

PJM

AMENDED AND RESTATED CONSTRUCTION CONTRACT

**PARKER JORDAN METROPOLITAN DISTRICT AND
CITY OF CENTENNIAL
CHERRY CREEK REGIONAL TRAIL
BRONCOS PARKWAY TRAILHEAD
TAGAWA ACCESS ROAD**

THIS **AMENDED AND RESTATED CONSTRUCTION CONTRACT** (the "Amendment") is entered into this 19 day of April, 2010, by and between PARKER JORDAN METROPOLITAN DISTRICT, a quasi-municipal corporation and a political subdivision of the State of Colorado, whose address is c/o Grant Street Ventures, 9145 E. Kenyon Avenue, Suite 320, Denver, Colorado 80237 (the "District") and L&M ENTERPRISES, INC., a Colorado corporation whose address is 735 E Hwy 56 Berthoud CO 80513 (the "Contractor"), and the CITY OF CENTENNIAL, a Colorado home rule municipality, whose address is 13133 E. Arapahoe Road, Centennial, Colorado 80112 (the "City"), collectively referred to herein as the "Parties." The "Construction Manager" is hereby defined as follows:

Construction Manager for District Work and City Work:

Grant Street Ventures
9145 E. Kenyon Avenue, Suite 320
Denver, Colorado 80237
Phone: (303) 741-2500
Fax: (720) 222-8642
Attn: Dan Sheldon

The Parties agree as follows:

1. **THE CONTRACT DOCUMENTS**

1.1 The Parties acknowledge that the District and the Contractor have previously entered into a Construction Contract dated the 8th day of April, 2010 to be effective the 12th day of April, 2010 (the "Original Contract"), and that the primary purpose of amending and restating the Original Contract in this Amendment is to add the City as a party to the Amendment and to add the City Work (defined herein) to the scope of Work to be performed by the Contractor. This Amendment will also effectuate the following: (1) require the Contractor to invoice the City separately for all Work directly related to the City Work; (2) require that both the District and the City receive copies of all change orders, progress reports, and other correspondence or billings from the Contractor to either of the District and/or the City in order to ensure that both the District and the City remain fully apprised as to the progress of the Work; (3) require that the City Work be preliminarily and finally accepted by the City in accordance with standard City procedures; and (4) require the Contractor to provide the City with a one (1) year

warranty on the City Work following the date of preliminary (or conditional) acceptance, all as set forth herein.

1.2 The Parties acknowledge and agree that the date of the Original Contract between the District and the Contractor is April 8, 2010 to be effective April 12, 2010, and that the date of this Amendment which adds the City as a Party is April 19, 2010, and that as between the District and the Contractor all applicable time periods, including the District Contract Time (defined herein) and any statute of limitations, shall run from the date of the Original Contract, and that as between the City and the Contractor all applicable time periods, including the City Contract Time (defined herein) and any statute of limitations, shall run from the date of this Amendment.

1.3 All references herein to "Contract" shall mean the Original Contract and also the amendments to the terms and conditions of the Contract as set forth in this Amendment.

1.4 It is agreed by the Parties hereto that the following list of instruments, drawings and documents, attached hereto and bound herewith or incorporated herein by reference, constitute and shall be referred to as the "Contract Documents" and all of said instruments, drawings and documents taken together as a whole shall constitute the Contract between the Parties hereto, and they are as fully a part of this Contract as if they were set out herein:

Notice of Invitation for Bids
Notice to Bidders
Definitions
Instructions to Bidders
Addenda (as applicable)
Bid Submittal Form
Documentation Submitted by Contractor with Bid and Prior Notice to Apparent Low Bidder
Bid Bond
Contractor Reference Form
Owner Questionnaire
Subcontractor Listing
Material and Equipment Supplier Listing
Notice to Apparent Low Bidder
Construction Contract
Amended and Restated Construction Contract
General Contract Requirements (Section 200)
Work Schedule – Exhibit "A"
Work Schedule – Exhibit "B"
Certificate of Insurance
Performance Bond
Labor and Materials Payment Bond
Notice to Proceed
Change Order Form
Final Receipt
Notice of Final Settlement
Interim Waiver of Lien and Claim

