AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: DIA; Roper Subdivision

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Albert and Angela Roper and BOCC

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

Summary:

Development Improvements Agreement for subdivision of three lots from the Roper Ranch for residential use.

Fiscal Impact:

Submitted by: Laura Stanley for David Baumgarten **Submitter's Email Address:** lstanley@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 1/2/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 1/2/2020 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 1/3/2020

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 5

Agenda Date: 1/7/2020

Revised April 2015

DEVELOPMENT IMPROVEMENTS AGREEMENT

FOR ALBERT AND ANGELA ROPER

THIS DEVELOPMENT IMPROVEMENTS AGREEMENT FOR ALBERT AND ANGELA ROPER ("Agreement") is entered into this ____ day of _____, 2019 by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 ("Gunnison County"), and Albert and Angela Roper, jointly and severally, whose address is 34 Lucile Place, Gunnison, CO 81230 ("Developer") as follows:

1. Purpose. The Developer has submitted to Gunnison County an application for Land Use Change Permit No: 2019-00012 for the subdivision of three (3) lots from the Roper Ranch for residential use ("Project").

The Project is located within Sections 28, 33 and 34, Township 51 North, Range 1 East, N.M.P.M., Gunnison County, Colorado, generally located 8 miles northeast of the City of Gunnison, approximately 1/2 mile east of Highway 135, on the east side of the Gunnison River.

As valuable and sufficient consideration for this Agreement, Gunnison County and the Developer agree that approval of such application by Gunnison County is expressly conditioned on completion of the improvements described in paragraph 7 below ("Improvements") to the specifications described herein and by the times specified herein. Gunnison County and the Developer further agree that such Improvements are appropriate and necessary requirements to be required by Gunnison County, and to be performed by the Developer and which Developer shall perform. Gunnison County and Developer further agree that an agreement guaranteeing the Developer's performance secured by suitable security to protect the interests of Gunnison County, and the public in the amount set forth herein is an appropriate condition to Gunnison County's approval of such Land Use Change Permit. The parties have entered into this Agreement to memorialize such understandings and agreements. The relationship of the parties to this Agreement is contractual; Developer is an independent contractor and is not an agent of Gunnison County.

2. Developer Bound. The Developer agrees to accept and be bound by the terms and conditions for Gunnison County's issuance of its approval of the Land Use Change Permit No: 2019-00012 and the terms and conditions of this Agreement. Developer accepts Gunnison County's review and permitting authority, process and performance of same in connection with Land Use Change No: 2019-00012, as legal and valid and waives any defect therein.

3. Construction.

A. The Developer agrees to complete construction of the Improvements within the Project in the locations and in accordance with the specifications as identified in paragraph

7 herein, by no later than November 1, 2020. Acts of God and any cause beyond the reasonable control of the Developer excepted, including without limitation labor disputes, laws, regulations, or orders of any governmental entity, orders of court, inability to obtain any required authorization, act of war or conditions arising out of or attributable to war, riot, civil strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or subcontractors, shortage of or inability to obtain labor, supplies or materials.

B. The completion deadline set forth in this paragraph 3 may be extended by Gunnison County in its sole discretion upon written request of Developer if Gunnison County determines that: (1) such extension of time will not operate to the detriment of Gunnison County, the public or the owners of property within the Project; and (2) Gunnison County's security is adequate to ensure full performance by Developer by the extended completion date; and (3) that such an extension would not be in conflict with the conditions of the approved Land Use Change Permit. Gunnison County may require Developer to provide, at Developer's cost, supplemental estimates by Developer's engineer of the costs of completion and to provide additional security as a prerequisite to its extension of any completion date. Any extended completion date granted by Gunnison County hereunder may be further extended in like manner.

C. Each contract entered into by Developer for construction of the Improvements shall provide that Gunnison County is a third-party beneficiary with all rights to enforce such contracts in place of Developer in the event of a default by Developer. Developer shall provide to Gunnison County a copy of each such contract upon its execution.

4. Estimated Cost. The total cost of the Improvements to be constructed by the Developer is estimated currently to be Five-Thousand and Eighty-Two and 00/100 U.S. Dollars ($5,082.00).

