

LADERA REGIONAL TRAIL CONNECTION
CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (“Agreement”) is made effective the 21st day of January, 2014, by and between PARKER JORDAN METROPOLITAN DISTRICT, a political subdivision of the State of Colorado whose address is: 8390 East Crescent Parkway, Suite 500, Greenwood Village, Colorado 80111 (“District”), and COLORADO CONCRETE CONSTRUCTION, LLC., a limited liability company in good standing in the State of Colorado, whose address is PO Box 465, Eastlake, Colorado 80614 (“Company”). District and Company may hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, District desires to construct the Ladera Regional Trail Connection in accordance with plans approved by Arapahoe County (“Trail”); and

WHEREAS, by this Agreement, the District and Company intend to set forth the provisions by which construction of the Trail will occur; and

WHEREAS, Company is prepared to undertake the construction of the Trail and is capable of providing construction services for the project.

C O V E N A N T S

NOW, THEREFORE, in consideration of the covenants and mutual promises of the Parties recited herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. General Intent. This Agreement establishes the general provisions for and defines certain responsibilities regarding installation and construction of the Trail.

2. Plans and Specifications. Company shall construct the Trail in compliance with the plans and technical specifications for the Trail developed by J3 Engineering, titled “Construction Plans for Ladera Trail Connection” and “Grading, Erosion, and Sediment Control (GESC) Plan for Ladera Trail” and approved by Arapahoe County and the Southeast Metro Stormwater Authority (SEMSWA) (“Plans and Specifications”). Change orders that alter the Plans and Specifications shall be administered as provided herein. Exhibit A, attached hereto and incorporated herein by reference, is Company’s estimate for the work.

3. Property and Easements. District has acquired or shall acquire rights to the properties upon which the Trail will be constructed as necessary for the completion and future operation of the Trail, and shall establish temporary construction easements as needed.

4. Documents. Company shall comply with the following:

A. Company shall furnish public liability and property casualty insurance, at a minimum in the amounts set forth in the Colorado Governmental Immunity Act (\$350,000 per person, \$990,000 per occurrence) naming the District as an additional insured.

B. The Trail shall be warranted for a period of one year from the date of final acceptance against defects in material or workmanship.

5. Construction Process. Subject to the requirements of Colorado law, Company shall accept direction from the staff of Mulhern, MRE, who are acting as the project manager for all purposes relating to the supervision and prosecution of the construction of the Trail.

A. District and Mulhern, MRE shall be the only entities authorized to direct or redirect the construction of the Trail.

B. Company shall ensure that the Trail is constructed and completed lien-free, and will not be subject to any mechanics' liens or other encumbrances ("Claims") which are not contested and removed in due course, and Company shall hold harmless District from and against any and all such Claims.

C. Company may enter into subcontracts with third parties to perform the work associated with the Trail. Company shall make all payments to subcontractors selected to work on the Trail as provided herein.

D. District or Mulhern, MRE shall issue all written change orders as required for the construction of the Trail. District shall be provided copies of all change orders for review and approval which approval will not be unreasonably denied, withheld, delayed or conditioned. Unless required by applicable laws or regulations, Mulhern, MRE shall not authorize any change to the Plans and Specifications or authorize any change order that requires an increase in District's costs such that District's costs for the Trail will exceed 110% of the estimate in Exhibit A, absent District's express written approval.

E. During the period of construction of the Trail, Company shall keep accurate records concerning the construction of the Trail and shall provide status reports to District, as requested, including progress updates on the construction, notice of any problems with the Work or the subcontractors, and a record of the payments made to the subcontractors.

F. District shall have the right to review and/or audit Company's books and records relating to the Work at any time and upon reasonable notice, but not more than once per calendar month.

6. Costs. Notwithstanding any provision to the contrary, monthly, Company will invoice District for the work completed. District will then remit the amount of the invoice within ten (10) working days after approval of the receipt. District shall pay the amount required for construction of the Trail according to the unit rates shown in Exhibit A attached hereto, or such other amount as agreed to by the Parties pursuant to duly executed change orders.

7. Appropriations. District has sufficient appropriations for all payments required by the contract, see C.R.S. 24-91-103.6.

8. Performance and Payment Bond. No performance or payment bond is required.

9. Acceptance of the Trail. The procedure for acceptance of the Trail shall be as follows:

A. Upon receipt of notice that the Trail is complete, tested, and ready for District's final acceptance, District shall conduct an inspection of the Trail to determine the acceptability of the Trail prior to payment to Company as provided by Section 6 of this Agreement. District shall withhold payment until after publication for final payment in accordance with Section 38-26-107, C.R.S. ("Final Payment"). District shall not make Final Payment unless the Parties agree that the Trail have been completed in accordance with this Agreement, which agreement shall not be unreasonably denied, withheld, delayed or conditioned.

B. Company shall arrange for the performance of such corrective work as may be required during the one-year warranty period following the date of final acceptance of the Trail.

10. Remedies.

A. Remedies. If, through any cause, either Party shall fail to complete its obligations in accordance with this Agreement, or fail to fulfill in a timely and proper manner its obligations under this Agreement, then the other Party may exercise any remedy available to it at law or equity, including, without limitation, a suit or claim for specific performance and damages.

B. Waiver, Remedies Cumulative, Attorney's Fees and Costs. The failure by any Party to insist upon the strict performance of any of the terms, covenants, conditions or agreements contained herein will not be deemed a waiver of any rights or remedies that the Parties may have, and will not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by any Party. No remedy will exclude any other remedy, and all remedies will be cumulative with one another. The prevailing party in any action arising from the execution or interpretation of this Agreement shall be entitled to recover its costs, including attorneys' fees.