Final Waiver of Lien and Claim

Special Provisions(Section 300)

Plans, Specifications, & Drawings to include:

- a. Cherry Creek Regional Trail CDs
- b. Cherry Creek Regional Trail GESC Plan
- c. Cherry Creek Regional Trail GESC Report
- d. Broncos Parkway Trailhead CDs (including two (2) supplemental pages)
- e. Broncos Parkway Trailhead GESC Plan
- f. Broncos Parkway Trailhead GESC Report
- g. Broncos Parkway Trailhead Right of Way Landscape Plans
- h. Tagawa Access Road CDs
- i. Tagawa Access Road GESC Plan
- j. Tagawa Access Road GESC Report
- k. Construction Document Package
- l. Cherry Creek Regional Trail & Broncos Parkway Trailhead Technical Specifications

1.5 The Contractor acknowledges receipt of the Contract Documents by signing this Contract.

1.6 The Contractor, by signing this Contract, represents and warrants that it has thoroughly reviewed and understands the Contract Documents and has studied and carefully correlated the Contractor's observations with the Contract Documents; is familiar with applicable local, state and federal laws, ordinances, rules and regulations and other requirements that in any manner may affect the cost, progress or performance of the Work and are necessary to perform the Work; and agrees that the scope of work is defined by the unit quantities contained in the Bid Submittal Form as prepared by the Construction Manager.

2. THE WORK

2.1 The Work is hereby defined as all work shown in the Contract Documents and more particularly defined in the Bid Submittal Form.

The phrase "Work" shall include the "District Work," which is generally defined as follows:

CHERRY CREEK REGIONAL TRAIL and BRONCOS PARKWAY TRAILHEAD (Base Bid) - located between S. Jordan Road and S. Parker Road on E. Broncos Parkway. The scope includes erosion control, earthwork, concrete and colored concrete, gravel parking lot, construction of pavilion with vegetative roof, sanitary enclosure, associated plumbing and electrical, landscaping, irrigation, installation of bike racks, trash enclosures, water fountain, picnic tables and signage;

and also the "City Work," which is generally defined as follows:

TAGAWA ACCESS ROAD (Alternate #1) - located between S. Jordan Road and S. Parker Road on E. Broncos Parkway. The scope includes erosion control, construction of new asphalt road including storm sewer, curb & gutter, sidewalk, handicap ramps, striping, and the connection into the adjacent roadway which will include the removal of sidewalk, curb & gutter, rip rap, and asphalt.

The term "Work" as used in the Contract shall, where appropriate, refer to "District Work" or "City Work" or both, as the context dictates.

2.2 The Contractor shall furnish all qualified labor, material, both installed and consumable, except as noted herein, equipment, accessories, tools, supervision, insurance and all and every item of expense necessary to perform the Work in accordance with plans, specifications and drawings as provided by the Construction Manager. The term "Construction Manager" shall mean the Construction Manager for the District Work or the City Work, as applicable.

3. TIME OF COMMENCEMENT, COMPLETION AND LIQUIDATED DAMAGES

3.1 All days shall be in calendar days, including Saturdays, Sundays and holidays.

3.2 The Contractor shall commence the Work within ten (10) days of receipt of the Notice to Proceed. The Contractor shall prosecute the Work continuously and uninterruptedly with all possible speed pursuant to the schedule as attached as Exhibits A and B (the "Work Schedules").

3.3 No extension of time related to completion of the Work will be valid without the District or the City's written consent after written request made by the Contractor in accordance with Paragraph 13, as applicable.

