

**AGENDA  
SPECIAL MEETING  
OF THE BOARD OF DIRECTORS OF  
FITZSIMONS VILLAGE METROPOLITAN DISTRICT NO. 1**

<b>DATE:</b>	Tuesday, August 9, 2022
<b>TIME:</b>	11:30 a.m.
<b>ACCESS:</b>	<p>You can attend the meeting in any of the following ways:</p> <ol style="list-style-type: none"> <li>1. <a href="https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2U1NDZINDQqMTgxNy00ODQ1LTk3NDUyYjYxYmlxMzVhZmFi%40thread.v2/0?context=%7b%22Tid%22%3a%224aaa468e-93ba-4ee3-ab9f-6a247aa3ade0%22%2c%22Oid%22%3a%229bf4c29b-a9c8-46b4-a6c0-c1ed7cba4824%22%7d">https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2U1NDZINDQqMTgxNy00ODQ1LTk3NDUyYjYxYmlxMzVhZmFi%40thread.v2/0?context=%7b%22Tid%22%3a%224aaa468e-93ba-4ee3-ab9f-6a247aa3ade0%22%2c%22Oid%22%3a%229bf4c29b-a9c8-46b4-a6c0-c1ed7cba4824%22%7d</a></li> <li>2. To attend via telephone, dial 720- 547-5281 and enter the following additional information: Passcode: 368 153 898#</li> </ol>

<b>Fitzsimons Village Metropolitan District Nos. 1</b>		
<u>Board of Directors</u>	<u>Office</u>	<u>Term Expires</u>
Suzanne Schlicht	President	May, 2023
Brittany Havard	Secretary	May, 2023
Jamie Curcio	Treasurer	May, 2023*
VACANT	Assistant Secretary	May, 2025
Bob Dapper	Assistant Secretary	May, 2025

**I. ADMINISTRATIVE MATTERS**

- A. Call to order. Present disclosures of potential conflicts of interest.
- B. Confirm quorum, location of meeting and posting of meeting notices, designate 24-hour posting location and approve agenda.
- C. Public Comment.

Members of the public may express their views to the Boards on matters that affect the Districts that are otherwise not on the agenda. Comments will be limited to three (3) minutes per person.

- D. Other.

**II. CONSENT AGENDA**

- A. Review and consider approval of minutes of the July 11, 2022 Special meeting (enclosure).

### **III. FINANCIAL MATTERS**

- A. Other.

### **IV. MANAGEMENT MATTERS**

- A. Review and consider approval of revised scope of work from MBI in the amount of \$129,466.74 (enclosure).
- B. Review and consider approval of revised scope of work from MBI for structural defects in the amount of \$31,892.55 (enclosure).
- C. Other.

### **V. LEGAL MATTERS**

- A. Review and ratify bid solicitation process; consider approval of parking structure design and construction bid, and builder agreement with Corporex Development and Construction Management, LLC (enclosure).
- B. Other.

### **VII. DIRECTOR MATTERS**

- A. Other.

### **VIII. OTHER BUSINESS**

- A. Discuss need for quarterly meetings.

### **IX. ADJOURNMENT**

**The next regular meeting will be November 11, 2022.**

**MINUTES OF A COMBINED SPECIAL MEETING OF  
THE BOARDS OF DIRECTORS OF THE  
FITZSIMONS VILLAGE METROPOLITAN DISTRICT NOS. 1, 2 & 3  
HELD  
JULY 11, 2022**

A special meeting of the Boards of Directors of the Fitzsimons Village Metropolitan District Nos. 1, 2 & 3, County of Arapahoe (referred to hereafter as the “Boards”) was convened on Monday, July 11, 2022 at 10:00 a.m. The Districts’ Board meeting was also held and properly noticed to be held via video enabled web conference. The meeting was open to the public via videoconference.

**Directors In Attendance Were:**

Jamie Curcio  
Brian Ratner (Dist. No. 3)  
Brittanny Havard

The absence of Director Dapper was excused.

**Also In Attendance Were:**

Tom George, Esq.; Spencer Fane LLP  
Gigi Pangindian, Carrie Beacom and Anna Jones; CliftonLarsonAllen LLP (“CLA”)  
Wesley Ellis and Nella Rosales; Engle Martin  
Keely Matson, Tom Ritz and Steve Pouliot: Michael Baker International  
Josh Hoffman; Upland Real Estate Partners

**ADMINISTRATIVE  
MATTERS**

**Call to Order/Disclosure of Potential Conflicts of Interest:** Director Curcio called the meetings to order at 10:06 a.m.

Attorney George discussed the requirements of Colorado law to disclose any potential conflicts of interest or potential breaches of fiduciary duty of the Board of Directors to the Secretary of State. The members of the Boards were requested to 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 Boards’ members prior to this meeting in accordance with statute. It was noted that the disclosures of potential conflicts of interest were filed with the Secretary of State for all Directors as required by statute. No new conflicts were disclosed.

**Quorum/Meeting Location/Approve Agenda:** A quorum was confirmed. It was noted that notice providing the time, date and video link information was duly posted and that no objections, or any requests that the means of hosting the meeting be changed by any interested person were received. Following review and discussion, upon a motion duly made by Director Havard, seconded by Director Curcio and, upon vote, unanimously carried, the Boards approved the agenda, as amended to include distinction of the Districts on agenda items.

**Public Comment:** None.

**Appointing of Suzanne Schlicht:** It was noted that there are existing vacancies on the Boards, and that Ms. Suzanne Schlicht has indicated her interest in serving on the Boards.

Following discussion, upon a motion duly made by Director Havard, seconded by Director Curcio and, upon vote, unanimously carried, the District No.1 and No. 2 Boards appointed Suzanne to the Board of Districts 1 and 2.

Following discussion, upon a motion duly made by Director Ratner, seconded by Director Curcio and, upon vote, unanimously carried, the District No. 3 Board appointed Suzanne Schlicht to the Board of District 3.

**Appointment of Officers for Districts 1, 2 and 3:** Following discussion, upon motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the following slate of officers were appointed for Districts 1 and 2:

- President: Suzanne Schlicht
- Secretary: Jamie Curcio
- Treasurer: Brittany Havard

Following discussion, upon motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the following slate of officers were appointed for District 3:

- President: Suzanne Schlicht
- Secretary: Jamie Curcio
- Treasurer: Brittany Havard
- Assistant Secretary: Brian Ratner

**Other:** None.

**CONSENT AGENDA Approval of Minutes of the November 12, 2021 Special Meetings, December 6, 2021 Joint Special Meeting and December 13, 2021 Joint Special Meeting**

Following review, upon a motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the Boards approved the minutes of the November 12, 2021 Special Meeting, December 6, 2021 Special Meeting and December 13, 2021 Special Meeting, as presented.

**Other:** None.

## FINANCIAL MATTERS

**Adding Director Havard and Suzanne Schlicht as Signers on the 1<sup>st</sup> Bank Accounts for Districts 1 and 3:** Ms. Pangindian reviewed with the Boards. Following review, upon a motion duly made, seconded and, upon vote, unanimously carried, the Boards approved adding Director Havard and Suzanne Schlicht as signers on the 1<sup>st</sup> Bank account for Districts 1 and 3.

**May 31, 2022 Financial Statements and Schedule of Cash Position for Districts 1 and 3:** Ms. Pangindian reviewed the statements with the Boards. Following review, upon a motion duly made by Director Havard, seconded by Director Curcio and, upon vote, unanimously carried, the District 1 Board accepted the May 31, 2022 Financial Statements and Schedule of Cash Position for District 1.

Following review, upon a motion duly made by Director Ratner, seconded by Director Havard and, upon vote, unanimously carried, the District 3 Board accepted the May 31, 2022 Financial Statements and Schedule of Cash Position for District 3.

**Claims in the Amount of \$287,957.59 for District 1, and in the amount of \$94,281.19 for District 3:** Ms. Pangindian reviewed the claims with the Boards. Following review, upon a motion duly made by Director Havard, seconded by Director Curcio and, upon vote, unanimously carried the District 1 Board ratified approval of the claims for District 1, in the amount of \$287,957.59.

Following review, upon a motion duly made by Director Ratner, seconded by Director Havard and, upon vote, unanimously carried the District 3 Board ratified approval of the claims for District 3, in the amount of \$94,281.19.

**Other:** None.

## MANAGEMENT MATTERS

### **Pedestrian Bridge**

**Pedestrian Bridge Emergency Impact Report with Stephen Pouillot for District 1:** Mr. Pouillot and Mr. Ritz reviewed the report with the Board.

**MBI Emergency Repair Contract for District 1:** Following review, upon a motion duly made by Director Havard, seconded by Director Curcio and, upon vote, unanimously carried, the Board ratified approval of the MBI Emergency Contract for District 1.

**Proposal for Insured Engineering Repair in the Amount of \$100,428.86 for District 1:** Following review, upon a motion duly made by Director Havard, seconded by Director Curcio and, upon vote, unanimously carried, the Board approved the proposal for insured engineering repair in the amount of \$100,428.86 for District 1 and authorized legal counsel and the Board President to finalize and execute an agreement regarding the same.

**Proposal for Uninsured Repairs Related to the Bearing Plates in the Amount of \$22,257.99 for District 1:** Following review, upon a motion duly made by Director Havard, seconded by Director Curcio and, upon vote, unanimously carried, the Board approved the proposal for uninsured repairs related to the bearing plates in the amount of \$22,257.99 for District 1 and authorized legal counsel and the Board President to finalize and execute an agreement regarding the same.

**Damage Insurance Response and Coverage:** Ms. Jones reviewed the response and coverage with the Board.

**Consultant Authorization Regarding Bridge Repair Work for District 1:** Following discussion, upon a motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the Board ratified the actions taken by the consulting team to-date and authorized staff to continue to complete repairs for District 1.

**Termination of Parking Agreement with Republic Parking System Inc.:** Following review, upon a motion duly made by Director Havard, seconded by Director Curcio and, upon vote, unanimously carried, the Board approved the termination of the Parking Agreement with Republic Parking Systems Inc.

**Other:** None.

**LEGAL MATTERS** **Operations and Maintenance Fee Status for Metropolitan Districts 1 and 3:** This item was tabled. No action was taken.

**Payment and Reimbursement of Broken Main Line in the Amount of \$6,342.60 for District 3:** This item was tabled. No action was taken.

**Revised CLA Management Scope of Work:** Following review, upon a motion duly made by Director Havard, seconded by Director Ratner and, upon vote, unanimously carried, the Board approved the revised CLA Management Scope of Work, as presented for District 3.

Following review, upon a motion duly made by Director Havard, seconded by Director Curcio and, upon vote, unanimously carried, the Boards approved the revised CLA Management Scope of Work, as presented for Districts 1 and 2.

**S.A. Miro Proposal to Maintain Stormwater Systems and Engagement Letter in the Amount not to exceed \$10,000.00:** Following review, upon a motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the Board approved the S.A. Miro proposal to maintain stormwater systems and Engagement Letter in the amount not to exceed \$10,000.00, as presented, and authorized legal counsel and the Board President to finalize and execute an agreement regarding the same.

**Lionheart EC Lighting Retro Proposal for the Pedestrian Bridge in the Amount of**

**\$42,310.00:** Following review, upon a motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the Board approved the Lionheart EC Lighting Retro Proposal for the pedestrian bridge in the amount of \$42,310.00, as presented, and authorized legal counsel and the Board President to finalize and execute an agreement regarding the same.

