \$63,494.21           |
| November 2015                | \$780,300.14            | \$713,889.71            | \$66,410.43           |
| December 2015                | \$756,598.28            | \$680,563.55            | \$76,034.73           |
| January 2016                 | \$600,728.96            | \$580,315.96            | \$20,413.00           |
| February 2016                | \$570,728.96            | \$562,281.06            | \$8,076.52            |
| March 2016                   | \$1,213,309.14          | \$1,153,979.74          | \$59,329.40           |
| April 2016                   | \$1,434,299.11          | \$1,347,357.20          | \$86,941.91           |
| May 2016                     | \$1,053,203.00          | \$1,017,758.38          | \$35,443.62           |
| June 2016                    | \$1,358,821.77          | \$1,357,524.27          | \$1,297.50            |
| July 2016                    | \$1,734,107.82          | \$1,729,615.31          | \$4,492.51            |
| August 2016                  | \$1,581,590.58          | \$1,575,895.57          | \$5,695.01            |
| September 2016               | \$1,045,381.30          | \$1,018,494.69          | \$26,886.63           |
| October 2016                 | \$921,020.12            | \$919,932.61            | \$26,886.62           |
| November 2016                | \$979,267.13            | \$963,336.63            | \$15,930.50           |
| December 2016                | \$362,198.78            | \$354,583.77            | \$7,615.01            |
| January 2017                 | \$481,301.45            | \$479,295.94            | \$2,005.51            |
| February 2017                | \$357,790.30            | \$357,790.30            | \$0.00                |
| March 2017                   | \$407,004.87            | \$403,102.37            | \$3,902.50            |
| April 2017                   | \$297,364.74            | \$292,531.74            | \$4,833.00            |
| May 2017                     | \$855,818.15            | \$779,616.65            | \$76,201.50           |
| June 2017                    | \$311,745.63            | \$306,023.33            | \$5,722.50            |
| July 2017                    | \$655,654.61            | \$650,361.61            | \$5,293.00            |
| August 2017                  | \$468,181.46            | \$462,258.96            | \$5,922.50            |
| September 2017               | \$672,495.96            | \$671,363.45            | \$1,132.51            |
| October 2017                 | \$555,341.55            | \$553,824.04            | \$1,517.51            |
| November 2017                | \$888,520.58            | \$801,458.31            | \$87,062.27           |
| December 2017                | \$1,419,105.61          | \$1,279,990.58          | \$139,115.03          |
| January 2018                 | \$1,452,290.58          | \$1,145,238.77          | \$307,051.81          |
| February 2018                | \$1,204,019.62          | \$1,062,806.59          | \$141,213.03          |
| March 2018                   | \$1,296,711.15          | \$1,264,028.86          | \$32,682.29           |
| April 2018                   | \$1,805,510.62          | \$1,761,234.91          | \$44,275.71           |
| May 2018                     | \$590,331.09            | \$499,052.87            | \$91,278.22           |
| June 2018                    | \$1,243,153.54          | \$1,159,638.12          | \$83,515.42           |
| July 2018                    | \$858,076.94            | \$855,413.94            | \$2,663.00            |
| August 2018                  | \$1,137,495.17          | \$1,134,539.17          | \$2,956.00            |
| September 2018               | \$662,890.06            | \$662,430.06            | \$460.00              |
| October 2018                 | \$417,140.89            | \$411,100.89            | \$6,040.00            |
| November 2018                | \$613,014.70            | \$606,240.16            | \$6,774.54            |
| December 2018                | \$280,709.08            | \$278,624.08            | \$2,085.00            |
| January 2019                 | \$283,146.40            | \$282,466.40            | \$680.00              |
| February-March 2019          | \$764,290.91            | \$716,820.50            | \$47,470.41           |
| April-May 2019               | \$550,759.42            | \$549,284.42            | \$1,475.00            |
| June-July 2019               | \$332,574.02            | \$328,949.04            | \$3,624.98            |
| August-September 2019        | \$405,944.69            | \$405,944.69            | \$0.00                |
| October-November 2019        | \$181,170.29            | \$181,170.29            | \$0.00                |
| December 2019-January 2020   | \$87,020.64             | \$87,020.64             | \$0.00                |
| February-March 2020          | \$90,414.03             | \$90,414.03             | \$0.00                |
| April-May 2020               | \$185,887.25            | \$185,887.25            | \$0.00                |
| June-July 2020               | \$113,863.62            | \$113,863.62            | \$0.00                |
| August-September 2020        | \$95,615.31             | \$95,615.31             | \$0.00                |
| October-November 2020        | \$395,522.74            | \$395,522.74            | \$0.00                |
| December 2020-January 2021   | \$139,950.99            | \$139,950.99            | \$0.00                |
| February-March 2021          | \$100,248.06            | \$100,248.06            | \$0.00                |
| April 2021                   | \$49,543.21             | \$49,543.21             | \$0.00                |
| May 2021                     | \$24,462.20             | \$24,462.20             | \$0.00                |
| June 2021                    | \$25,481.56             | \$25,481.56             | \$0.00                |
| July 2021                    | \$28,339.82             | \$28,339.82             | \$0.00                |
| August 2021                  | \$50,571.05             | \$50,571.05             | \$0.00                |
| September 2021               | \$86,109.22             | \$86,109.22             | \$0.00                |
| October 2021                 | \$62,010.33             | \$62,010.33             | \$0.00                |
| November 2021                | \$160,983.72            | \$160,983.72            | \$0.00                |
| December 2021                | \$109,144.42            | \$109,144.42            | \$0.00                |
| January 2022                 | \$20,769.74             | \$20,769.74             | \$0.00                |
| February 2022                | \$51,256.30             | \$51,256.30             | \$0.00                |
| March 2022                   | \$26,051.58             | \$26,051.58             | \$0.00                |
| April 2022                   | \$18,980.79             | \$18,980.79             | \$0.00                |
| May 2022                     | \$34,138.10             | \$34,138.10             | \$0.00                |
| June 2022                    | \$136,313.62            | \$136,313.62            | \$0.00                |
| July 2022                    | \$105,454.30            | \$105,454.30            | \$0.00                |
| August 2022                  | \$175,025.57            | \$175,025.57            | \$0.00                |
| September 2022               | \$349,203.96            | \$349,203.96            | \$0.00                |
| October 2022                 | \$46,339.07             | \$46,339.07             | \$0.00                |
| November 2022                | \$96,386.67             | \$96,386.67             | \$0.00                |
| December 2022                | \$81,809.10             | \$81,809.10             | \$0.00                |
| January 2023                 | \$40,600.82             | \$40,600.82             | \$0.00                |
| February 2023                | \$40,989.15             | \$40,989.15             | \$0.00                |
| March 2023                   | \$28,618.60             | \$28,618.60             | \$0.00                |
| April 2023                   | \$46,485.77             | \$46,485.77             | \$0.00                |
| May 2023                     | \$31,647.15             | \$31,647.15             | \$0.00                |
| June 2023                    | \$119,466.09            | \$119,466.09            | \$0.00                |
| July 2023                    | \$77,043.79             | \$77,043.79             | \$0.00                |
| August 2023                  | \$98,965.13             | \$98,965.13             | \$0.00                |
| September 2023 (Current)     | \$58,118.77             | \$58,118.77             | \$0.00                |
| <b>Total</b>                 | <b>\$117,993,247.14</b> | <b>\$108,236,424.91</b> | <b>\$9,782,758.34</b> |