3.4 Liquidated damages in the amount of One Thousand Dollars (\$1,000.00) shall be charged each day for failure to complete the Work pursuant to the Work Schedule. The Parties agree that the amount of the liquidated damages is a reasonable, good faith estimate of the damages which the District or the City would suffer if the Contractor were to fail to complete the District Work or the City Work pursuant to the Work Schedule. Because the Contractor has an important part in the overall completion of the project, and other contractors are depending upon the timely completion of the Work to begin their work, actual damages would be difficult, if not impossible to ascertain.

4. THE CONTRACT SUM & CHANGE ORDERS

4.1 This is a **UNIT PRICED** contract. The District and the City shall pay the Contractor for the performance of the Work based on the quantities and unit prices reflected in the Bid Submittal Form. Based on those quantities and unit prices the Contractor is entitled to compensation from the District in the amount of Five Hundred Thirty-One Thousand, One Hundred Thirty-One Dollars and Seven Cents (\$531,131.07)

and the City in the amount of Two Hundred Forty-Two Thousand, Four Hundred Fifty-Five Dollars and Fifty Seven Cents (\$242,455.57) (in the aggregate, the "Contract Sum").

4.2 Any additions or deletions to the unit quantities related to the District Work must be approved in writing by the District and any additions or deletions to the unit quantities related to the City Work must be approved in writing by the City **prior** to the installation of such additional unit quantities, or deletion of unit quantities. Should additional work be required that is not currently shown in the Bid Submittal Form, the relevant Parties shall execute a Construction Contract change order in the form contained in the Contract Documents for such additional work at an agreed upon quantity and unit price, **prior** to the installation or performance of such additional work by the Contractor.

4.3 The Contract Sum shall include all fees and charges for all permits, applicable sales and excise taxes, licenses and other governmental authorization needed to perform the Work.

4.4 A list of major suppliers together with addresses and phone numbers shall be submitted to the District and the City by the Contractor prior to commencement of the Work.

5. APPROPRIATION

In compliance with § 24-91-103.6, C.R.S., the following statements are included in this Contract:

A. The District has budgeted and appropriated an amount of money equal to or in excess of that part of the Contract Sum for the District Work to be performed under this Contract, and the City has budgeted and appropriated an amount of money equal to or in excess of that part of the Contract Sum for the City Work to be performed under this Contract. The District or the City, upon reasonable written request, will advise the Contractor in writing of the total amount of appropriated funds which remain available for payment for the District Work or the City Work under the Contract.

B. The District and the City are each prohibited from issuing any change order or other form of order or directive requiring additional compensable work to be performed by the Contractor, if such directive causes the aggregate compensation amount under the Contract to exceed the amount appropriated for the original Contract, unless the Contractor is given written assurance by the District or the City, as applicable, that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in the Contract. "Remedy-granting provision" means any contract clause which permits additional compensation in the event that a specific contingency or event occurs. Such term shall include, but is not limited to, change clauses, differing site conditions clauses, variations in quantities clauses and termination for convenience clauses. Any work undertaken or performed by the Contractor in excess of the respective amounts appropriated by the City and the District is undertaken or

performed in violation of the terms of this Contract, without the proper authorization for such work, and at the Contractor's own risk.

6. PROGRESS PAYMENTS TO CONTRACTOR

6.1 No later than the twenty-fifth (25th) day of each month, the Contractor shall submit a progress payment request for labor performed and materials incorporated in the Work as of that date to the District or the City, as applicable. The Contractor shall submit progress payment requests for the District Work directly to the District, with a copy to the City, and progress payment requests for City Work directly to the City, with a copy to the District. No payment will be made by the District or the City for materials on site but not installed by the Contractor.