**Roth Property Maintenance, LLC 2022 Annual Services in the Amount of \$19,197.20:** Following review, upon a motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the Board approved the Roth Property Maintenance, LLC 2022 annual services in the amount of \$19,197.20, as presented, and authorized legal counsel and the Board President to finalize and execute an agreement regarding the same.

**Sustainable Landscapes 2022 Maintenance Agreement for Fitzsimons Village MD No 1 in the Amount of \$9,883.71:** Following review, upon a motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the Board approved the Sustainable Landscapes 2022 Maintenance Agreement for Fitzsimons Village MD No 1 in the amount of \$9,883.71, as presented, and authorized legal counsel and the Board President to finalize and execute an agreement regarding the same.

**Sustainable Landscapes Summer Floral Containers Proposal for Fitzsimons Village MD No 1 in the Amount of \$8,369.90:** Following review, upon a motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the Board approved the Sustainable Landscapes Summer Floral Containers Proposal for Fitzsimons Village MD No 1 in the amount of \$8,369.90, as presented, and authorized legal counsel and the Board President to finalize and execute an agreement regarding the same.

**Sustainable Landscapes 2022 Maintenance Agreement for Fitzsimons Village MD No 3 in the Amount of \$8,342.26:** Following review, upon a motion duly made by Director Ratner, seconded by Director Havard and, upon vote, unanimously carried, the Board approved the Sustainable Landscapes 2022 Maintenance Agreement for Fitzsimons Village MD No 3 in the amount of \$8,342.26, as presented, and authorized legal counsel and the Board President to finalize and execute an agreement regarding the same.

**Diversified Underground Agreement:** Following review, upon a motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the Board approved the Diversified Underground Agreement, as presented, and authorized legal counsel and the Board President to finalize and execute an agreement regarding the same.

**TKE Service Addendum in the Amount of \$277 Per Month:** Following review, upon a motion duly made by Director Curcio, seconded by Director Havard and, upon vote, unanimously carried, the Board approved the TKE Service Addendum in the amount of \$277 per month, as presented.

**Possible Action to Parking Garage Construction; Ratify Bid Process; Select Design,**

**Construction and/or Construction Management Contractors:** Attorney George reviewed and discussed with the Board. No action was taken.

**Other:** None.

**PROPERTY  
MANAGER  
MATTERS**

**Other:** None.

**DIRECTOR  
MATTERS**

**Other:** None.

**OTHER BUSINESS**

**Need for a Special Meeting Before Next Regular Meeting in November:** Nothing was determined.

**ADJOURNMENT**

There being no further business to come before the Boards at this time, the Boards adjourned the meetings at 11:28 a.m.

Respectfully submitted,

By \_\_\_\_\_  
Secretary for the Meeting

**From:** Matson, Keely <[Keely.Matson@mbakerintl.com](mailto:Keely.Matson@mbakerintl.com)>  
**Sent:** Tuesday, August 2, 2022 6:18 PM  
**To:** Jones, Anna <[Anna.Jones@claconnect.com](mailto:Anna.Jones@claconnect.com)>  
**Cc:** Ritz, Thomas <[Thomas.Ritz@mbakerintl.com](mailto:Thomas.Ritz@mbakerintl.com)>; Pouliot, Stephen <[Stephen.Pouliot@mbakerintl.com](mailto:Stephen.Pouliot@mbakerintl.com)>  
**Subject:** [External] Fitzsimons Village Metro District - Additional Scopes of Work with engineering construction support services

**Think Security – This email originated from an external source. Be cautious with any links or attachments.**

4A2204TD3S2-0001 Fitzsimons Metropolitan District No. 1 - Pedestrian bridge hit struck by truck 04/25/2022

Anna,

Attached are two scopes of work revised to include structural support services and construction engineering services. Below is a summary of the attached contract amendments.

1. Amended scope of work that reflects **additional services (impact repair design plan) to the original contract for insured conditions and engineering construction/bid support services.**
  - a. The fee estimate for the additional services is \$70,176, for a total contract value not-to-exceed \$129,466. That is, the original contract was \$59,290 + \$70,176 (amended) = \$129,466 (total).
  
2. New scope of work that reflects **services related to the uninsured conditions** (bearing grout cracking) repair design and engineering construction/bid support services.
  - a. The fee estimate for the services is \$31,892.

Again, we appreciate the opportunity to provide services. Please feel free to call myself or Steve Pouliot to discuss any questions or comments.

Thank you.

**Keely Matson** | Department Manager - Bridge  
165 South Union Boulevard, Suite 1000 | Lakewood (Denver), CO 80228 | [O] 720-479-3158 | [M] 406-459-3529

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**SCOPE OF SERVICES**  
**Fitzsimons Village Colfax Pedestrian Bridge Emergency Response**

**For**  
**Fitzsimons Village Metropolitan District No. 1**  
**c/o CliftonLarsonAllen LLP**  
**Attn: Anna Jones**  
**8390 E. Crescent Parkway, Suite 300**  
**Greenwood Village, CO 80111**

**Dated: May 6, 2022**  
**UPDATED August 2, 2022**

**Project Description (Unchanged):**

Michael Baker International (MBI) was notified of a vehicle collision (a 23-ton crane) on the Fitzsimons Village Metropolitan District's (FVMD/CLA) Colfax Pedestrian Bridge in the morning of April 25, 2022, with a request to provide immediate structural inspection of the damage to determine the integrity of the structure. MBI was notified that Colfax Avenue was closed to all vehicular traffic under the bridge, and pedestrian access to use the bridge was also closed.

MBI engineers Stephen (Steve) Pouliot and Tom Ritz mobilized immediately in response to this request in contacting CDOT Region 1 Bridge Lead Tristan Siegel and CDOT Statewide Bridge & Tunnel Inspection Engineer Lynn Crowell. MBI requested assistance from CDOT Region 1 maintenance crews to provide a bucket truck to support access to the bridge. CDOT was cooperative and notified Tom that MBI was recognized as the Engineer in Charge and would make all decisions regarding structural integrity, level of damage, recommendations if/when to reopen Colfax Avenue or pedestrian use of the bridge. Concurrently, and over the next several days, Steve established contacts with the City of Aurora Public Works and the Aurora Police Department, Fitzsimons Village Metropolitan District / CLA, Children's Hospital Colorado, Engle Martin (Insurance Adjuster), the Hyatt Regency and Corporex Colorado to ensure full and open communication going forward.

**Team Responsibilities and Authority (Unchanged):**

The roles of responsibility as they unfolded on the 25<sup>th</sup> and now supplemented through ongoing coordination are as listed below. Primary roles include FVMD who shall direct and administer the contract, including review and comment of the work prepared by the MBI team. MBI will serve as the Engineer in Charge (regarding all field inspection and evaluation activities) and Engineer of Record (regarding engineering assessments, calculations, repair details and related activities) as authorized and directed by FVMD/CLA. More specific roles include:

*Project Coordination*

FVMD/CLA:

Anna Jones                      Project Contact/District Management

Michael Baker International

Stephen Pouliot, PE              MBI Project Manager

Tom Ritz, PE                      MBI Lead Structural Engineer

Keely Matson, PE                MBI Design Lead

Luke Potthast

MBI Design Engineer

Insurance Coordination

Sedgewick

Nella Rosales

Insurance Adjuster

Engle Martin

Wesley Ellis

Insurance Adjuster

Golden Forensics

Drew Houser

Forensic Engineer

### Scope of Work – Overview (Unchanged)

MBI will provide bridge inspection services, non-destructive material testing, analytical structural assessment of the bridge, structural repair details, agency coordination (City of Aurora Public Works, Aurora Police Department and CDOT), and subconsultant coordination to confirm and/or restore the load-carrying capacity of the bridge as necessary to reopen the structure.

### Guidelines and References (Current Version Unless Noted Otherwise) (Unchanged):

The standards, reports, and manuals we will use to complete the work may include:

- National Bridge Inspection Standards, 23 CFR Part 650
- FHWA Bridge Inspector’s Reference Manual
- AASHTO Manual for Bridge Element Inspection
- AASHTO Manual for Bridge Evaluation (MBE), 3rd Ed.
- CDOT Bridge Inspection Coding Guide and NBI Coding Guide
- FHWA Fracture Critical Inspection Techniques for Steel
- AASHTO LRFD Bridge Design Specification, 9<sup>th</sup> Edition
- AASHTO Standard Specifications for Highway Bridges 17th Edition (2002)

Note: FHWA = Federal Highway Administration

AASHTO = American Association of State Highway Transportation Officials

### Scope of Work – Detail

#### 1.0 Project Administration (Updated)

MBI will perform on-going project administration duties throughout the length of the contract as follows:

- Develop project scope, fee estimate and schedule. Provide on-going project management of the MBI team to coordinate work tasks, schedules, and scope of work responsibilities, file sharing management, and quality assurance reviews. Management practices will follow the published “Michael Baker Way” management principles.
- Conduct **monthly (beginning in late July)** update/progress calls (via Teams) to FVMD/CLA and other interested stakeholders during the first month of activity. This task assumes a total of four **plus three additional (4 + 3 = 7)** meetings at 30 minutes each. This scope item will be reassessed after the fourth meeting.
- Conduct six (6) monthly project progress meetings with FVMD/CLA to maintain communications. It is assumed that the scope of work as described will be completed in December 2022.
- Maintain other email / telephone client communications as necessary.

- Prepare and submit invoices and progress reports. Invoice format will be in accordance with current MBI practices and will include timecard and direct cost information as requested.
- Provide coordination and management of the field inspection and testing teams including oversight of trip logistical arrangements with traffic control vendors, City of Aurora and CDOT. Manage vendor payments and any terms and conditions as required.
- Gather information for design drawings, design calculations, inspection reports, maintenance records and CDOT records on the bridge. Maintain technical coordination with CDOT Staff Bridge engineers.

## **2.0 In-Depth, Hands-On Emergency Inspection and Testing (Updated)**

*Background Information.* The bridge was inspected using hands-on inspection of fracture critical members throughout the day by a NBIS-certified Senior Bridge Inspector (Tom Ritz) the day on April 25, 2022. Field inspection activities were tailored to the emergency, public safety, and maintenance of traffic conditions present that day. Inspection that day also included:

- Limited demolition to gain visual and hands-on access to critical structural members as needed to determine the extent of damage.
- Removal of paint and grinding small areas to facilitate magnetic particle testing for cracks or fractures in the structure's bottom chord member.
- Coordination activates with the FVMD/CLA, CDOT, City of Aurora and others by Senior Project Manager Steve Pouliot.

The Emergency Inspection was conducted to determine the structural integrity of the bridge as expediently as possible. This inspection concluded same day with enough evidence to open Colfax Avenue traffic operations under the bridge, but MBI recommended the bridge remain closed to pedestrian traffic since the engineer was unable to be 100% conclusive of the extent and consequences of damage. The inability to be 100% certain was based on very limited/blocked access to supplemental structural elements (bolted or welded connections, bearings at each end of bridge, and adjacent member conditions).

