AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Fourth Addendum to the Development Improvements Ag

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC and Dunbar Family Partnership, L.P.

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

There has been a transfer, by warranty deed, of ownership of several lots as well as the rights and obligations of the Development Improvements Agreement for Riverwalk Estates Subdivision. Transfer of the obligations of the DIA, requires the approval of the BOCC pursuant to paragraph 22 of

Fiscal Impact: 0

Submitted by: Office of the County Attorney **Submitter's Email Address:** rmagruder@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 6/1/17

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 6/1/2017 Certificate of Insurance Required

Yes ◉ No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 6/2/2017

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 0

Agenda Date: 6/6/2017

Revised April 2015

FOURTH ADDENDUM TO THE
DEVELOPMENT IMPROVEMENTS AGREEMENT
FOR RIVERWALK ESTATES SUBDIVISION

THIS FOURTH ADDENDUM TO THE DEVELOPMENT IMPROVEMENTS AGREEMENT FOR RIVERWALK ESTATES SUBDIVISION modifies that certain Development Improvements Agreement by and between the Board of County Commissioners of the County of Gunnison, Colorado ("Gunnison County") and Riverwalk Estates, LLLP, a Colorado limited liability limited partnership ("Developer"), which was recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on July 25, 2005, bearing Reception No: 556038 ("DIA") and the following Addendums thereto:

1. Addendum To Development Improvements Agreement which was recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on October 12, 2005, bearing Reception No: 559286; and

2. Amendment To The Addendum To Development Improvements Agreement recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on November 18, 2005, bearing Reception No: 560773; and

3. Second Addendum To Development Improvements Agreement recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on April 1, 2008, bearing Reception No: 583063; and

4. Third Addendum To Development Improvements Agreement recorded in the records of the office of the Clerk and Recorder of Gunnison County, Colorado on July 20, 2009, bearing Reception No: 592290.

The DIA and Addendums thereto referenced above were entered into pursuant to the approval of Land Use Change No: 2003-44 for Riverwalk Estates Subdivision as identified on the plat titled: *Riverwalk Estates Within The SW1/4 of Section 24 and the NW1/4NW1/4 of Section 25, Township 50 North, Range 1 West, N.M.P.M. Gunnison County, Colorado* which was recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on July 22, 2005, bearing reception No: 555976.

The DIA and Addendums thereto are hereby modified as follows:

1. Transfer of Ownership:

The real property and development rights for Riverwalk Estates Subdivision were conveyed from Developer to Dunbar Family Partnership, L.P., an Oklahoma limited partnership ("Owner"), by the General Warranty Deed recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on December 30, 2016, bearing Reception No: 644202.

The DIA is binding upon successors and assigns of the Developer pursuant to paragraph 12 of the DIA and the transfer or assignment of any of the rights or obligations of the Developer under the DIA are not permitted without the prior approval of the Gunnison County.

Gunnison County hereby approves the transfer of rights and obligations of the DIA under all terms and conditions of the DIA from Developer to Owner.

Notices to Owner pursuant to paragraph 22 of the DIA are to reflect: 6724 South Granite, Tulsa, OK 74136

2. Security Retained For Remaining Infrastructure:

The only remaining infrastructure to be completed, pursuant to paragraph 5.D and paragraph 7 of the DIA, is the Left Turn Deceleration Lane which is to be completed after the construction of the twentieth home is initiated.

The cost of construction for the Left Turn Deceleration Lane has increased since the 2004 cost estimate prepared by Wilcox Dozer Service which had identified the cost to be in the amount of One Hundred Sixty Five Thousand Three Hundred Thirty Five and No/100 U.S. Dollars ($165,335.00). The current amount of security being held pursuant to the DIA for the Left Turn Deceleration Lane is in the amount of Two Hundred Six Thousand Six Hundred Sixty Eight and 75/100 U.S. Dollars ($206,668.75) ($165,335.00 plus 25% contingency $41,333.75).

The 2004 cost estimate prepared by Wilcox Dozer Service is hereby replaced with the proposal prepared by Williams Engineering, L.L.C. dated April 4, 2017 incorporating the cost estimate prepared by Oldcastle dated January 20, 2017 attached hereto and incorporated herein as Appendix "A" ("2017 Cost Estimate").