6.2 Progress payments for each month's Work completed as detailed in each progress payment request and as specified in the Contract Documents (less ten percent (10%) retention until fifty percent (50%) of the Work has been performed), are to be made by the District or the City, as applicable, to the Contractor on or about the twenty-fifth (25th) day of the month following the month in which the progress payment request was made, provided that the District or the City has determined that the percentage of the Work requested for payment has been performed by the Contractor according to the Contract Documents. The amount retained by each the District and the City shall not be reduced from ten percent (10%) until: 1) at least fifty percent (50%) of the District Work or the City Work is complete; and 2) the District or the City, as applicable, has agreed, in writing, to reduce the amount retained. If, in the opinion of the District, satisfactory progress is not being made in the District Work, the District may continue to retain ten percent (10%) of the calculated value of the District Work even after fifty percent (50%) of the District Work has been completed. If, in the opinion of the City, satisfactory progress is not being made in the City Work, the City may continue to retain ten percent (10%) of the calculated value of the City Work even after fifty percent (50%) of the City Work has been completed.

6.3 It shall be the responsibility of the Contractor each month to provide sufficient written indication to each of the District and the City that sufficient Work has been performed according to the Plans, Specifications & Drawings to justify the progress payment.

6.4 Payment for invoices not delivered by the Contractor to the District or the City as set forth above may be withheld until the next succeeding progress payment period. The District or the City may issue progress payment checks jointly to the Contractor and its supplier(s).

6.5 No payment pursuant to this Contract shall constitute evidence of full performance by the Contractor nor shall the same be considered acceptance of defective work or defective materials.

7. FINAL SETTLEMENT WITH AND PAYMENT TO CONTRACTOR

7.1 The Contractor may make application to the District and the City for final payment for both the District Work and the City Work, in the aggregate, (a) after the Work has been one hundred percent (100%) completed as determined by both the District and the City; and (b) after the required written approval and acceptance of the Work by the District and the City and/or other appropriate governmental entity(ies) which will own the improvements.

7.2 Before issuance of the final payment, the Contractor shall submit evidence satisfactory to the District and the City that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Work have been satisfied. The District and the City shall also each require the execution of mechanic lien releases from the Contractor, any of its subcontractors and materialmen or employees.

7.3 The Contractor agrees that all of the Work shall be done subject to the final approval of the District and the City, as applicable, or other appropriate governmental entity which will own the improvements. The District's and the City's decisions in matters relating to artistic effect shall be final. Warranties provided in Paragraph 15 begin upon and survive such final approval.

7.4 The District and the City shall not authorize final payment to the Contractor until: (1) all items on the applicable Construction Manager's or other governmental entity's, which will own the improvements, final punch list have been completed; (2) a document evidencing final acceptance is issued to the Contractor by each the District and the City; (3) the District and the City have obtained written approval from any surety furnishing bonds for the Work; and (4) the notice of final settlement in the form contained in the Contract Documents has been published and the date designated therein has passed.

7.5 If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed prior to the date set for final settlement, the District or the City, as applicable, shall withhold from payment to the Contractor sufficient funds to ensure the payment of such claim, until the same shall have been paid or withdrawn. The District or the City will withhold from payment any funds it may be required by law to withhold or that it may, in the determination of the District or the City, be entitled to withhold, and final payment will not be made until, in the sole determination of the District or the City, all conditions of the Contract and of law have been met.

7.6 At the time of delivery to the Contractor of the final payment, the Contractor shall execute and deliver to each the District and the City the Final Receipt for the same in the form contained in the Contract Documents.

7.7 All provisions of the Contract Documents, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment.

8. TIME Time is of the essence of all matters contemplated by or to be performed pursuant to this Contract, particularly with respect to the Work Schedule.

9. INSURANCE AND BONDS

9.1 Prior to commencing the Work and at all times during the completion of the Work, the Contractor shall maintain the types and amounts of insurance set forth in the Certificate of Insurance. The Contractor shall provide the District and the City with a fully executed original of the Certificate of Insurance before commencing the Work.

9.2 Before the Contract is executed by the District, the Contractor shall provide the District and the City with a Performance Bond and Labor and Materials Payment Bond, guaranteed by a surety, satisfactory to both the District and the City, to guarantee payment of all obligations incurred by the Contractor for the full amount of the Contract Sum and to guarantee full performance by the Contractor of its obligations under this Contract in the form contained in the Contract Documents.