For this reason, two additional inspection events are planned as follows:

1. Follow Up Inspection #1 – As informed by a structural modeling assessment (see Task 4.0 below for more information) in the office to analyze the full impact loading on the bridge, this evaluation will identify bridge elements for targeted follow-up inspection. This scope of work assumes more demolition at bridge bearings and within the span will be necessary. Accordingly, the inspection will involve three (3) bridge inspectors, one (1) material tester, two (2) construction laborers (to support demolition activities) a traffic control vendor, two (2) rented bucket trucks to conduct the work.
  - a. At this time, we anticipate that supplemental demolition will be necessary to inspect bridge bearings and welded connections in truss members in the panel points on each side of the impact zone, including the spliced members at the west panel point 5.
2. Follow Up Inspection #2 – A final inspection to be conducted six (6) months after the incident, and prior to architectural repairs (which would hide any/all exposed bridge elements from further visual inspection). This final inspection will require two (2) bridge inspectors, traffic control and a rented bucket truck to complete the work. **UPDATE: Three inspectors will be required in the field, as budgeted in our previous fee estimate. This is a zero cost adjustment.**
3. Inspection Access Coordination:

- a. Prior to commencing any field inspection activity, MBI will coordinate with a traffic control vendor to prepare traffic control plans, submit plans to the City of Aurora for approval, and assemble all equipment necessary for the work.
- b. Inspections include the preparation of Project Safety Plan prior to beginning any field work that will detail the procedures and standards to be followed to ensure safety of the inspectors and the public.
- c. Site inspections are assumed to be completed in the evening hours to minimize disruptions of traffic. Follow Up Inspection #1 is anticipated to take 8 hours at the site plus 2 hours mobilization; while Follow Up Inspection #2 is anticipated to take 2 hours at the site plus 2 hours mobilization.

### 3.0 Inspection Data and Reporting (Unchanged)

The Emergency Inspection data findings and presentation of defects will follow NBIS procedures for concrete and fracture critical steel members in addition to CDOT inspection criteria as applicable. Observations will be recorded in the form of descriptions, photographs, notes, and sketches for the primary purpose of supporting the design team efforts in assessment of the bridge's structural integrity as a result of the impact.

Reporting for Follow up Inspection #1 and #2 will append the emergency inspection report that, again, will include descriptions, photographs, notes, and sketches as necessary to fully document findings.

**Deliverables:** Emergency Inspection Report  
 Follow Up #1 Inspection Report as Appendix A  
 Follow Up #2 Inspection Report as Appendix B

### 4.0 Detailed Structural Assessment (Unchanged)

To provide the MBI team with a deeper understanding of the damage caused by the crane truck impact on the bridge, MBI has initiated structural modeling and calculations in our office using registered professional engineers licensed in Colorado. This assessment is important since it will provide calculated insight regarding the extent, severity, and potentially hidden consequential structural defects. This evaluation will inform the locations of interest to guide Follow Up Inspection #1 activities.

MBI is using a widely accepted practice by creating a 3D model of the primary steel truss members to evaluate the deflection response and stress levels in the truss members and connections. The model software platform is Midas Civil v1.2 which provides for rapid model development and evaluation of a range of loading and behavioral characteristics. The goals of the structural modeling task include:

- Calculate the lower and upper boundaries of impact load on the low chord at the point of impact.
- Assess the total deflected shape of the bridge induced from the collision to understand the stress levels witnessed by the bridge bearings. Damage of anchor bolts may have occurred.
- Determine the total shear and axial forces in the structural members in the vicinity of the impact to include a focus on panel point members each side of the impact zone.
- Review the welded and bolted connections of the truss in the same vicinity as described above.
- Prepare a summary of the model and calculations for review by the owner and/or their designated representative.

**Deliverables:** Structural Assessment Summary of Findings and Recommendations

Structural Assessment Calculations  
Midas Civil Model Input File Emergency Inspection Report

### 5.0 Prepare Bridge Repair Plans **(Updated Entirely)**

**UPDATE:** Michael Baker's *Fitzsimmons Village Pedestrian Bridge over Colfax Avenue Inspection and Impact Analysis* report delivered on May 4, 2022, and our *Fitzsimmons Village Pedestrian Bridge over Colfax – Follow Up Inspection* report delivered on May 24, 2022, detail the structure response, damage and findings from the inspections and analysis performed to-date. The damage found is as follows:

1. The incident did result in damage to the truss bridge at the low chord in the vicinity of the point of impact. The damage has weakened the lateral capacity of the bridge in this localized area; however, the damage is relatively minor to the tensile capacity of the member. Repairs to address the reduced capacity in lateral strength (in transverse shear primarily) will be determined from both design calculations and empirical repair research of similar repairs in the industry.
  - a. Our structural team will evaluate two (2) of the most feasible and effective (cost and structural performance) options for the repair of the low chord. The options evaluated and final option chosen will be documented in a brief memo for the District's approval prior to finalizing drawings and specifications.
  - b. Details and notes will not require more than two drawing sheets, plus special provisions as necessary.
2. The architectural anodized aluminum panels have been damaged in two locations. These panels must be replaced with new connection details that provide for a close match to the style and color of the remaining anodized aluminum on the bridge.
  - a. These panels are normally sourced from a fabricator, but Michael Baker has already determined this is not as straight forward as once estimated. Additional time and potentially detailing replacement panels may be required.
  - b. Details are not expected to take more than two drawings sheets plus special provisions as necessary.
3. Damage to the bearing concrete leveling pad was found during the follow up inspection, but this damage was determined to precede the incident and more likely the result of poor craftsmanship in the original construction. This damage should be repaired but will be detailed in a separate scope of work and not included in this scope or associated fee estimate.

**Deliverables:** Construction drawings, special provisions and engineers estimate of probable cost.

### 6.0 Quality Control of Engineering Tasks and Deliverables **(Unchanged)**

MBI will provide quality control reviews for all calculations and deliverables in accordance with Michael Baker International Denver Office Quality Control Procedures. These procedures include steps required to ensure all engineering activities are reviewed by engineers of equal or senior experience to the engineer who prepared the original documents. All reviews and certifications of quality are document and can be included with our deliverables upon request. The intent is to achieve the highest quality possible (per Michael Baker policy and AASHTO, FHWA, and CDOT requirements). We employ discipline checklists, verification forms, independent design checks, constructability reviews, and client comment resolution forms as required for the given deliverable prepared for submittal.

## 7.0 Bid and Construction Support (NEW 08/02/2022)

MBI will provide support services to the metro district during the solicitation and selection of the contractor for the bridge repairs. This includes:

- Provide coordination with the City of Aurora including coordinating inspections/approvals, processing contractor submittals for City review/records, updating city on schedule and other construction documentation compiled by MBI
- Providing comments and guidance on solicitation and contractor selection
- Preparing an estimated schedule for solicitation and develop an estimated construction duration (note actual construction schedule will be developed by contractor after selection.)
- Contacting potential contractors to attract bidders to the project
- Responding to technical questions during the bidding process through the metro district

NOTE: It is assumed that a single contractor will be selected for both insured and non-insured work. Time to support solicitation and construction has been separated to reflect the work related to each repair.

MBI will provide construction services including:

- Virtual coordination meetings with the contractor to discuss progress
- Coordinating with contractor and city inspectors for any necessary inspections related to permitting
- Prepare responses to any Request for Information (RFIs) that occur during construction (assumed 10 RFIs)
- Review and provide recommendations for approval of contractor's steel shop drawings and aluminum cladding shop drawings (assume 4 initial submittals and 1 resubmittal @ 4 hours each).
- Provide on-site construction inspection for installation of steel repair and final project closeout inspection (assume 2 trips for 2 inspectors 4 hours each).
- Provide Project Closeout support

## 8.0 Information to be Provided by Fitzsimons Village Metro District (Updated)

The District will provide the following items for this assignment:

- As-built drawings for the bridge **Update: and original construction specifications**
- Most recent bridge inspection reports if available
- Original design calculations and load rating calculations
- Coordination with stakeholders that could include Children's Hospital, Retail Stores in the area, City of Aurora, and others as necessary to inform stakeholders of ongoing engineering activities

### Fee Estimate Basis (Updated):

The fee estimate attached is based on direct and indirect rates in accordance with the audited indirect cost rate information as certified by an independent accounting firm. MBI consulting services performance period is expected to span through the end of October 2022. Direct expenses for milage, equipment rental, traffic control vendor, construction personnel, and consumable supplies (material testing, tool blades, etc.) have been estimated without markup in the estimate in accordance with planned site activities.

**Update:** the fee estimate has been adjusted in parallel with the scope modifications above. Please see the attached fee estimate for more details. In summary, the following hours and fees have been updated:

- Overall effort has increased from 368 hours to 730 hours

- Direct costs: Additional traffic control costs and lift equipment has now been added for Follow Up Inspection #2 that was not previously included.
- Total fee, not to exceed, is now \$129,466.74.

**END OF SCOPE OF WORK**

5/6/2022 (Updated 7/17/22) (Updated 8/2/2022)		Principal	Sr. Inspector / Design Engineer	QC Engineer II	Engineer II	Engineer I	Designer II	Administrative Assistant	PRIME CONSULTANT
Michael Baker International Fee Estimate for Fitzsimons Village Colfax Pedestrian Bridge Emergency Response		Billable Rate:	\$248	\$248	\$155	\$144	\$129	\$95	\$79
<b>1.0</b>	<b>Project Management</b>								
	Manage Project Team, Scope, Schedule, and Budget	8	3					5	16
	Weekly Update Communications	6	3		2				11
	Monthly Progress Meetings & Communications	9	8					2	19
	Monthly Invoices with Progress Reports	4						2	6
	Coordinate Field Inspection Team Logistics & Suppliers		3			6			9
	Gather Information & Maintain Coordinated Activities	2	2						4
	<i>Total Hours</i>	<i>29</i>	<i>19</i>	<i>0</i>	<i>2</i>	<i>6</i>	<i>0</i>	<i>9</i>	<i>65</i>
<b>2.0</b>	<b>In-Depth, Hands-On Emergency Inspection and Testing</b>								
	April 25, 2022 Emergency Inspection	6	7					2	15
	Follow Up Inspection #1	2	8			10	10	1	31
	Follow Up Inspection #2		4			4	4		12
	Inspection Access Coordination	1	2		8	5		2	18
	<i>Total Hours</i>	<i>9</i>	<i>21</i>	<i>0</i>	<i>8</i>	<i>19</i>	<i>14</i>	<i>5</i>	<i>76</i>
<b>3.0</b>	<b>Inspection Data and Reporting</b>								
	Emergency Inspection Report	1	4			4	10	1	20
	Follow Up Inspection #1 Reporting		2			4	4		10
	Follow Up Inspection #2 Reporting		2			2	2		6
	<i>Total Hours</i>	<i>1</i>	<i>8</i>	<i>0</i>	<i>0</i>	<i>10</i>	<i>16</i>	<i>1</i>	<i>36</i>
<b>4.0</b>	<b>Detailed Structural Assessment</b>								
	Engineering & Modeling		6		78				84
	Prepare Deliverables (Findings & Recommendations)	2	2	4	14			2	24
	<i>Total Hours</i>	<i>2</i>	<i>8</i>	<i>4</i>	<i>92</i>	<i>0</i>	<i>0</i>	<i>2</i>	<i>108</i>
<b>5.0</b>	<b>Prepare Bridge Repair Plans (Updated 08/02/2022)</b>								
	Construction Drawings to Replace Architectural Panels	1	8	6	46	51		1	113
	Construction Drawings for Repairs to Steel Truss		14	5	54	47			120
	Prepare Engineers Estimate of Probable Cost and preliminary			6	10	4			20
	<i>Total Hours</i>	<i>1</i>	<i>26</i>	<i>17</i>	<i>115</i>	<i>107</i>	<i>2</i>	<i>1</i>	<i>269</i>
<b>6.0</b>	<b>Quality Control of Engineering Tasks &amp; Deliverables (Updated)</b>								
	QA/QC Engineering & Modeling			8	4				12
	QA/QC Final Deliverables	1	2	9	6				18
	<i>Total Hours</i>	<i>1</i>	<i>2</i>	<i>17</i>	<i>10</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>30</i>
<b>7.0</b>	<b>Bid and Constructino Support (NEW 08/02/2022)</b>								
	Coordination Meetings during Construction (4 - one hour mtgs)	2		4	4				10
	Solicitation support (estimate schedules and contact bidders)	4		8	16				28
	On-site Construction Inspection Services ( 4 visits assumed)		16		16				32
	Construction Inspection Reporting		4	4	8				16
	Coordination with City on Permitting	1	4	2					7
	Respond to RFIs during construction (10 assumed)	2		5	10				17
	Shop drawing review (4 initial submittals and 1 resubmittal)	1		12	25				38
	Final Project Closeout	2		2	4				8
	<i>Total Hours</i>	<i>12</i>	<i>24</i>	<i>37</i>	<i>83</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>146</i>
	<i>Combined Total Hours (Task 1 Thru 6)</i>	<i>55</i>	<i>108</i>	<i>75</i>	<i>310</i>	<i>142</i>	<i>32</i>	<i>18</i>	<i>730</i>
	<b>Total Labor Cost</b>	<b>\$ 13,662.00</b>	<b>\$ 26,827.20</b>	<b>\$ 11,608.56</b>	<b>\$ 44,773.55</b>	<b>\$ 18,267.39</b>	<b>\$ 3,046.16</b>	<b>\$ 1,415.88</b>	<b>\$ 119,600.74</b>
<b>8</b>	<b>Direct Costs</b>								
	Traffic Control Vendor (GDT Traffic Control) (Updated)								\$ 4,980.00
	Boom Lift Equipment Rental (United Rental) (Updated)								\$ 2,486.00
	<b>TOTAL DIRECT COSTS:</b>								<b>\$ 7,466.00</b>
	<b>TOTAL PRIME:</b>								<b>\$ 119,600.74</b>
	<b>DIRECT COSTS:</b>								<b>\$ 7,466.00</b>
	<b>SUBCONSULTANT / SUPPLIER (Panel fabrication coordination to 3rd party supplier):</b>								<b>\$ 2,400.00</b>
	<b>CONTRACT:</b>								<b>\$ 129,466.74</b>