The current security required for the Left Turn Deceleration Lane as identified in the 2017 Cost Estimate is Two Hundred Twenty Thousand Two Hundred Two and 95/100 U.S. Dollars ($220,202.95) and pursuant to the DIA is in the amount of Two Hundred Seventy Five Thousand Two Hundred Fifty Three and 68/100 U.S. Dollars ($275,253.68) ($220,202.95 plus 25% contingency $55,050.74).

Except as modified herein, the terms and conditions of Agreement and Addendums thereto are hereby reaffirmed and ratified.

This Fourth Addendum to the Development Improvements Agreement for Riverwalk Estates Subdivision shall not be effective until it is recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado.

APPROVED this _____ day of _____, 2017.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Phil Chamberland, Chairperson

ATTEST:

_____
Deputy County Clerk

FOR DUNBAR FAMILY PARTNERSHIP, L.P.,
an Oklahoma limited partnership

By: _____
W.K. Dunbar, Manager of MAM Management,
L.L.C., an Oklahoma limited liability company,
General Partner of Dunbar Family Partnership, L.P.,
an Oklahoma limited partnership

STATE OF OKLAHOMA)
) ss.
County of Tulsa)

The foregoing was acknowledged before me this 12th day of May, 2017, by W.K. Dunbar, Manager of MAM Management, L.L.C., an Oklahoma limited liability company, General Partner of Dunbar Family Partnership, L.P., an Oklahoma limited partnership, Owner herein.

Witness my hand and official seal.
My commission expires: 4/9/20

Tracey Chalmers
Notary Public
Address:

NOTARY PUBLIC SEAL
TRACEY CHALMERS
Notary Public
State of Oklahoma
08004057 Expires 04/09/20
08004057

WILLIAMS ENGINEERING, LLC
400 N Main
Gunnison, Co 81230
(970) 641-2499

April 4, 2017

Dunbar Family Partnership
6724 S Granite Ave.
Tulsa, Ok 74136-7035

Ref: Proposal for Engineering Services
Riverwalk Estates
Left Hand Turning Lane

Dear Adam;

Pursuant to your request are hereby submitting this revised lump sum proposal for civil engineering design services for the above referenced project. The proposal is being submitted in accordance with your request, industry standards and the requirements of CDOT. The scope of the work is as follows and will consist of the following phase:

- Preliminary Design Phase.

    1. Perform field survey to define and document all existing conditions, to establish highway right of way boundaries, and to establish permanent horizontal and vertical bench marks and references to be used by the contractor in staking the construction.
    2. Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

- Final Design Phase.

    1. Prepare final drawings affixing the character and extent of the project.
    2. Prepare construction specifications in accordance with industry standards and CDOT's requirements.
    3. Prepare all necessary documents for submittal to CDOT and assist the Owner in obtaining the highway construction permit.
    4. Prepare contract general conditions.

- Construction Phase.

    1. Perform engineering services as set forth in the Contract General Conditions.
    2. Perform site visits to the site at intervals appropriate to the various stage of construction to observe the quality and progress of the construction.
    3. Review and approve all submittals and shop drawings.
    4. Issue all instructions to the Contractor as necessary to interpret and clarify the Contract Documents, and in conjunction therewith prepare any required change orders.
    5. Conduct final inspections and certify completion of the project as being in compliance with the Contract Documents.
    6. Submit all required documentations to Gunnison County and CDOT for close out of the project.

We will perform the work for a fixed fee of $25,000, plus the minor reimbursable expenses set forth below. Billing will be monthly commensurate with work progress. We will provide a fixed fee for construction supervision services which will be in the order of 3.5% of construction. Billing for the design services will be commensurate with progress on the project.

The following items are not included in the proposal:

- Revisions or changes to documents after approval by Owner.
- Preparing documents for alternate bids requested by Owner.
- Fees charged by any jurisdictions having authority over the project.
- Soils or material testing.
- Reimbursable expenses

Auto cad prints	15.00 each
Black line print	3.80 each

We will perform the necessary field surveys after the Ski Area closes on April 9th. The final Contract Documents will be completed by the end of June for your approval and submittal to CDOT. You may selected United Companies to perform the work and we will coordinate the design with them and coordinate with them on a start date, which will be in the fall after the heavy summer traffic.

Williams Engineering is fully insured and maintains professional liability, general liability, workmen's compensation, and automobile insurance.

We thank you for the opportunity to submit this proposal and look forward in helping bring the project into reality. We are prepared to work on a schedule as you desire to proceed with the work, and I am available to provide any additional information you deem necessary. Please contact me with any questions. Thank you.