10. CONTRACTOR'S PERFORMANCE OBLIGATIONS

10.1 The Contractor shall use all payments received by the District or the City, as applicable, as a result of performing the Work anticipated by the Contract to pay for all materials, equipment and labor used in, or in connection with, the performance of the Work identified in the Contract, holding such funds in trust as provided in the laws of the State of Colorado for such purpose, and shall furnish satisfactory evidence, when requested by the District or the City, to verify compliance with this requirement.

10.2 The Contractor shall be responsible to secure and protect the Work and materials at all times and shall bear and be liable for all loss and/or damage of any kind in connection therewith at any time, unless said loss and/or damage is caused by the direct action of the District or the City, as applicable.

10.3 The Contractor shall not damage the Work in place by its operations. All damages to the Work in place caused by the operations of the Contractor shall be promptly repaired at the sole cost and expense of the Contractor.

10.4 The Contractor shall thoroughly clean up the Work each day at the conclusion of the Work and at all times shall maintain the Property in a clean, safe, orderly and workmanlike manner. Any injury caused by the failure of the Contractor to perform the Work or cleanup thereafter shall be the sole responsibility of the Contractor.

10.5 The Contractor shall take all reasonable safety precautions with respect to the Work, shall comply with all safety measures initiated by the District and/or the City and with all applicable laws, ordinances, rules, regulations and orders of any public authority including the U.S. Department of Labor, Occupational Safety and Health Administration and the Colorado Labor Occupational Safety and Health Administration, for the safety of persons or property in accordance with the requirements of the Contract Documents. The

Contractor shall report within one (1) day to the District and the City any injury to any of the Contractor's employees incurred in connection with the Work.

10.6 The Contractor shall cooperate with the District, the City and other subcontractors whose work might interfere with the Work, and shall participate with the preparation of coordinated drawings and/or shall in good faith negotiate reasonable charge to scheduling mobilization and staging to accommodate all parties in areas of congestion as required by the Contract Documents, specifically noting and advising both the District and the City of any such interference.

10.7 The Parties shall cooperate with each other in scheduling and performing the Work to avoid conflict or interference with the work of others.

10.8 The Contractor shall promptly submit shop drawings and samples to the applicable Construction Manager as required in order to perform the Work efficiently, expeditiously and in a manner that will not cause delay in the progress of the activities of the District or the City or the activities of other subcontractors.

10.9 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Contract, including the payment of all applicable taxes. Except as otherwise provided herein, and unless otherwise an obligation of the developer, the Contractor shall secure and pay for all permits, fees and licenses necessary for the execution of the Work described in the Contract Documents as applicable to this Contract.

10.10 The Contractor shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of the Contract.

10.11 The Contractor agrees to immediately amend, remove or correct any defective material or defective workmanship related to the Work based on instructions given by the District or the City or the designee of either the District or the City who may include, but not be limited to, the applicable Construction Manager. Should the Contractor neglect to proceed at once, at its sole cost and expense, with the amendment, removal or correction of any defective material or workmanship after being instructed to do so, or if the Contractor is no longer on the job or the District or the City reasonably believes that the Contractor will not promptly and correctly perform the corrections to the Work, the District or the City, as applicable, may declare a default under this Contract and proceed under Paragraph 18 of this Contract.

10.12 The Contractor shall provide a qualified supervisor of the Work under this Contract at all times and such supervisor shall attend weekly job meetings as required by the District and/or the City.

10.13 The Contractor shall submit daily field reports regarding the District Work and the City Work to the Construction Manager on a weekly basis. Progress payments may be withheld by the District and/or the City if the Contractor fails to meet this requirement.