**SCOPE OF SERVICES**  
**Non-Insured Repairs to the Fitzsimons Village Colfax Pedestrian Bridge**

**For**  
**Fitzsimons Village Metropolitan District No. 1**  
**c/o CliftonLarsonAllen LLP**  
**Attn: Anna Jones**  
**8390 E. Crescent Parkway, Suite 300**  
**Greenwood Village, CO 80111**

**Dated: August 2, 2022**

**Project Description**

Michael Baker International (MBI) was notified of a vehicle collision (a 23-ton crane) on the Fitzsimons Village Metropolitan District's (FVMD/CLA) Colfax Pedestrian Bridge in the morning of April 25, 2022, with a request to provide immediate structural inspection of the damage to determine the integrity of the structure. Michael Baker's work to-date has determined that repairs found during inspections revealed damage unrelated to the incident, yet damage that should be repaired.

**Team Responsibilities and Authority**

The roles of responsibility as they unfolded on the 25<sup>th</sup> and now supplemented through ongoing coordination are as listed below. Primary roles include FVMD who shall direct and administer the contract, including review and comment of the work prepared by the MBI team. MBI will serve as the Engineer of Record (regarding engineering assessments, calculations, repair details and related activities) as authorized and directed by FVMD/CLA. More specific roles include:

*Project Coordination*

FVMD/CLA:

Anna Jones                      Project Contact/District Management

Michael Baker International

Stephen Pouliot, PE              MBI Project Manager  
Keely Matson, PE                MBI Lead Structural Engineer  
Luke Potthast, PE                MBI Design Engineer

Insurance Coordination

Sedgewick  
Nella Rosales                      Insurance Adjuster

Engle Martin

Wesley Ellis                        Insurance Adjuster

**Scope of Work – Overview**

MBI will provide bridge repair details for the failing concrete leveling pad at the bridge's southwest bearing. This is a rather simple repair, but for a contractor to gain adequate space to work and lift the bridge in a stable

manner requires more engineering assessment and creation of the operational parameters for the contractor to adhere to. Michael Baker will continue with agency coordination (City of Aurora Public Works, Aurora Police Department and CDOT), for plan reviews. No permits are anticipated at this time.

### **Guidelines and References (Current Version Unless Noted Otherwise)**

The standards, reports, and manuals we will use to complete the work may include:

- AASHTO LRFD Bridge Design Specification, 9<sup>th</sup> Edition
- AASHTO Standard Specifications for Highway Bridges 17th Edition (2002)
- CDOT Standard Specifications for Bridge and Highway Construction

*Note: AASHTO = American Association of State Highway Transportation Officials*

## **Scope of Work – Detail**

### **1.0 Project Administration**

MBI will perform on-going project administration duties throughout the short length of the contract as follows:

- Develop project scope, fee estimate and schedule. Provide on-going project management of the MBI team to coordinate work tasks, schedules, and scope of work responsibilities, file sharing management, and quality assurance reviews. Management practices will follow the published “Michael Baker Way” management principles.
- Prepare and submit invoices and progress reports. Invoice format will be in accordance with current MBI practices and will include timecard and direct cost information as requested.
- Gather information for design drawings, design calculations, maintenance records and CDOT records on the bridge.

### **2.0 Prepare Bridge Repair Plans (updated)**

Michael Baker’s *Fitzsimmons Village Pedestrian Bridge over Colfax Avenue Inspection and Impact Analysis* report delivered on May 4, 2022, and our *Fitzsimmons Village Pedestrian Bridge over Colfax – Follow Up Inspection* report delivered on May 24, 2022, detail the structure response, damage and findings from the inspections and analysis performed to-date. The damage found is as follows:

1. The incident did result in damage to the truss bridge at the low chord in the vicinity of the point of impact. The damage has weakened the lateral capacity of the bridge in this localized area and will be repaired.
  - a. Note: The engineering drawings and specifications to repair and restore the lateral capacity (in transvers shear primarily) will be provided under a separate contract.
2. The architectural anodized aluminum panels have been damaged in two locations. The engineering drawings and specifications to replace these panels will be provided under a separate contract. It is assumed that more panels will be removed as part of the proposed bridge repairs, therefore these panels must be replaced with new connection details that provide for a close match to the style and color of the remaining panels on the bridge. The engineering drawings and specifications prepared under the separate contract will be referenced to complete this work and will not be duplicated.
3. Damage to the bearing concrete leveling pad at the southwest corner of the bridge was found during the follow up inspection, but this damage was determined to precede the incident and more likely the result of poor craftsmanship in the original construction. This damage should be repaired to ensure stable bearing over the long-term service life of the bridge. The repair detail is not complicated, but

the contractor's access and stability of the bridge to jack it vertically to make the repair is more complicated. Michael Baker will include the following to complete the repair work:

- a. Analyze the induced stresses into the bridge and allowable movement tolerances in the architectural components from the temporary jacking of the south end of the bridge using the model created during the inspection analytical phase. This will ensure the repair detail, notes and specifications are clear in the parameters that must be satisfied under the contractor's chosen means and methods
- b. Review the possible methods to increase the allowable expansion length at the south bridge bearings. During the previous inspection it was noted that the bearing anchors were fully engaged even though the temperature outside was far less than temperatures that could exist. If repaired as-is there could be persistent issues with stress induced damage to the bridge and the architectural components, so the proposed work will include minimizing those stresses.
- c. One (1) field visit e to determine if the southwest bearing also requires repair. It is assumed that the Contractor will provide access to the bearing.

Deliverables: Construction drawings, special provisions and engineers estimate of probable cost.

### **3.0 Inspection Quality Control of Engineering Tasks and Deliverables**

MBI will provide quality control reviews for all calculations and deliverables in accordance with Michael Baker International Denver Office Quality Control Procedures. These procedures include steps required to ensure all engineering activities are reviewed by engineers of equal or senior experience to the engineer who prepared the original documents. All reviews and certifications of quality are document and can be included with our deliverables upon request. The intent is to achieve the highest quality possible (per Michael Baker policy and AASHTO, FHWA, and CDOT requirements). We employ discipline checklists, verification forms, independent design checks, constructability reviews, and client comment resolution forms as required for the given deliverable prepared for submittal.

### **4.0 Bid and Construction Support Services (ADDED)**

MBI will provide support during the solicitation to support the Metro District with technical responses required including:

- Providing comments and guidance on solicitation and contractor selection regarding the non-insured repair
- Responding to technical questions during the bidding process through the metro district regarding the non-insured repair

NOTE: It is assumed that a single contractor will be selected for both insured and non-insured work. Time to support solicitation and construction has been separated to reflect the work related to each repair.

MBI will provide construction services including:

- Coordinating with contractor and city inspectors for any necessary inspections related to permitting of bearing repair
- Prepare responses to any Request for Information (RFIs) that occur during construction (assumed 5 RFIs) regarding the non-insured repair
- Review and provide recommendations for approval for material submittals for bearing repair (assume 1 initial submittal and 1 resubmittal @ 2 hours each).

- Provide on-site construction inspection for installation of bearing repair (assume 3 trips for 2 inspectors 4 hours each one for bearing inspection during panel removal, one for jacking/bracing operation, and one for bearing repair inspection).
- Provide Project Closeout support for non-insured bearing repair plans.

**Fee Estimate Basis:**

The fee estimate attached is based on direct and indirect rates in accordance with the audited indirect cost rate information as certified by an independent accounting firm. MBI consulting services performance period is expected to span through the January 31st, 2023.

**END OF SCOPE OF WORK**



## **OWNER AND BUILDER CONSTRUCTION PROJECT AGREEMENT**

AGREEMENT made this 5<sup>th</sup> day of July, in the year 2022.

BETWEEN THE OWNER: **FITZSIMONS VILLAGE METROPOLITAN DISTRICT NO. 1,  
A QUASI-MUNICIPAL CORPORATION AND POLITICAL  
SUBDIVISION OF THE STATE OF COLORADO  
C/O CLIFTON LARSON ALLEN  
8390 East Crescent Parkway, Suite 300  
Greenwood Village, Colorado 80111-2814**

AND BUILDER: **Corporex Development & Construction Management, LLC  
100 East RiverCenter Blvd. Suite 1100  
Covington, KY 41011**

FOR THE PROJECT: **Structured Parking Garage located at Fitzsimons 500, Colfax  
Avenue & Xanadu in Aurora, Colorado (the "Project")**

WHEREAS, Owner seeks to engage Builder to complete certain tasks associated with the design, development, and construction of the Project;

NOW, THEREFORE, the Owner and the Builder agree as set forth herein:

### **ARTICLE 1 - THE CONTRACT DOCUMENTS**

1.1 The Contract Documents consist of this Agreement and General Conditions attached ("General Conditions"), all Modifications issued subsequent thereto and the following:

Exhibit #A: Drawings and Specifications  
Exhibit #B: Schedule of Values  
Exhibit #C: Insurance Requirements

These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

### **ARTICLE 2 - THE WORK**

2.1 The Builder shall perform all the work required by the Contract Documents as identified in Article I (Contract Documents) for the planning, design, marketing, management, development, and construction of the Owner's proposed facility (the "Work").