11. Illegal Alien Workers. Company shall not knowingly employ or contract with an illegal alien to perform work under the Agreement or contract with a sub-contractor who knowingly employs or contracts with an illegal alien to perform work under the Agreement. Execution of the Agreement by Company shall constitute a certification by Company that it does not knowingly employ or contract with an illegal alien and that the Company has participated or attempted to participate in the E-Verify Employment Verification Program administered by the United States Department of Homeland Security, ("E-Verify Program" – f/k/a "Basic Pilot Program") in order to verify that it does not employ any illegal aliens.

A. Company shall comply with the following:

(i) Company shall apply to participate in the E-Verify Program every three months until all requirements under this Agreement are completed or until accepted into the E-Verify Program, whichever occurs earlier.

(ii) Company shall not utilize the E-Verify Program procedures to independently undertake pre-employment screening of job applicants.

(iii) Company shall require each subcontractor to certify that subcontractor will not knowingly employ or contract with an illegal alien to perform work under the Agreement. If Company obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien Company shall be required to:

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

b. Terminate the subcontract with the subcontractor if within three (3) days of receiving notice, the subcontractor does not stop employing or contracting with the illegal alien; except that Company shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(iv) Company shall comply with any reasonable request by the Department of Labor and Employment (“Department”) made in the course of an investigation by the Department.

B. If Company violates any provision of this Section 11, District may terminate the Agreement immediately and Company shall be liable to District for actual and consequential damages of District resulting from such termination, and District shall report such violation by Company to the Colorado Secretary of State as required by law.

12. Integration; Amendment. This Agreement is the complete integration of all understandings between the Parties with regard to the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect unless written herein. No amendment hereto shall have any force or effect unless such amendment is written and executed by both Parties.

13. Successors and Assigns. The terms, covenants, conditions and agreements contained herein shall be binding on and inure to the benefit of the successors and assigns of the Parties. No Party may assign or delegate its obligations hereunder absent the written consent of the other Party; provided that, Company may subcontract its obligations under this Agreement, but such subcontracting does not relieve Company of its obligation to ensure the terms and conditions of this Agreement are fulfilled.

14. Severability. The terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

15. Third Parties. Nothing contained in this Agreement shall give or allow any claim or right of action by any third party on such Agreement. It is the express intention of the Parties hereto that any person other than District or Company receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

16. Authority. Each Party hereto represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law, to legally authorize the undersigned signatory to execute this Agreement on behalf of the Party and to bind the Party to its terms.

17. Notices. Any and all notices required to be given by this Agreement are deemed to have been received and to be effective: (1) upon hand delivery, or (2) upon 3 days after the same shall have been mailed by certified mail, return receipt requested; to the address of the Parties as set forth below or to such other Party or addresses as may hereafter be designated in writing.

To Company: Colorado Concrete Construction, LLC
PO Box 465
Eastlake, CO 80614

To District: Parker Jordan Metropolitan District
c/o CliftonLarsonAllen LLP
8390 East Crescent Parkway, Suite 500
Greenwood Village, CO 80111
Attention: Bob Blodgett

With a copy to: Spencer Fane & Grimshaw LLP
1700 Lincoln Street, Suite 3800
Denver, Colorado 80203
Attention: Mr. Norman F. Kron, Jr.

18. Governing Law, Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado. Venue shall be exclusive in the District Court in and for the County of Arapahoe, State of Colorado. By this Agreement the Parties submit themselves to the jurisdiction of such court.

19. Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together will be one original Agreement.

[INTENTIONALLY LEFT BLANK]


IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of

January 21, 2014.

PARKER JORDAN METROPOLITAN
DISTRICT, a political subdivision of the State of
Colorado

ATTEST:

By: 

By: 
Its: PRESIDENT

COLORADO CONCRETE CONSTRUCTION,
LLC, a Colorado limited liability company

By: _____
Its: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of

_____, 2013.

PARKER JORDAN METROPOLITAN
DISTRICT, a political subdivision of the State of
Colorado

ATTEST:

By: _____

By: _____

Its: _____

COLORADO CONCRETE CONSTRUCTION,
LLC, a Colorado limited liability company


By:  _____
Its: Managing Member

Exhibit A
ESTIMATE

Colorado Concrete Construction LLC

P.O. Box 465
 Eastlake, CO 80614
 Ph: 303-915-9681
 Fax: 303-284-4612

Estimate

Date	Estimate #
10/4/2013	227

Name / Address
Mulhern MRE , Inc 2 Inverness Dr. East Englewood, Co. 80112

				P.O. No.
Description	Qty	Cost	Pay unit	Total
Ladera Regional Trail Connection				
Mobilization	1	1,500.00	LS	1,500.00
Traffic Control	1	2,500.00	LS	2,500.00
Concrete Wash Out	1	950.00	EA	950.00
Vehicle Tracking Pad	1	2,000.00	EA	2,000.00
Stabilized Staging Area	1	2,200.00	SY	2,200.00
Construction Fence	109	2.50	LF	272.50
Silt Fence	67	1.75	LF	117.25
Tree Protection	2	65.00	EA	130.00
Sediment Control Log	316	3.33	LF	1,052.28
Erosion Control Blanket	377	2.35	SY	885.95
Seeding and Mulching	1	500.00	LS	500.00
Surface Roughening	1	450.00	LS	450.00
Excavation, Stockpile, And Fill On-Site	321	26.00	CY	8,346.00
Fill, Imported Material	16	55.00	CY	880.00
Concrete Trail (6" depth)	275	56.00	SY	15,400.00
Replace Curb And Gutter	20	30.00	LF	600.00
Permitting	1	950.00	EA	950.00
Total				\$38,733.98

Signature 