10.14 The Contractor certifies that the Contractor has complied with the provisions of C.R.S. Sections 8-17.5-101, et seq. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform under this Agreement. The Contractor represents, warrants, and certifies that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the e-verify program or the Department of Labor and Employment program (collectively, the "E-Verify Program"). The Contractor shall not use the E-Verify Program procedures to undertake a pre-employment screening of job applicants while this Agreement is being performed. The Contractor shall comply with any reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or C.R.S. Section 8-17.5-101, et seq., either the District or the City may terminate this Agreement for breach of contract, and the Contractor shall be liable for actual and consequential damages to the District and/or the City, as applicable.

If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall:

Notify the subcontractor and both the District and the City within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) above, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

11. DISTRICT AND CITY'S PERFORMANCE OBLIGATIONS

The District and the City shall both aid with the coordination of the Work to be performed by the Contractor and take such action as is reasonably necessary to prevent other contractors from interfering with the Work to be performed by the Contractor. Nevertheless, neither the District nor the City shall be liable for the negligence or other action by any of its subcontractors or other contractors which cause damage to the Contractor.

12. CLAIMS BY CONTRACTOR

12.1 All claims and requests by the Contractor for payment for additional work, for extensions of time and damage for delays or claims made for any other reason shall be made in writing to the District or the City, as applicable, and the Contractor shall contemporaneously send a copy of such claim or request to the City in the event the claim or request is made to the District and to the District in the event the claim or request is made to the City, within one hundred twenty (120) hours upon learning of the claim or of the need for the request or, in the case of extensions of time due to weather conditions, within five (5) days of such occurrence. CLAIMS NOT MADE WITHIN FIVE (5) DAYS OF SUCH OCCURRENCE, WILL NOT BE HONORED BY THE DISTRICT OR THE CITY, AS APPLICABLE.

12.2 Claims agreed to by the District or the City and the Contractor shall be evidenced by a written Contract amendment which must be signed by the applicable Parties before it shall bind the Parties so that payment shall be made by the District or the City thereunder.

13. CONSTRUCTION MANAGER, DISTRICT OR CITY MAY SUSPEND WORK

13.1 The Construction Manager, in consultation with the District or the City, as applicable, when the time permits, shall have the authority to suspend the District Work or the City Work, as applicable, wholly or in part, by written notice to the Contractor, due to unfavorable weather or other conditions, or because of the failure by the Contractor to properly prosecute the Work in accordance with the Contract, or to carry out orders of the Construction Manager, the District or the City to remove defective material or Work. The Contractor shall not suspend the Work without written authorization from the District, the City or the Construction Manager. Prior to resuming Work, the Contractor shall give the Construction Manager written notice to afford opportunity to re-establish observation and inspection of Work being performed.

13.2 In the event the Contractor is ordered by the Construction Manager to suspend Work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the Work during the period of suspension; provided, however, that no allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in the written order of suspension until the date of the order for Work to resume. Claims for such reimbursement shall be filed with the relevant Construction Manager within ten (10) days after the date of the order to resume Work or such claims will not be considered. If the Contractor requests reimbursement, the Contractor shall submit documents substantiating the entire amount reflected on the claim. After receiving relevant information from the relevant Construction Manager, the District or the City, as applicable, shall consider the claim and may make such investigations as are deemed necessary. The District or the City, as applicable, shall be the sole judge as to the equitability of such claim for reimbursement and the District or the City's decision shall be final. No provision of this Section shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due

to failure of surety, for suspensions made at the request of the Contractor or for any other delay provided for in the Specifications.

14. DELEGATION OF DUTIES AND ASSIGNMENT OF CONTRACT

14.1 The Parties agree that the performance hereunder by the Contractor involves the supply of services uniquely personal to the Contractor. Accordingly, the Contractor shall not delegate, subcontract or piece out any Work to be done under this Contract unless agreed to in writing by the District and the City prior to the performance of the Work, and neither the District nor the City is obligated to accept performance from such delegee.