2.2 The Builder shall include all supervision, administration, accounting, etc. necessary to manage the Work including but not limited to

- Contract with contractor, prime contractor, and subcontractors (as used herein, "contractor party(ies)" or "subcontractor party(ies)") necessary to complete the Work.
- Coordinate all submission and resubmission of documents with the various jurisdictions for permits and approvals.
- Manage all Owner, Builder and Architectural meetings.
- Manage the RFI process between Builder and Architect.
- Provide frequent site inspection and quality control of the Work.
- Review all pay applications.
- Review and approve all change order requests.

- Travel, hotels, rental cars, etc. is included.
  - Printing, copying, overnight mail, etc. is included
- 2.3 Builder is responsible for all Code and Zoning requirements enforced by the governing jurisdiction including but not limited to fire pumps, radio amplification system, etc.
- 2.4 Builder is required to provide all temporary construction systems, such as temporary heat during winter conditions, etc., as are reasonable necessary to deliver the project as scheduled.

### **ARTICLE 3 - THE BUILDER'S DUTIES AND STATUS**

- 3.1 The Builder accepts the relationship of trust and confidence established between itself and the Owner by this Agreement. Builder covenants with the Owner to furnish its best skill and judgment and to cooperate in furthering the interests of the Project. Builder agrees to furnish efficient business administration and supervision and to use best efforts to furnish at all times an adequate supply of workers and materials. Builder further agrees to perform the Work in the best way and in the most expeditious and economical manner consistent with the interest of the Owner.

### **ARTICLE 4 - TIME OF COMMENCEMENT AND COMPLETION**

- 4.1 The Work to be performed under this Contract shall commence immediately. The Builder shall use all reasonable efforts to substantially complete the Work within eighteen (18) months after receipt of the necessary building permit and authorization to proceed.
- 4.2 The Builder shall not be liable for any delay and shall be excused in its performance obligations, including completion of the Project, if the delay is due in whole or in part to the Owner, or to any cause beyond the reasonable control of the Builder such as fires, accidents, wars, rebellion, civil commotion or public strife, acts of any government, whether legal or otherwise and acts of public enemies, adverse weather conditions, or any other causes beyond the reasonable control of the Builder (but not strikes or work stoppages unless such strikes or work stoppages are not related to or directed at the Builder's performance of the Work at the Project) if the Builder could not have reasonably foreseen and provided against and taken all reasonable precautions to avoid such forces. If such delay continues for more than (30) days either party may cancel this Agreement by providing written notice thereof and this Agreement shall otherwise be subject to an equitable adjustment as hereinafter provided. The Builder shall give the Owner written notice within ten (10) days of the occurrence of any such delay in reasonable detail setting forth the cause for the delay, the anticipated duration and effect of the delay on the schedule of the Builder's performance, if any. Such excuse shall be effective only upon the giving of such notice. If such notice is not given, then the Builder shall not be entitled to rely upon the provisions hereof in claiming this delay. Upon the occurrence of any delay excused by the foregoing provisions, the period of the Construction Schedule shall be extended for an additional time period equivalent to the time period of such delay plus a reasonable period for demobilization and remobilization.

### **ARTICLE 5 - CONTRACT AMOUNT**

- 5.1 Notwithstanding any other provisions contained in the Agreement to the contrary, except for adjustments performed or made as extra Work, in accordance with Article 7 herein below, the Owner agrees to compensate the Builder **\$16,743,884** (Sixteen Million, Seven Hundred and Forty-Three Thousand, Eight Hundred and Eighty-Four Dollars) for the Work as is further defined in the Schedule of Values indicated in Exhibit #B to this Agreement. Pursuant to Section 24-91-103.6(2), C.R.S., the Owner has appropriated sufficient funds to pay the amounts due under this Agreement. No Change Orders or other form of order or directive shall be issued by the Owner requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the Agreement, unless the Builder is given written assurance by the Owner that lawful appropriations necessary to cover the additional work have been made.

## **ARTICLE 6 - DESIGN AND ENGINEERING**

- 6.1 Final Construction Drawings are attached hereto as Exhibit #A and made a part of hereof (the "Contract Documents") and Builder represents that such Drawings should meet all applicable code and regulations.

## **ARTICLE 7 - CHANGES IN THE WORK**

- 7.1 The Owner may make changes in the Work, within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Amount and Contract Time shall be adjusted accordingly. Upon notice of a requested change, the Builder shall prepare and submit to the Owner a written estimate of the value of the change, including the Builder's overhead and the profit. The Owner shall review each estimate within five (5) days, and if accepted, a Change Order shall be executed by the Owner and the Builder. If the Owner requests the Builder to submit a proposal for a change in the Work and then elects not to proceed with the change, a Change Order shall be issued to reimburse the Builder for costs incurred for Design Services or proposed revisions to the Contract Documents, if required.
- 7.2 Cost or credit to the Owner resulting from a change in the Work shall be determined by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. The amount of credit to be allowed by the Builder to the Owner for deletion or changes which results in a net decrease in the Contract Amount will be actual net cost without any reduction in the Builder's overhead or profit. When both additions and credits covering the related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increases, if any.
- 7.3 The Owner and the Builder agree that this contract is contingent upon preliminary information and observations made available to the Builder and the Owner in developing the Contract Amount and determining the scope of the Work. If unforeseen conditions exist which require changes to the Work, reconstruction or modifications to the Work in either design and/or construction phases, then the Contract shall be adjusted by Change Order as prescribed herein. If governing authorities, utilities, or other agencies beyond the Builder's control cause additions or modifications, changes or delays by reason of enactment of ordinances, policies, or imposition of other requirements, which changes cause additional cost to the Work, then the Contract Amount and Time shall be adjusted appropriately.

## **ARTICLE 8 – SUBCONTRACTS**

- 8.1 Any portion of the Work may be performed under subcontract at the Builder's option. The Builder shall request bids from qualified subcontractors, determine which bids shall be accepted and as soon as practical, furnish to the Owner in writing the names of the persons or entities he will have engaged as subcontractor for the Project.

## **ARTICLE 9 - PAYMENTS TO THE BUILDER**

- 9.1 The Builder shall submit an Application for Payment on the fifth of each month using AIA G702 and G703 formats including a Schedule of Values along with the appropriate indication of percentage of completion with attached affidavit stating subcontractors and material suppliers entitled to payment for that draw period. Within ten (10) days after receipt of the monthly Application for Payment the Owner shall pay a progress payment of ninety percent (90%) of the Application for Payment amount, and ten percent (10%) shall be held as retainage. When the Work is fifty percent (50%) complete no further retainage will be withheld. No retainage shall be withheld for material and equipment delivered and/or stored on site. Retainage for individual like items may be released upon completion of the Work for that line item and approval of the Bond Trustee or Consultant.

- 9.2 Payment checks shall be issued by the Owner, made payable to the Builder. The Builder shall pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Builder on account of such subcontractor's work, the amount to which said subcontractor is entitled in accordance with the terms of the Developer/Design Builder's contract with such subcontractor. The Design Builder shall, by appropriate agreement with each subcontractor, require each subcontractor make payments to sub-subcontractors and material suppliers in similar manner.
- 9.3 The Owner shall have no obligation to pay or to be responsible in any way for payment to a subcontractor of the Builder, except as may otherwise be required by law.
- 9.4 Provided payment has been received on a timely basis by the Builder from the Owner, the Builder shall provide routine affidavits from subcontractors and materialmen certificates from suppliers from the prior month.
- 9.5 When a subcontractor has completed its portion of the Work, and such Work has been accepted by the Owner, the Owner shall authorize, within thirty (30) days, the release of all retainage to the Builder and the subcontractor for such accepted Work.
- 9.6 Substantial Completion:
- 9.6.1 The Builder shall notify the Owner when it considers the Work substantially complete. Within fourteen (14) days from the receipt of such notice, the Owner shall make such investigations as it deems necessary to determine if it considers the Work substantially complete and shall notify the Builder in writing of any deficiencies which, in the Owner's opinion, exist and causes the Work not to be substantially complete. The date of substantial completion of the Work or designated portion thereof is the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy the Work or designated portion thereof for the use for which it is intended, even though "punch list" corrective items may not have been fully completed. Such use need not be to serve the final function or business as may ultimately be intended for the Project, but the intended use for this Work shall be to service only the function, such as the installation of equipment or finishes or other such activities which are not included as a condition of the Work and which are intended by the Owner to immediately follow the completion of the Work.
- 9.6.2 If only Work to be performed by the Owner is not complete, or if only materials and/or equipment to be furnished by the Owner have not been furnished, then the Work shall be deemed substantially complete.
- 9.6.3 Once the Work has been accepted as substantially complete but not finally complete, the Owner and the Builder shall mutually agree upon a dollar amount to be held as final retainage by the Owner. This final retainage amount shall be equivalent to one hundred fifty percent (150%) of the estimated cost of punch list items required for final completion. The remaining balance of the Contract Amount shall be paid forthwith to the Builder.
- 9.7 Final Payment
- 9.7.1 Final Payment, constituting any unpaid balance of the Contract Amount shall be paid by the Owner to the Builder when the Work has been completed, the Contract has been fully performed and the final Application for Payment has been issued. Final Payment shall be due twenty (20) days after the date of issuance of the final Application for Payment or upon occupancy of the building by the Owner, whichever occurs first; provided, Final Payment will not be made unless and until the provisions of Section 38-26-107, C.R.S., are met, including but not limited to the publication of a "notice of final payment" in a legal newspaper in the county in which the Work is performed.

- 9.7.2 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:
- .1 unsettled liens;
  - .2 faulty or defective Work appearing after Substantial Completion;
  - .3 failure of the Work to comply with the requirements of the Contract Documents;  
or
  - .4 terms of any special warranties required by the Contract Documents.

#### **ARTICLE 10 - TERMINATION OF CONTRACT**

- 10.1 If the Work is stopped for a period of more than thirty (30) days by reason of any of the causes set forth herein, which justify an extension of the estimated completion date of the Work, the Builder may, upon seven (7) days written notice, terminate this Contract. In such event, the Owner shall pay the Builder for the cost of the Work for which payment has not been made, all other losses and damages sustained and the Builder's Overhead and the Builder's Fee expended through the date of termination.
- 10.2 If the Work is stopped for a period of more than seven (7) days due to an act or omission of the Owner or if the Owner fails to make any payment for a period of seven (7) days after it is due, the Builder may stop or terminate this Contract. In such event, the Owner shall pay the Builder the cost of the Work for which payment has not been made, all other losses and damages sustained, and the Builder's Overhead and Builder's Fee for the entire Contract.
- 10.3 If the Builder is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of his insolvency, or if it persistently and repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or persistently and repeatedly disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction or otherwise substantially violates a material provision of the Contract Documents, the Owner shall notify the Builder in writing hereof. Within twenty-one (21) days from such notice, the Builder shall remedy the situation. Otherwise, the Owner may terminate the engagement of the Builder and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Builder and may finish the Work by whatever method necessary and reasonable. In such event, the Builder shall not be entitled to receive any further payment until the Work is complete. If the unpaid balance of the Contract Amount exceeds the cost remaining to complete the Work, such excess shall be paid to the Builder. If such cost to complete the Work exceeds such unpaid balance of the Contract Amount the Builder shall pay the difference to the Owner.