Sincerely,

Robert L. Williams

Robert L. Williams, PE
Williams Engineering, LLC

Ecopy: Adam@southforkbuilders.com

Agreed to by:

Dunbar Family Partnership manager

4-6-17

Date

An Oldcastle Materials Company

Oldcastle®

www.united-gj.com
1275 River Road
P.O. Box 5569
Grand Jct., CO 81502
(970) 243-4000

0779 County Road 305
Glenwood Springs, CO 81601
(970) 704-4800

131.5 6175 Road
Montrose, CO 81403
(970) 249-1815

964 CR 63L
Telluride, CO 81435
(970) 728-3775

www.telluridegravel.com

To:	Williams Engineering LLC	**Contact:**	Bill Barvitski
Address:	400 North Main Street	**Phone:**	970-641-2499
	Gunnison, CO 81230	**Fax:**	
Project Name:	Riverwalk Estates Turn Lane	**Bid Number:**	17760
Project Location:	Riverwalk Estates/Hwy 135, Gunnison, CO	**Bid Date:**	1/20/2017

We are pleased to propose the following:

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	Clear & Grub	1.00	LS	$1,400.00	$1,400.00
2	Subgrade Prep	1,307.00	SY	$1.85	$2,417.95
3	Embankment Material	2,900.00	CY	$37.00	$107,300.00
4	Class 6 Road Base - 6" - Includes Shouldering	435.00	TON	$30.00	$13,050.00
5	HMA - 5"	381.00	TON	$135.00	$51,435.00
6	Place Conserved Topsoil On Slopes	1.00	LS	$2,000.00	$2,000.00
7	Seeding	0.25	ACRE	$6,000.00	$1,500.00
8	Stripe Removal	1.00	LS	$2,500.00	$2,500.00
9	Re-Stripe - Assumed Waterborne Paint	1.00	LS	$5,000.00	$5,000.00
10	Traffic Control	1.00	LS	$18,000.00	$18,000.00
11	Mobilization	1.00	LS	$15,600.00	$15,600.00

Total Bid Price: $220,202.95

Notes:

- This proposal is for budget purposes only.
- This proposal is to become part of the contract documents.
- A minimum of 2% grade is required for all pavement. If the design specifies less than a 2% minimum grade, or the physical character of the site does not allow for a 2% minimum grade, then there is no warranty or guarantee for that pavement.
- All erosion control & stormwater management BMP measures do not include maintenance or dismantling.
- Price shown does not include Performance and Payment bond. Add 1% if bond is required.
- This proposal is based on "spec" weather paving and conditions. Paving after the onset of cold weather may require the owner to sign a waiver of warranty.
- Base course work performed by others to be left at paving tolerances (+/- 0.02').
- Unless the words "Lump Sum" appear next to an item of work, it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the stated unit prices for actual quantities of work performed by United Companies
- Scheduling of work will be upon mutual consent between the owner and United Companies.
- This proposal does not include excavation or stabilization of soft areas. If soft conditions are discovered during the work, an engineered pavement section will be needed and upon receipt, a change order proposal will be prepared for authorization prior to proceeding with the work.
- The above price excludes engineering, staking, testing, traffic control, striping, stormwater management, permits and fees as applicable.
- The tops of manholes will be left at base grade, plated, and referenced prior to asphalt paving. The adjustment of manhole rings to final asphalt grade is not included unless a separate bid item and unit price is offered on the proposal. Manhole rings & covers will be furnished to United Companies, Inc. for the final adjustment.
- The tops of water valves will be left at base grade and referenced prior to asphalt paving. The adjustment of water valve boxes to final asphalt grade is not included unless a separate bid item and unit price is offered on the proposal.
- Prices are valid for 30 days from the date of this proposal.
- Pre-emergent controls many annual grasses and broadleaf weeds as they germinate but does not control established weeds. Russian knapweed, morning glory, alfalfa, etc. require weed killer treatment prior to disturbance of the soil. United Companies' warranty does not include weeds coming through the new asphalt mat.