14.2 Assignment of amounts due or to become due the Contractor under this Contract without the consent of the District and the City shall be considered a default of this Contract. Neither the District nor the City shall be required to recognize any assignment the Contractor may make of amounts due or to become due under this Contract until a full accounting is made of amounts due the District and the City from the Contractor. The Contractor authorizes the District or the City, as applicable, to set off amounts due the District or the City against any amounts due the Contractor prior to any payment to the Contractor.

15. WARRANTIES The Contractor warrants for a period of not less than one (1) year from the date of acceptance of the District Work by the District and the City Work by the City, all materials, equipment and labor used to complete the Work. All materials and equipment shall be new, of good quality, free from faults and defects and in conformance with the Contract Documents. All work, materials and equipment not conforming to these standards may be considered defective and shall be corrected as set forth in Paragraph 10.11 of this Contract. The warranty provided in this Paragraph shall be in addition to, and not in limitation of, any other warranty or remedy required by law or by the other Contract Documents. The Contractor shall also provide the District with a warranty bond for the District Work and the City with a warranty bond for the City Work, for a period of no less than one (1) year from the date of preliminary or conditional acceptance of the District Work and City Work, as applicable..

16. CONSTRUCTION OF CONTRACT This Contract shall be construed and governed under and in accordance with the laws of the State of Colorado.

17. INDEMNIFICATION

17.1 The Contractor shall indemnify, release and hold harmless both the District and the City, their directors, councilmembers and all of their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting from the performance of the Work under this Contract, provided that any such claim, damage, loss, or expense: (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom; and (b) is caused in whole or in part by any negligent act or omission of the Contractor or anyone directly or indirectly employed by

the Contractor or anyone for whose acts the Contractor may be liable, regardless of whether it is caused in part by a party indemnified hereunder.

17.2 In any and all claims against the District and/or the City or any of the District or the City's agents or employees by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

17.3 The obligations of the Contractor under this Paragraph shall not extend to the liability of the Construction Manager, if any, its agents or employees arising out of: (1) the orders, designs or specifications; or (2) the giving of or the failure to give directions or instructions by such Construction Manager, its agents or employees provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.

18. DEFAULT In the event the Contractor defaults hereunder (a) in performance of any of the covenants or promises required by the Contractor; (b) in failing to proceed diligently with the Work; or (c) in removing itself from the Property or discontinuing the Work on the Property, the District or the City may take any steps it deems advisable to secure necessary labor or materials, including, but not limited to, removing all of the Contractor's equipment from the Property and storing it at the Contractor's expense, taking possession of materials purchased by the Contractor for use in completing the Work, and contacting personnel of the Contractor to prosecute the Work to completion, or executing new contracts to complete the Work. In the event the District deems any of these procedures necessary for proper conduct of the Work, it shall send or deliver written notice to the Contractor of such action within five (5) days after such action is taken. All monies expended by the District or the City for that purpose shall be deducted from the applicable portion of the Contract Sum and if such expenditures exceed the amount otherwise due the Contractor, the Contractor agrees to pay to the District or the City, as applicable, on demand, the full amount of such excess together with interest thereon at the rate of ten percent (10%) per annum until paid.

19. UNRESOLVED DISPUTES The Parties expressly waive their right to have any dispute arising out of the Work under this Contract tried before a jury and expressly agree that all such claims shall be tried before a judge only. The Parties further agree that all claims arising between the Parties which relate in any way to the Work shall be brought exclusively in the Arapahoe County District Court, State of Colorado and that venue for such action shall lie only in said County. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise.

20. BILLING PROCEDURE When preparing the monthly billing for labor and materials in place, the Contractor agrees to utilize the "Payment Application" forms

provided by District and the City, and to follow the "Billing Instructions to Contractors" if provided by District and/or the City, when preparing the same. If either the District or the City elects to use the Contractor's "Payment Application" form, the payment application form to be used must be submitted and approved by District and the City **PRIOR** to the first payment application.