#### **ARTICLE 11 – INSURANCE**

- 11.1 Builder shall at all times during the term of this Agreement (including without limitation, throughout the duration of the Warranty Period) fully comply with the insurance requirements set forth in Exhibit C. The Owner's failure to enforce any of the insurance provisions in this Agreement shall not act as a waiver of or estoppel to assert Builder's obligation to procure and maintain the required insurance coverages in accordance with the insurance requirements set forth in Exhibit #C.

#### **ARTICLE 12 - INTEREST ON PAST DUE ACCOUNTS**

- 12.1 In the event the Owner does not promptly make Progress and Final Payments pursuant to the terms of this Agreement, or if the Owner withholds funds in excess of the amounts permitted under this Agreement, the Builder shall be entitled to interest on the past-due accounts computed on an annual rate of ten percent (10%).

### **ARTICLE 13 - THE OWNER'S REPRESENTATIVE**

- 13.1 The Owner hereby designates Thomas Banta as its representative with sole and complete authority to approve changes in design or construction, to approve payments and to inspect and approve workmanship and materials. The representative shall be available when needed during working hours. In all cases, his/her signature shall be final and binding upon the Owner with respect to all matters affecting this Contract.

### **ARTICLE 14 - CONTRACTOR WARRANTIES AND CORRECTIVE DUTIES**

- 14.1 **Warranty Period.** Builder represents and warrants to the Owner that all materials provided by Builder and incorporated into the Work will be new and Builder's Work, including all materials incorporated therein, shall be in conformity with all of the Contract Documents and applicable standards. All labor and materials not so in conformity may be deemed "Defective Work" by the Owner in its reasonable discretion. Builder further warrants that all labor and materials furnished by Builder shall be free of defects from the date of the completion of the Work through the one-year anniversary from the later of the date of the completion of the Work or the date of final acceptance of the Work as evidenced by issuance of a certificate of occupancy or equivalent permission to use and occupy the Project for its intended use (the "Warranty Period"). The Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. Builder hereby expressly disclaims any other warranties, guaranties and/or representations, whether express or implied, that may arise by statute, common law or otherwise.
- 14.2 **Call Back Responsibility.** Builder shall correct Defective Work ("Corrective Work") promptly upon receipt of notice from the Owner ("Notice of Defect"). Builder shall commence Corrective Work not later than two (2) Business Days after receipt of the Notice of Defect, except in an emergency, in which case Builder shall commence the Corrective Work within twenty-four (24) hours after receipt of the Notice of Defect, and Builder shall diligently and continuously complete the Corrective Work to the reasonable satisfaction of the Owner. Builder shall be solely responsible for the entire cost of Corrective Work, including any costs incurred as a result of any disturbance of work or materials of other contractors.
- 14.3 **Failure to Correct Defective Work.** Should Builder fail to commence the Corrective Work within the time specified above and diligently pursue the Corrective Work to completion, the Owner, without further notice, may provide or arrange for others to provide the Labor and Materials necessary to correct any Defective Work, and all costs thereof shall be charged to Builder. In the event there are not sufficient funds owing to Builder by the Owner strict (or an affiliate of the Owner), then Builder shall reimburse the Owner for such costs and fees immediately upon receipt of written demand from the Owner, and interest shall accrue on the aggregate amount at the rate of eighteen percent (18%) per annum from the date incurred until the Owner is fully reimbursed for all such amounts and interest thereon.
- 14.4 **Assignment of Warranties.** Any and all warranties procured by Builder from any other parties shall accrue to the Owner's benefit. Whenever possible, Builder shall cause such warranties to be made directly to the Owner or the Owner's successor, or if the same shall be made to Builder, Builder hereby assigns all such warranties, to the extent possible, to the Owner. Upon written request from the Owner, those warranties that are not assignable shall be enforced (to the extent enforceable) by Builder for the benefit of the Owner for the duration of the Warranty Period. All warranties and guarantees pursuant to this section shall inure to the benefit of the Owner's successors and assigns, and the Owner may further assign to third-party purchasers of any portion of the applicable Project, on a non-exclusive basis, any or all of such assigned warranties and guarantees. The assignment of warranties from Builder to the Owner herein shall not in any way limit any other rights or remedies of the Owner or obligations and liability of Builder under this Agreement.

- 14.5 **Miscellaneous Warranty Issues.** All warranties and guarantees pursuant to this section are in addition to any special warranty contained or referred to in any of the other Contract Documents or available or provided under applicable Laws. Builder's obligations under this section, and the Owner's rights under this section, shall survive both final payment for the Work and the expiration or any termination of any Authorization Notice and/or this Agreement. Any failure to correct Defective Work pursuant to this section shall constitute a breach of this Agreement. Builder shall insert the terms of this section in all sub-subcontracts and/or agreements executed in connection with the Work to be performed under this Agreement and shall cause each other subcontractor party to agree in writing thereto.

## **ARTICLE 15 - INDEMNIFICATION**

- 15.1 **Builder Indemnity and Duty to Defend.** In addition to any other obligation in this Agreement, to the fullest extent permitted by law including Section 13-21-111.5, C.R.S., Builder shall indemnify, defend and hold harmless each Indemnitee (as defined below) for, from and against any and all Claims (as defined below), regardless of whether or not the Claim is caused in part by an Indemnitee; provided, however, that Builder shall not be required to indemnify an Indemnitee for, and solely to the extent of, a Non-Indemnified Matter (as defined below). The parties acknowledge and agree that the existence of a Non-Indemnified Matter shall in no event relieve Builder of its indemnity, defense and other obligations hereunder for, or with respect to, any other portion of a Claim that is not a Non-Indemnified Matter. Builder's duty to defend the Indemnitees is entirely separate from, independent of and freestanding from Builder duty to indemnify the Indemnitees. Notwithstanding Builder's duty to defend, Builder acknowledges and agrees that the Owner is entitled to defend any and all Claims against the Owner with counsel and experts of the Owner's choice, to the extent not in conflict with applicable insurance coverage(s). The Owner will promptly reimburse Builder the defense costs reasonably incurred and paid by Builder for the reasonable defense of any portion of any Claim against an Indemnitee solely to the extent such portion is ultimately determined to be a Non-Indemnified Matter (as defined in Section 8.4 below). Payment by any Indemnitee is not a condition precedent to enforcing such Indemnitee's rights to indemnification and defense under this Agreement.
- 15.2 **Indemnity and Defense Not Limited; Survival.** Nothing in this Agreement shall be construed to negate, abridge or otherwise reduce: (a) any other obligation or liability of Builder for breaching any of its agreements, covenants, representations, warranties, or obligations under this Agreement and/or any of the other Contract Documents; or (b) any other right or obligation of indemnity that otherwise exists in favor of the Owner or any Indemnitees. Further, payments by Builder to any Indemnitee(s) in connection with this Section 8 shall be in addition to any and all other legal remedies available to the Indemnitees and shall not be considered the exclusive remedy of any of the Indemnitees. Builder's obligations under this Section 8 shall apply without regard to the particular allegations or theories of recovery asserted or omitted by any third party, including, without limitation, Claims based on duties, obligations or liabilities imposed on the Indemnitees by Law, and Claims based on theories of peculiar risks or non-delegable duty arising from conditions of the workplace and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefits acts or other employee benefits acts. Builder's obligation to indemnify, defend and hold harmless the Indemnitees shall survive termination of this Agreement and shall remain in effect until final acceptance of all improvements constructed under this Agreement that are to be accepted by the Owner or any other applicable accepting jurisdiction and for the period of time equal to the period of time proscribed for liability under Colorado's applicable statute of limitations and statute of repose.
- 15.3 **Applicability of Insurance.** The indemnification obligations of Builder under this Agreement shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) that Builder is required to carry under this Agreement. The right to indemnification and defense by Builder shall be in addition to the Owner's separate rights under the insurance to be provided by Builder under this Agreement.

- 15.4 Definitions. For purposes of this Agreement, the following capitalized terms shall have the following meanings:

“Claim” means (i) any action, administrative action, legal proceeding, claim, demand, obligation and cause of action of every kind and character made or asserted against an Indemnitee, whether based on tort, contract or equitable principles, and whether asserted by one or more owners of any residence constructed on a Project, any applicable associations or any other person or entity; and (ii) any damage, loss, liability, lien, judgment, cost and expense (including, without limitation, reasonable attorney fees and costs, investigative and expert witness fees and costs and other litigation, mediation, arbitration or judicial reference expenses) suffered or incurred by an Indemnitee provided that such action, administrative action, legal proceeding, claim, demand, obligation or cause of action is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself); which are in any way occurring, incident to, or arising from or in connection with (A) nonperformance of the Work or any term or provision of any of the Contract Documents by Builder or any other subcontractor party; (B) the failure to comply with applicable laws by Builder or any other subcontractor party; and/or (C) any other breach of any provision of any of the Contract Documents by Builder or any other subcontractor party. A Claim also includes all costs incurred by the Indemnitees for Corrective Work performed by the Owner or an entity other than Builder.

“Indemnitee” means each of the following: the Owner and any of its respective subsidiaries, affiliates, members, managers, shareholders, owners, officers, directors, partners, employees, agents, successors and assigns, and lenders and land bankers, if any.

“Non-Indemnified Matter” means any portion (and solely to the extent of such portion) of any Claim against an Indemnitee to the extent the Claim (or portion thereof, if applicable) is determined to have been caused by the negligent or willful act of the Indemnitee sought to be indemnified. Said determination shall be made by (1) entry of a non-appealable final judgment after trial or award after arbitration, or (2) any other written agreement by the Builder and Indemnitee(s) against whom the Claim is alleged

## **ARTICLE 16 – MISCELLANEOUS**

- 16.1 Independent Contractor. Builder warrants that it is an independent contractor within the purview of the Internal Revenue Code of 1986, as amended, the Social Security Act of 1935, as amended, and all other applicable laws and is not acting in the name of the Owner or as an agent or employee of the Owner.
- 16.2 Taxes. Owner is a tax exempt governmental entity. Builder shall be responsible for paying all taxes, including without limitation, sales and use taxes, required by law in connection with the Work. To the extent permitted by law, Builder shall utilize the Owner’s tax exempt status for obtaining all materials and for establishing applicable tax exempt status for the Project or any part of the Work. Builder shall be solely responsible for withholding taxes, social security taxes and statutory unemployment taxes for all contractor parties.
- 16.3 Liens. The Project is a government owned project and is not subject to liens. To the fullest extent permitted by law, Builder hereby waives any and all rights to file mechanics’ or materialman’s liens against the Project or any portion thereof. Builder shall pay when due, all claims for labor and/or materials furnished to the Project at Builder’s request and any fringe benefit trust fund, pursuant to any collective bargaining agreement to which Builder may be bound, to prevent the filing or recording by any third party of any mechanics’, materialmen’s or other lien, stop notice or bond claim or any attachments, levies or garnishments (collectively “Liens”) involving the Work or Builder. Builder shall, within five (5) Business Days after written notice from the Owner or after Builder otherwise becomes aware of such Liens or notice of intent to file a Lien, terminate the

effect of any Liens by filing or recording an appropriate release or other bond if so requested by the Owner. If the Owner requests Builder to file and obtain any such release or other bond and Builder fails to do so within five (5) Business Days of such request, the Owner may obtain such bond on Builder behalf and deduct the cost thereof and all fees and costs related thereto from any sums due Builder. If such fees and costs result in a deficiency, Builder shall be fully responsible for the deficiency, together with any damages and costs, including without limitation court costs and reasonable attorneys' fees, incurred by the Owner, and interest shall accrue on the aggregate amount at the rate of eighteen percent (18%) per annum from the date incurred until the Owner is fully reimbursed for all such amounts and interest thereon. Builder shall ensure that all agreements with sub-contractors and material providers contain lien waiver and acknowledgment provisions in form similar to this section