- The above prices are valid contingent on the work being performed during the 2016 construction season. In the event that the work described within the signed proposal is not completed within the 2016 construction season, United Companies reserves the right to adjust the prices accordingly.
- The above prices are based on the preliminary plans provided by the owner. Upon receipt of approved construction drawings, United Companies will revise the quantities and prices as necessary.
- Base course performed by others to be left at (+/- 0.10). No additional base will be brought in by United Companies.
- Scheduled shut down of the hot mix asphalt plant is the day prior to Thanksgiving of each year. Any paving past this date will be at United Companies discretion.
- Traffic control is to be done by others. Should United Companies need to supply traffic control, this charge will be assessed accordingly.
- The terms and conditions stated below are expressly made a part of this contract. This proposal shall not become a binding contract unless and until the Acceptance of Proposal and Confirmation by contractor. This proposal must be accepted as provided and delivered to United Companies, 30 days from the above date, or it shall expire. To accept the terms of this proposal, sign below and return to United Companies.
- In the event that United Companies is awarded the contract for this project, the Owner will be required to fill out a credit application from United Companies. The credit application must be approved by United Companies prior to starting work on the proposed project.
- Payment in full for all work performed hereunder during any month shall be made not later than the tenth (10th) day of the month next following. Final and complete payment for all work performed hereunder shall be made not later than fifteen (15) days after the completion of such work. Interest at the highest rate allowable under the laws of the in state which the work is done, or one and one half percent (11/2%) per month, whichever is less, shall be charged and paid on all unpaid balances from the due date to the date we receive payment. You agree to pay in full all costs and expenses incurred by UNITED COMPANIES in collecting the amounts owed by you under the Agreement, including any and all court costs and attorneys' fees. Payments received will be applied against open items on unpaid invoices in an order and sequence determined by UNITED COMPANIES in its sole discretion. Any monies paid to you for our work shall be held in trust for our benefit.

  We shall not become obligated to perform the work called for under this Proposal and Contract until we check and approve your credit. This Proposal and Contract shall be null and void if your credit is not approved. If credit conditions become unsatisfactory at any time prior to our completion of the work hereunder, you will furnish adequate security upon our request. To the extent you fail to provide adequate security, we may stop work.

  This document is the full agreement between us, regardless of any prior proposals or communications. Any deviations from the specifications or modification of the terms of this contract and any extra or incidental work, or reductions in work, shall be set forth in writing and signed by both parties prior to the making of such change. We will be compensated for any increase in our costs caused by such change, on the basis of the increase plus ten percent (10%) profit. If a time is set for the performance of work, and if, in our judgment, such change or other circumstances beyond our reasonable control will increase the time necessary for our performance, we will be granted a reasonable extension of time.

  We will provide and pay for Workers' Compensation covering our employees, as well as General Liability and Property Damage Insurance. You agree to carry General Liability and Property Damage Insurance sufficient to protect yourself against any and all claims and liabilities arising from the performance of the work, including but not limited to claims arising under your agreement to indemnify and hold us harmless under this contract.

  We shall be provided with suitable access to the work area. If our work is dependent upon or must be undertaken in conjunction with the work of others, such work shall be so performed and completed as to permit us to perform out work hereunder in a normal uninterrupted single shift operation.

  Unless a time for the performance of our work is specified, we shall undertake it in the course of our normal operating schedule. We shall not be liable for any failure to undertake or complete the work for causes beyond our control, and we may suspend the work for causes beyond our control, including but not limited to fire, flood or other casualty; the presence on or beneath the work site of utilities, facilities, substances, or objects, including but not limited to any substance that in our opinion is hazardous or toxic or the reporting, remediation, or clean-up of which is required by any law or regulation (together "subsurface conditions"); labor disputes or other disagreements; and accidents or other mishaps, whether affecting this work or other operations in which we are involved, directly or indirectly.
- If for causes beyond our control our work is not completed within twelve (12) months after the date of your acceptance of the proposal, we may cancel this agreement at any time thereafter on ten (10) days notice. In such event (i) we shall be relieved of any further obligation with respect to the balance of the work; and (ii) we shall be entitled to receive final and complete payment for all work performed by us to the date of cancellation within fifteen (15) days thereafter.

  We shall not be responsible for, and you agree to indemnify and hold us harmless from, any suit, claim, liability, cost or expense arising from or in any way related to: sidewalks, driveways or other improvements located within our work area or designated areas of access, and to adjacent property and improvements; subsurface conditions; and any and all other alleged damages to persons or property, including but not limited to personal injury and death, arising from the performance of the work, unless such alleged damages arise from our sole negligence. You further agree to indemnify and protect us and save us harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of your breach of any obligations and covenants of this contract. It is further understood that we shall not be responsible for any damage to or deterioration of any of our work, whether completed or in process, resulting from any cause or causes beyond our reasonable control, including but not limited to design, failure of subgrade or other subsurface conditions, or failure or inadequacy of any labor or materials not furnished and installed by us, whether or not such failure or inadequacy was or could have been known at the time our work was undertaken or work performed under adverse weather conditions. You agree that the proper jurisdiction and venue for adjudication concerning this contract is Mesa County, Colorado, and you waive any right to jurisdiction and venue in any other place.