21. **NOTICES** All notices to be given or to be served upon any Party hereto in connection with this Contract must be in writing, and shall be hand delivered or sent by certified mail, facsimile transmission or by an overnight delivery service.

22. **NO RECORDING** In no event shall this Contract or any memorandum hereof be recorded in the public records of the county in which the Property is situated, and any such recordation or attempted recordation shall constitute a default of this Contract by the Party responsible for such recordation or attempted recordation, entitling the non-defaulting Party to any permissible remedy.

23. **DESIGNATION OF REPRESENTATIVES** The District and the City hereby designate the Construction Manager to be in direct charge of the Work, to make decisions and to bind the District or the City, as applicable, with regard to the administration of this Contract, except with regard to those actions which require approval of the District's Board of Directors or the City's City Council or City Manager, as applicable; and the Contractor hereby designates _____ to be in direct charge of the Work, to make decisions and to bind the Contractor with regard to the administration of this Contract. Any Party may change its designated representative by written notice to the other Parties.

24. **GOVERNMENTAL IMMUNITY** Nothing herein shall be construed as a waiver of the rights and privileges of the District or the City pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

25. **COUNTERPART EXECUTION** This Contract may be executed in three or more counterparts, each constituting the same agreement.

26. **NON-DISCRIMINATION CLAUSE** In connection with the performance of the Work under this Contract, the Contractor agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, sex, color, national origin or ancestry; the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

27. **PREFERENCE TO COLORADO LABOR AND SUPPLIERS** With regard to the City Work, preference shall be given to Colorado labor and to supplies, materials, and provisions produced, manufactured, or grown in Colorado, quality being equal to articles offered by competitors outside the state.

DISTRICT:
PARKER JORDAN METROPOLITAN DISTRICT

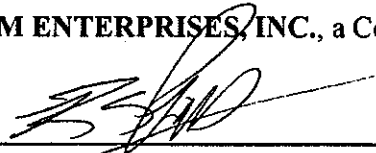
By: 

Name: Norman Sheldon
Title: President

Date: 4/15/10

CONTRACTOR:

L & M ENTERPRISES, INC., a Colorado corporation

By: 

Name: Ron Proff
Title: PRESIDENT

Date: 4-16-10

CITY OF CENTENNIAL, COLORADO

By: [Signature]
Jacque Wedding-Scott (pursuant to
authority set forth in Resolution 2010-R-
36)



[Signature]
City Clerk or Deputy City Clerk

APPROVED AS TO FORM:

[Signature]
For City Attorney's Office

DEPARTMENT OF ORIGATION: P+D - Engineering

FINANCE DEPARTMENT REVIEW:

Finance has reviewed this agreement and the funds:
 are appropriated and available for this Agreement.
 are not available for this agreement.

By: [Signature]

Budgeted Item/Account: 0200010199 / 7900-01
0400300400 / 7900-01

DEPARTMENT/POSITION RESPONSIBLE FOR ADMINISTRATION OF CONTRACT:

City Engineer

EXHIBIT A TO CONSTRUCTION CONTRACT

WORK SCHEDULE

**CHERRY CREEK REGIONAL TRAIL
BRNCOS PARKWAY TRAILHEAD**

THE CONTRACTOR SHALL COMPLETE THE WORK AS SPECIFIED IN THE CONSTRUCTION CONTRACT WITHIN ONE HUNDRED TWENTY FIVE (125) CALENDAR DAYS PER THE NOTICE TO PROCEED AS ISSUED BY THE DISTRICT.

EXHIBIT B TO CONSTRUCTION CONTRACT

WORK SCHEDULE

TAGAWA ACCESS ROAD

THE CONTRACTOR SHALL COMPLETE THE WORK AS SPECIFIED IN THE CONSTRUCTION CONTRACT WITHIN ONE HUNDRED TWENTY FIVE (125) CALENDAR DAYS PER THE NOTICE TO PROCEED AS ISSUED BY THE CITY.