- 16.4 Performance and Payment Bonds. Builder shall cause all Subcontractors performing the Work with contracts in excess of \$50,000 to furnish a performance bond and a labor and material payment bond for no less than 100% of the their contract amount, each issued in form, in amount and by a surety approved by Owner. Such bonds shall be in effect during the entire term of the Agreement and any warranty period, and shall conform to Section 38-26-106, C.R.S. If requested by the Owner at any time prior to Substantial Completion of the Work, Builder agrees to increase the face amount of the bond(s) to include any increase in the Contract Price increased consistent with the provisions of this Agreement.
- 16.5 Applicable Law; Venue. This agreement shall be governed by the laws of the state of Colorado, and all disputes arising hereunder are to be resolved in the state and federal courts having jurisdiction of such disputes sitting in the state of Colorado. Both parties hereby consent to the jurisdiction of such courts, and agree to accept service of process by registered mail.
- 16.6 Notices. All notices and other communications required or provided to be sent by either party pursuant to this Agreement shall be in writing and shall be deemed properly delivered, received, given and served: (i) on the same day as personally delivered if delivered before 5:00 p.m. (according to the time zone in which the party being notified is located) on a Business Day, and otherwise on the next Business Day; (ii) when delivered by United States mail, postage prepaid, certified, return receipt requested; (iii) when delivered by any nationally known overnight delivery service, charges prepaid, if delivered before 5:00 p.m. (according to the time zone in which the party being notified is located) on a Business Day, and otherwise on the next Business Day; (iv) on the same day as actually sent by facsimile transmission to the parties at their respective addresses or facsimile numbers listed on page 1 of this Agreement if transmitted before 5:00 p.m. (according to the time zone in which the party being notified is located) on a Business Day, and otherwise on the next Business Day; or (v) on the same day as actually sent by email if sent to Builder at Builder's email address before 5:00 p.m. (according to the time zone in which the party being notified is located) on a Business Day, and otherwise on the next Business Day. "Business Day," wherever that term is used in this Agreement, means a day that is not a Saturday, a Sunday, or a legal holiday observed in the state in which the party being notified is located. Any address specified herein may be changed by written notice given to the other party in accordance with this section. The inability to deliver notices because of a changed address of which no notice was given or rejection or other refusal to accept any notice shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.
- 16.7 Amendments. All additions and modifications to the Contract Documents shall be valid only if made in writing and signed by both parties to this Agreement, whereupon such items shall then become a part of the Contract Documents and subject to the provisions of this Agreement.
- 16.8 Assignment. Builder's rights and obligations under this Agreement are nontransferable and non-assignable. Any purported assignment of this section shall be null and void. Subject to the foregoing restrictions and prohibitions on assignment, each and all of the covenants and conditions of this Agreement will inure to the benefit of and be binding upon the successors in interest of the Owner and the successors, representatives and assigns of Builder. As used in this section, "successors" means successors to the parties' interest in the applicable Project,

successors to all or substantially all of the parties' assets, and successors by merger or consolidation.

- 16.9 Complementary Documents. The Contract Documents are intended to be complementary. Anything required by any portion of the Contract Documents shall be performed as if it were set forth in all portions of the Contract Documents. The Contract Documents will be construed together so as to give effect to every part.
- 16.10 Counterparts; Copies of Signatures. This Agreement may be executed in counterparts, each of which, when taken together, will constitute a fully executed original. Copies of signatures shall be accepted and binding as originals.
- 16.11 Waiver of Consequential Damages. The Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to, special, incidental, consequential, or punitive damages of any kind arising out of or related to the performance or non-performance of the Contract, and regardless of whether such losses, damages or liability arises from breach of contract or warranty, tort (including negligence), strict liability or otherwise.
- 16.12 Cumulative Remedies. All rights, options and remedies of the Owner contained in this Agreement or otherwise available at law or in equity are cumulative so that no one of them is exclusive of the other. The Owner will have the right to pursue any one or all of its remedies or to seek damages or specific performance in the event of any breach of this Agreement by Builder, or to pursue any other remedy or relief that may be provided by law or equity, whether or not stated in this Agreement. The Owner specifically retains and reserves, to the fullest extent permitted by law, all causes of actions, claims, and remedies, in contract and in tort, at law or in equity, seeking recovery for property damage, personal injury, or economic loss arising from, without limitation, breach of contract, negligence, malpractice, fraud, or negligent misrepresentations in connection with or relating to the performance by Builder of its obligations and duties set forth in this Agreement or performed in connection with or as a result of this Agreement.
- 16.13 Entire Agreement. The Contract Documents shall constitute the entire agreement between the parties hereto and supersede all other agreements or understandings between the parties with respect to the subject matter of the Contract Documents, and there are no other agreements, oral or written, made by or relied upon by and between the parties hereto with respect to the subject matter of the Contract Documents, including, without limitation, any previous land development agreement.
- 16.14 Governing Law. Except where specific citation to federal or other law requires otherwise, all provisions in this Agreement shall be construed and interpreted under and shall be governed and enforced according to the laws of the State where the applicable Project is located, without regard to choice of law rules which would result in the application of any law other than the law of the State where the applicable Project is located, except to the extent that the Federal Arbitration Act is applicable to this Agreement.
- 16.15 Severability. In the event any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal or otherwise unenforceable in any respect, such provision shall be severed from this Agreement, such invalidity, illegality or unenforceability shall not affect any other provision in this Agreement, and the remainder of the provisions of this Agreement shall continue in full force and effect without impairment.
- 16.16 Survival. Without limiting the survival of any express provision to that effect, all representations; warranties; agreements of Builder to reimburse, defend, hold harmless or indemnify; dispute resolution provisions; and all covenants or agreements of Builder that contemplate performance after completion of the Work and/or payment of amounts owed under this Agreement, including, without limitation, Corrective Work and/or rights and obligations with respect to work product and

intellectual property rights, shall survive the termination of this Agreement and receipt of final payment by Builder.

- 16.17 Waiver. No waiver of a breach of any of the terms, covenants or conditions of this Agreement will be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall in no way constitute a waiver of its rights, at law or in equity, or a waiver of any other provisions of this Agreement or subsequent default by the other party in the performance of or compliance with any of the terms and conditions set forth in this Agreement. The consent or approval by the Owner to or of any act by Builder requiring the Owner's consent or approval does not waive or render unnecessary the Owner's consent or approval to or of any subsequent similar acts by Builder.
- 16.18 Attorneys' Fees. In the event that the Owner prevails in any proceeding or court action related to this Agreement that is brought against Builder by third parties in which the Owner is joined as a party or interpleads, whether the same proceeds to judgment or not, Builder agrees to pay to the Owner its reasonable attorneys' fees. In the event that Builder prevails in any proceeding or court action related to this Agreement that is brought against the Owner by third parties in which Builder is joined by the Owner as a party or interpleads, whether the same proceeds to judgment or not, the Owner agrees to pay to Builder its reasonable attorneys' fees. This provision is separate and several and shall survive the merger of this Agreement into any award or judgment on this Agreement. The parties' covenants set forth in this subsection shall survive and be enforceable following termination of this Agreement.
- 16.19 No Personal Liability. No elected official, director, officer, agent or employee of the Owner shall be charged personally or held contractually liable under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.
- 16.20 No Waiver of Governmental Immunity. Builder understands and agrees that the Owner is a quasi-municipal corporation and political subdivision of the State of Colorado, and Owner is relying on and does not waive or intend to waive by the Agreement or any provision thereof, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, et seq., as from time to time amended, or otherwise available to Owner.
- 16.21 Headings for Convenience Only. The headings or titles used herein are for convenience of reference only and do not define or limit the scope of any provision hereof.

\*\*\*\*\*

In witness whereof, the Owner and the Builder have executed this Agreement to be effective on the date first written herein.

OWNER

BUILDER

**FITZSIMONS VILLAGE  
METROPOLITAN DISTRICT NO. 1**

**CORPOREX DEVELOPMENT &  
CONSTRUCTION MANAGEMENT, LLC**

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\_\_\_\_\_

Alan Bogart  
Vice President

ATTEST:

ATTEST:

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\_\_\_\_\_

EXHIBIT #A  
 FITZSIMONS 500 PARKING GARAGE  
 DRAWINGS AND SPECIFICATIONS

**DRAWINGS**

<u>Drawing</u>	<u>Title</u>	<u>Consultant</u>	<u>Date</u>
A0.01	Cover Sheet	Corporex	10/11/2019
A0.02	First Floor Life Safety Plan	Corporex	10/11/2019
A0.03	2 <sup>nd</sup> -6 <sup>th</sup> Floor Life Safety Plan	Corporex	10/11/2019
A0.04	Seventh/Eighth Floor Life Safety Plan	Corporex	10/11/2019
A1.01	Fitz 500 Garage Concept - Site Plan	Corporex	01/06/2020
A1.02	Fitz 500 Garage Concept - Lower-Level Floor Plan	Corporex	01/06/2020
A1.03	Fitz 500 Garage Concept - First Level Floor Plan	Corporex	01/06/2020
A1.04	Fitz 500 Garage Concept - Level 2-6 Floor Plan	Corporex	01/06/2020
A1.05	Fitz 500 Garage Concept - Level 7 Floor Plan	Corporex	01/06/2020
	Preliminary Site Utility Plan	Altitude	03/10/2020
	SD Structural Narrative	JCA	03/11/2020
	Elevation & Wall Section_EIFS	Elevar/CPX	03/18/2020
	Stamped Geotech Report	K&A	03/19/2020
	Concept MEP/FP Narrative	Corporex	03/26/2020
EX1.0	75' Setback Requirement Drawing	Altitude	04/30/2020

**EXHIBIT #B  
SCHEDULE OF VALUES**

 <b>FITSIMONS 500 PARKING GARAGE</b> <b>Schedule of Values</b> <b>6/29/2022</b>	
SCOPE OF WORK	SOV
- Div. 3 - Concrete	\$ 9,425,446.00
- Div. 4 - Masonry	\$ 139,506.00
- Div. 5 - Metals	\$ 609,282.00
- Div. 6 - Woods, Plastics, & Composites	\$ 5,075.00
- Div. 7 - Thermal & Moisture Protection	\$ 212,136.00
- Div. 8 - Openings, Glass, & Glazing	\$ 65,239.00
- Div. 9 - Finishes	\$ 254,559.00
- Div. 10 - Specialties	\$ 22,919.00
- Div. 11 - Equipment	\$ 60,900.00
- Div. 12 - Furnishings	\$ 65,000.00
- Div. 14 - Conveying Systems	\$ 214,338.00
- Div. 21 - Fire Suppression	\$ 55,703.00
- Div. 22 - Plumbing	\$ 421,770.00
- Div. 23 - HVAC	\$ 16,331.00
- Div. 26 - Electrical	\$ 1,040,313.00
- Div. 28 - Electronic Safety & Security	\$ 50,000.00
- Div. 31 - Earthwork	\$ 435,886.00
- Div. 32 - Exterior Improvements	\$ 184,147.00
- Div. 33 - Site Utilities	\$ 203,468.00
- General Contractor's General Requirements	\$ 583,395.00
- General Contractor's General Conditions	\$ 641,026.00
- General Contractor's Contingency	\$ 416,877.00
- General Contractor's Insurance	\$ 164,541.00
- General Contractor's Fee	\$ 521,739.00
<b>SUBTOTAL</b>	<b>\$ 15,809,596.00</b>
- Corporex Fee & Staffing (3%)	\$ 474,288
<b>SUBTOTAL</b>	<b>\$ 16,283,884</b>
- Architectural Services	Design-build, included above
- MEP Design	Design-build, included above
- Structural Design	Design-build, included above
- Civil Engineering	\$ 85,000.00
- Permit	\$ 250,000.00
- Testing	\$ 125,000.00
<b>TOTAL</b>	<b>\$ 16,743,884</b>

EXHIBIT #C

**INSURANCE REQUIREMENTS**

A. Builder shall purchase and maintain, at its own expense, with an insurer or insurers acceptable to the Owner, at least the following minimum insurance coverages prior to commencement of the Work, during the term of the Agreement to which this Exhibit C is attached (the "Agreement"), and during the entirety of the Warranty Period. Initially capitalized terms used and not otherwise defined in this Exhibit C shall have the meanings given to them in the Agreement.