- **STANDARD TERMS & CONDITIONS**

1. Applicability. These terms and conditions are incorporated into Seller's Quotation & Contract (collectively, the **"Contract"**). The Contract comprises the entire agreement between the parties, and supersedes all prior or contemporaneous communications, understandings, agreements, negotiations, representations and warranties. The Contract prevails over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer may have submitted a purchase order or contract.

2. Payment. Payment terms are net 30 days from date of Seller's invoice or sooner as may be required by applicable law. Late payments shall accrue a finance charge of one and one-half percent (11/2%) per month or the highest rate allowable by law, whichever is less. Seller shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, arising out of Buyer's failure to make all payments due under this Contract in a timely manner.

3. Taxes. Buyer is responsible for payment of all taxes and duties not specifically assumed in writing by Seller in the Contract. Buyer agrees to defend, indemnify and hold Seller harmless from any damages and expenses related to any levy or attempted levy of any other taxes on Seller.

4. Suspension; Termination. In addition to any other remedies available to Seller, Seller may suspend or terminate this Contract with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Contract (or any other agreement Buyer has with Seller); (ii) has not otherwise performed or complied with any of these terms (or complied with the terms of any other agreement Buyer has with Seller); (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (iv) exhibits other adverse credit conditions that are unsatisfactory to Seller, as determined by Seller in its sole discretion.

5. Shipment; Delivery Conditions. Unless otherwise agreed in writing, all materials purchased by Buyer shall be FOB Seller's plant sourcing the Contract. If FOB Destination, the Buyer agrees to provide suitable roadways or approaches to points of delivery. Seller reserves the right to cease deliveries if Seller concludes, in its sole opinion, that the roadways or approaches are unsatisfactory. In the event Buyer Contracts delivery beyond curb line, Buyer assumes liability for damages to sidewalks, driveways or other property, loss and expense incurred as a result of such deliveries to the maximum extent allowed by law. Prices quoted herein are based on prompt unloading of trucks, and in case repeated delays in unloading, deliveries may be discontinued until conditions are corrected. Delays of more than 20 minutes are subject to an additional charge. Buyer also agrees to provide a safe, suitable work area for Seller and its employees.

- **6. Title and Risk of Loss.** Title and risk of loss passes to Buyer at the time any materials are loaded into Buyer's, or Buyer's agents', vehicles, barges or other modes of transport, in the case of FOB Plant sales, or in the case of Seller's delivery, upon delivery of the Materials.

7. Warranty. Seller warrants that the goods and services herein will conform to the specifications provided to Seller prior to manufacture of the goods and/or Seller's performance of the services. Seller's obligation to meet the applicable specifications supersedes any and all other warranties. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSES. Buyer shall verify that Seller's materials comply with the plans and specifications prior to installation. Changes to the plans and specifications shall be made by written change order and Seller shall be entitled to an equitable price adjustment for such changes. The express limited warranty set forth herein shall be void if Buyer fails to pay Seller in full for the materials provided by Seller pursuant to this Contract.

8. Time. Seller shall make reasonable efforts to provide the equipment, labor, materials and/or services by the specified delivery date and provide notice to Buyer of any expected delays. Seller is not responsible for any delays due to labor disputes, repairs to machinery, fire, flood, adverse weather conditions, inability to obtain transportation, fuel, electric power, or operating materials or machinery at reasonable cost; or by reason of any other cause beyond its control, including the inability to produce materials meeting any applicable specification or requirement. In the event any such contingency should occur, Seller reserves the right to determine the order of priority of delivering to its purchasers.

9. Modification. No amendment or modification of this Contract shall be valid or enforceable unless in writing and signed by the party sought to be charged, and no prior or current course of dealing between the parties, or any usage of trade or custom of the industry shall modify or supplement the terms and conditions of this Contract.

10. No Waiver. The failure of Seller to exercise any right granted hereunder shall not impair or waive Seller's privilege of exercising such right to any subsequent time or times.

11. Damages. Seller's liability for any damages related to this Contract shall be limited to, at Seller's option, (a) replacement of defective materials and work or, at Seller's option, (b) a refund of any payments made by Buyer.

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WITH REGARD TO ANY CLAIM ARISING OUT OF OR RELATING TO THIS CONTRACT.