## Attachment B

### Cimarron Metropolitan District September 2023 Expenditures By Category

| Category                     | District Expenditures | Non Eligible Expenses |
|------------------------------|-----------------------|-----------------------|
| <b>Construction</b>          |                       |                       |
| 313263 SW Management         | \$0.00                | \$0.00                |
| 313272 Overlot Grading       | \$0.00                | \$0.00                |
| 333305 Over-Ex               | \$0.00                | \$0.00                |
| 343415 Concrete              | \$0.00                | \$0.00                |
| 343420 Paving                | \$0.00                | \$0.00                |
| 343460 Traffic Signalization | \$0.00                | \$0.00                |
| 363610 Water                 | \$0.00                | \$0.00                |
| 363642 Water Service Res     | \$0.00                | \$0.00                |
| 363644 Water Service LS      | \$0.00                | \$0.00                |
| 414110 Sewer Trunk           | \$0.00                | \$0.00                |
| 414122 Underdrains           | \$0.00                | \$0.00                |
| 414124 SS Services           | \$0.00                | \$0.00                |
| 434310 Storm Drainage        | \$17,076.00           | \$0.00                |
| 454510 Electric              | \$0.00                | \$0.00                |
| 454520 Gas                   | \$0.00                | \$0.00                |
| 454554 Electric              | \$0.00                | \$0.00                |
| 515115 Landscaping           | \$4,365.00            | \$0.00                |
| 515125 Sleeving              | \$0.00                | \$0.00                |
| 515150 Landscape             | \$0.00                | \$0.00                |
| 535310 Rec Center            | \$0.00                | \$0.00                |
| 919100                       | \$0.00                | \$0.00                |
| 999990 Misc                  | \$0.00                | \$0.00                |
| 999999 Retainage             | -\$1,072.05           | \$0.00                |
| <b>Subtotal Construction</b> | <b>\$20,368.95</b>    | <b>\$0.00</b>         |
| <b>Consulting</b>            |                       |                       |
| 212120 Bonding               | \$0.00                | \$0.00                |
| 222210                       | \$0.00                | \$0.00                |
| 222220 Planning/Engineering  | \$22,304.82           | \$0.00                |
| 222230 Slope Stability       | \$0.00                | \$0.00                |
| 222240 Testing               | \$0.00                | \$0.00                |
| 222250 Survey                | \$900.00              | \$0.00                |
| 222320 Architecture          | \$0.00                | \$0.00                |
| 222330                       | \$4,545.00            | \$0.00                |
| 252500                       | \$0.00                | \$0.00                |
| 252510 Legal                 | \$0.00                | \$0.00                |
| 252580 Professional          | \$0.00                | \$0.00                |
| 260000 District Amenities    | \$0.00                | \$0.00                |
| 31000                        | \$0.00                | \$0.00                |
| 313263 SW Management         | \$0.00                | \$0.00                |
| 717145 Project Management    | \$10,000.00           | \$0.00                |
| 717150 Accounting            | \$0.00                | \$0.00                |
| 999990 Misc                  | \$0.00                | \$0.00                |
| <b>Subtotal Consulting</b>   | <b>\$37,749.82</b>    | <b>\$0.00</b>         |
| <b>Subtotal Capital</b>      | <b>\$58,118.77</b>    | <b>\$0.00</b>         |