1. Commercial General Liability. Commercial general liability insurance, on an occurrence policy form (ISO CG 00 01 10 01 or later edition) ("modified occurrence" and "claims-made" are not acceptable), including premises-operations (including explosion, collapse and underground coverage) and products-completed operations coverage, with limits of liability of not less \$2,000,000 bodily injury and property damage per occurrence, \$2,000,000 general aggregate limit, \$2,000,000 personal injury and advertising limit, and \$2,000,000 products-completed operations aggregate limit, or limits carried, whichever are greater, and with deductibles or self-insured retentions acceptable to the Owner and clearly stated on the certificates of insurance evidencing coverage. All liability policies shall provide, without limitation, full separation of insureds, contractual liability coverage (including coverage to the maximum extent possible for the indemnification contained in the Agreement) and broad form property damage coverage (including completed operations) or equivalents. The required limits of liability may be provided by a combination of primary and umbrella and/or excess liability policies, all written on an occurrence policy form ("modified occurrence" and "claims made" forms are not acceptable), with umbrella/excess coverage at least as broad as the primary general liability insurance. The products-completed operations coverage shall be maintained continuously during the term of the Agreement and until final acceptance of all improvements constructed under this Agreement that are to be accepted by the Owner or any other applicable accepting jurisdiction, and shall remain in effect for the longer of ten years or the period of time equal to the period of time proscribed for liability under Colorado's applicable statute of limitations and statute of repose. Builder shall require each other contractor party to purchase and maintain insurance coverage as provided in this subparagraph.

2. Workers' Compensation. Workers' compensation insurance with statutory limits complying with the laws of the State where the applicable Project is located and employer's liability insurance with limits of liability of not less than \$2,000,000 for bodily injury by accident (each accident), \$2,000,000 bodily injury by disease (policy limit), and \$2,000,000 bodily injury by disease (each employee), or limits carried, whichever are greater. Such policies shall contain a waiver of subrogation endorsement in favor of the Owner and any lender(s), landbanker(s), and other financing sources of Builder, Owner and/or with respect to the Project. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance by Builder pursuant to the Agreement or during performance by any other contractor party. The required limits may be provided by a combination of primary and umbrella and/or excess liability policies, with umbrella/excess coverage at least as broad as the primary employer's liability insurance. Builder shall require each other contractor party to purchase and maintain insurance coverage as provided in this subparagraph, with the same waiver of subrogation in favor of the Owner and the other parties noted above.

3. Commercial Auto Liability. Commercial automobile liability insurance, including, without limitation, coverage for liability arising out of "any auto" or any and all owned, non-owned, leased, and hired automobiles, trucks and trailers, or semi-trailers, including, without limitation, any machinery or apparatus attached thereto, with limits of liability not less than \$2,000,000 each accident, or limits carried, whichever is greater, with a deductible or self-insured retention amount acceptable to the Owner. The commercial automobile liability insurance shall be written on the most recent edition of ISO form CA 01 01 or equivalent acceptable to the Owner and shall include, without limitation, contractual liability coverage and insured status for the Owner. Builder waives all rights against the Owner and the other Indemnitees for recovery of loss, injury and/or damages

to the extent such loss, injury and/or damages are covered by the commercial automobile liability insurance maintained by Builder. The required limits may be provided by a combination of primary and umbrella and/or excess liability policies, with umbrella/excess coverage at least as broad as the primary commercial automobile liability insurance. Builder shall require each other contractor party to purchase and maintain insurance coverage, and provide the same waiver of rights, as provided in this subparagraph.

B. Additional Insured. The Owner and such other persons and entities as may from time to time be designated by the Owner in writing, shall be named as additional insureds under the general liability insurance required above (including umbrella/excess policies) by issuance of ISO Form CG 20 10 11 85 or equivalent additional insured endorsement(s) reasonably acceptable to the Owner. The additional insured endorsements shall contain a primary insurance clause stating: "It is further agreed that such insurance as is afforded by this policy for the benefit of the additional insureds shall be primary insurance, and any insurance maintained by or available to the additional insureds shall be non-contributing to the insurance provided hereunder." The coverage provided to the additional insureds must be at least as broad as that provided to Builder and may not contain any additional exclusionary language or limitations applicable to the additional insureds.

C. All commercial general liability, workers' compensation/employer's liability and automobile liability policies maintained by Builder shall be primary coverage, and any coverage maintained by or available to the Owner shall be non-contributory.

D. Prior to commencing the Work, Builder shall deliver to the Owner the endorsements and waivers of subrogation referred to in this Exhibit C, as well as certificates of insurance evidencing the coverages referred to in this Exhibit C. Promptly upon the Owner's request, Builder shall deliver to the Owner a copy of any and all of the insurance policies and other insurance documents required by this Exhibit C. In the case of policies expiring while Work is in progress, a renewal certificate with all applicable endorsements must be received at the business office of the Owner prior to the expiration of the existing policy or policies. The Owner permitting Builder to start Work, continue Work, or releasing any progress payment prior to compliance with these requirements shall not constitute a waiver thereof. If at any time Builder's insurance fails to meet the requirements stated herein, all payments may be held until the deficiency has been resolved. Each certificate and endorsement must be executed by an authorized agent of the respective insurers. All certificates of insurance must provide the Owner with thirty (30) days advance written notice of cancellation or non-renewal (ten [10] days' notice in the event of cancellation for non-payment of premium) and shall include the following wording:

"CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, OR POLICY LIMITS REDUCED THEREON, THE ISSUING COMPANY WILL MAIL THIRTY (30) DAYS' NOTICE (TEN [10] DAYS NOTICE IN THE EVENT OF CANCELLATION FOR NON-PAYMENT OF PREMIUM) TO THE CERTIFICATE HOLDER NAMED TO THE LEFT."

E. All insurance referred to in this Exhibit C to be carried by Builder shall be maintained by Builder at its sole expense, with insurance carriers qualified to do business in the state in which the applicable Project is located and maintaining a rating of not less than A-, VII from A.M. Best & Co., unless the Owner, in writing, in its sole discretion, accepts a lower Best's rating.

F. In the event Builder fails to secure or maintain any policy of insurance required hereby, the Owner, at its sole discretion and election, may terminate any authorization notice then in effect and shall retain all remedies thereunder for breach of the Agreement.

G. The insurance requirements set forth herein are independent of Builder's indemnification and other obligations under the Agreement and at law. Nothing in this Exhibit C shall be construed to limit or alter any of the other obligations of Builder, under the Agreement, at law, or otherwise, including, without limitation, Builder's indemnification obligations. Nothing contained herein shall be construed as limiting the type, quality or quantity of insurance Builder should maintain or the extent of Builder's responsibility or liability for damages or other relief, under the Agreement or otherwise. Neither receipt nor acceptance of

policies, endorsements or certificates, whether or not showing less or different coverage than required herein, nor any other forbearance or omission by the Owner with respect to these insurance requirements or otherwise shall be deemed a waiver of, or estoppel to assert, any right of the Owner regarding these insurance requirements. Builder shall be solely responsible to pay any loss amount that lies within the deductible(s) or self-insured retention(s) of Builder's policies, up to the maximum amount of the deductible(s) or self-insured retention(s).

H. None of the requirements contained herein shall relieve Builder, and its subcontractors of any tier, of their respective obligations to exercise due care in the performance of their duties in connection with the Work or to complete the Work in strict compliance with the Contract Documents.

I. Any insurance policies required of or maintained by Builder pursuant to the Agreement may not contain any exclusions or limitations applicable to (a) additional insured vs. named insured Claims or suits; (b) any condominiums, townhomes, multi-unit, multi-family and/or attached projects, residential development or construction, common interest subdivisions or projects with a homeowners association; or (c) similar exclusions or limitations.

J. With regard to its personal property and its property insurance (if any), Builder agrees and acknowledges as follows:

1. Builder and each other contractor party shall have the risk of loss as to all materials, supplies, equipment and/or fixtures until such time as such materials, supplies, equipment and/or fixtures have been installed or otherwise affixed permanently to the Project (and accepted by the Owner in accordance with the Agreement). The Owner shall not be liable for loss or damage to, or theft of, any materials, supplies, equipment and/or fixtures prior to such time, whether such materials, supplies, equipment and/or fixtures are off the site, in transit, on the site, under the control of the Owner or otherwise.

2. Builder and each other contractor party shall have the risk of loss as to all materials, supplies, equipment and/or fixtures until such time as such materials, supplies, equipment and/or fixtures have been installed or otherwise affixed permanently to the Project (and accepted by the Owner in accordance with the Agreement). The Owner shall not be liable for loss or damage to, or theft of, any materials, supplies, equipment and/or fixtures prior to such time, whether such materials, supplies, equipment and/or fixtures are off the site, in transit, on the site, under the control of the Owner or otherwise.

3. Builder waives all rights of recovery, whether under subrogation or otherwise, against the Owner for (a) loss or damage covered by Builder's property insurance and (b) loss or damage to Builder's personal property. Contractor shall require the same waivers from each other contractor party and from the insurers issuing property insurance policies relating to the Work or the applicable Project or the applicable Project Site purchased and maintained by any other contractor party. The waivers of recovery, including subrogation, referred to in this subparagraph shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property that is the subject of the loss or damage. If the policies of insurance referred to in this Section J require an endorsement to effectuate the waivers of subrogation required hereunder, the parties procuring such policies will cause them to be so endorsed at their own expense.

K. For the purposes of this Exhibit C, "Project Site" shall mean the applicable Project, the real estate and adjacent and nearby areas where incidental operations are performed in connection with the Project, excluding permanent locations of any insured party, except the Owner.

L. Builder shall furnish each bidding and negotiating contractor party a copy of this Exhibit C, and shall make the same requirement of all with respect to their subcontracting or procurement procedures.

M. Any type of insurance or any increase of its limits of liability not described above that Builder requires for its protection, or on account of statute, shall be its own responsibility and at its own expense.