It is further understood that Seller shall not be responsible for any damage to or deterioration of any of its work, whether completed or in process, resulting from any cause or causes beyond its reasonable control, including but not limited to design, failure of subgrade or other subsurface conditions, or failure or inadequacy of any labor or materials not furnished and installed by Seller, whether or not such failure or inadequacy was or could have been known at the time its work was undertaken, or for any work performed under adverse weather conditions.

- **12. Indemnity.** To the maximum extent permitted by applicable law, Buyer shall defend, indemnify and hold Seller, its officers, employees, agents, insurers, sureties, and affiliates, harmless from any and all losses, damages, expenses (including attorneys' fees), claims, suits, liabilities, fines and remedial or clean-up costs arising out of or in any way related to: (i) Buyer's breach of this Agreement; or (ii) any act or omission by or on behalf of Buyer, its employees, contractors and/or agents.

13. Applicable Law. This Contract, and the rights, duties, obligations and remedies of the parties shall be governed by or construed in accordance with the laws of the state where the Project is located.

14. Work Conditions: If Seller's work is dependent upon or must be undertaken in conjunction with the work of others, such work shall be so performed and completed as to permit Seller to perform its work in a normal uninterrupted single shift operation. Unless a time for the performance of Seller's work is specified, Seller shall undertake the work in the course of its normal operating schedule. Seller shall not be liable for any failure to undertake or complete the work for causes beyond its control, and Seller may suspend the work for causes beyond its control, including but not limited to fire, flood or other casualty; the presence on or beneath the work site of utilities, facilities, substances, or objects, including but not limited to any substance that in Seller's opinion is hazardous or toxic or the reporting, remediation, or clean-up of which is required by any law or regulation; labor disputes or other disagreements; and accidents or other mishaps, whether affecting this work or other operations in which Seller is involved, directly or indirectly. If for causes beyond Seller's control, Seller's work is not completed within twelve (12) months after the date of Buyer's acceptance of the Contract, Seller may cancel this Contract. In such event: (i) Seller shall be relieved of any further obligation with respect to the balance of the work; and (ii) Seller shall be entitled to receive final and complete payment for all work performed by us to the date of cancellation within fifteen (15) days thereafter.

15. Miscellaneous. Unless otherwise specified in writing, Buyer shall be responsible for testing the materials and confirming that the materials comply with Buyer's specifications at Seller's facility prior to directing shipment. All funds paid to Buyer from a third party for Seller's labor, services, materials, and equipment shall be deemed in trust for the payment of Seller. Safety Data Sheets and product label information are available at Seller's office or Seller's website. Buyer agrees to draw to the attention of any persons handling or using the materials or having access to the materials while in Buyer's possession or to whom Buyer sells the materials or any part thereof any warning, information of suggestions which are contained or referred to in the Safety Data Sheets or label information, or any other literature or packaging relating to the materials.

- **16. MANDATORY BINDING ARBITRATION: ALL CLAIMS OR CONTROVERSIES ARISING OUT OF OR RELATED TO THIS CONTRACT, SHALL BE SUBMITTED TO AND RESOLVED BY BINDING ARBITRATION BY A SINGLE ARBITRATOR IN THE COUNTY AND STATE WHERE THE PROJECT IS LOCATED. THE AMERICAN ARBITRATION ASSOCIATION ("AAA") SHALL CONDUCT THE ARBITRATION AND THE COSTS OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES. NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY IN THIS CONTRACT, THE PARTIES AGREE: THAT THE UNDERLYING AWARD MAY BE APPEALED PURSUANT TO THE AAA'S OPTIONAL APPELLATE ARBITRATION RULES ("APPELLATE RULES"); THAT THE UNDERLYING AWARD RENDERED BY THE ARBITRATOR SHALL, AT A MINIMUM, BE A REASONED AWARD; AND THAT THE UNDERLYING AWARD SHALL NOT BE CONSIDERED FINAL UNTIL AFTER THE TIME FOR FILING THE NOTICE OF APPEAL PURSUANT TO THE APPELLATE RULES HAS EXPIRED.**

Payment Terms:

Payment due within 30 days of date of invoice, regardless of when payment is made by Owner

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. **Buyer:** _____ **Signature:** _____ **Date of Acceptance:** _____	**CONFIRMED:** **Oldcastle SW Group, Inc. Dba United Companies** **Authorized Signature:** _____ **Estimator:** Greg Frazier 970-641-0951 gfrazier@united-gj.com