5. Security. In order to secure all obligations of the Developer herein, the Developer and Gunnison County agree that the Developer shall, at Developer's sole cost, and before starting work on any phase of the Project or Improvements, and before conveying any portion of the Project, obtain and provide to Gunnison County either cash, a bond, an irrevocable letter of credit or other performance guarantee in a form and content satisfactory to Gunnison County to the benefit of Gunnison County in the amount of Six-Thousand Three-Hundred and Fifty-Two and 50/100 U.S. Dollars ($6,352.50) which is 125 percent of the currently estimated cost of the Improvements to include a reasonable contingency amount. If said security is in the form of cash, it will be placed by Gunnison County in an interest-bearing account; the interest shall accrue to Developer at 1% less than received by Gunnison County.

If the contract(s) provided to Gunnison County pursuant to paragraph 3C indicate a substantially different total cost than estimated in paragraph 4, the amount of security may be increased or decreased. For the purposes of this paragraph 5, substantial is defined as ten (10) percent or more.

Pending full performance of all of the terms and conditions hereof by the Developer, Gunnison County shall retain said security and shall remain the beneficiary of such security. In the event of any uncured default hereunder Gunnison County in its sole discretion, and without any other authority required, may draw upon said security up to the full amount of Six-Thousand Three-Hundred and Fifty-Two and 50/100 U.S. Dollars ($6,352.50), upon presentation by Gunnison County to the issuer of a written statement by Gunnison County that such uncured default exists. Upon timely performance of all terms and conditions hereof, said security shall be tendered by Gunnison County to the Developer, except as provided in paragraph 7C.

6. Certification.

A. Not later than November 1, 2020, a registered Colorado engineer retained by the Developer at its expense shall certify to Gunnison County whether the Developer's construction obligations regarding Improvements under this agreement have been fully and faithfully performed according to design and time specifications. Upon receipt by the Office of the County Attorney of such certification and receipt of a complete paper and two (2) electronic copies of road and utility as-built specifications and drawings, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. Developer agrees not to cover or otherwise prevent inspection of the Improvements constructed hereunder until Developer's engineer and Gunnison County's representative have had reasonable opportunity to inspect such Improvements.

B. Not later than November 1, 2020, Developer shall provide to Gunnison County Attorney a sworn affidavit, signed by the Developer's authorized representative, that the Improvements completed have been paid for, in full, by the Developer. The Developer shall be responsible for the information so provided. Said written certification will be reviewed by Gunnison County, but Gunnison County shall have no responsibility or liability to any party regarding the veracity of the information so provided.

7. Scope of Work.

A. The scope of work to be done by the Developer shall include, but not be limited to:

7.1 The cost estimate titled: *Customer Quotation and Contract*, prepared by Misty Grosse of United Companies, dated October 15, 2019, attached hereto and incorporated herein by reference as Appendix "A"; and

7.2 Those conditions cited by the Planning Commission and approved by the Board of Gunnison County Commissioners for Land Use Change Permit No: 2019-00012.

B. The conditions of this Agreement and Land Use Change Permit No: 2019-00012 are such that if the obligations hereunder of the Developer are well, truly, faithfully and timely performed by Developer, inspected and certified to by the Developer's engineer, and such performance is accepted by Gunnison County in Gunnison County's sole discretion, the Developer's obligations to Gunnison County under this Agreement except as set forth in 7C below shall be at an end; otherwise such conditions and obligations shall remain in full force and effect.

C. For a period of one year from and after the acceptance of all of the work described in paragraph 7A above, Developer shall, at its own expense, make all needed repairs and replacements to such work as shall, in Gunnison County's reasonable opinion, become necessary. Gunnison County shall have the right to retain up to One-Thousand Two-Hundred and Seventy and 50/100 U.S. Dollars ($1,270.50) of the security for up to one year following the acceptance of all of the work described in paragraph 7A above, as security to ensure such repair and replacement.

8. Partial Release of Security.

A. Gunnison County recognizes that as work proceeds upon the Improvements, Gunnison County's need for security shall be reduced. Accordingly, Gunnison County may make a reasonable partial release of the security to be delivered to Gunnison County pursuant to paragraph 5 herein upon receipt of a written completion; upon receipt of certification by Developer's engineer stating the estimated cost of remaining such certification, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. If Gunnison County does make a partial release, Gunnison County shall retain security equal to: (a) 125 percent of such estimated cost of remaining completion of Improvements; and (b) 125 percent of such estimated costs of all of the landscaping and reclamation; and shall release the balance of all security held by Gunnison County.

Without limiting the generality of the foregoing provision, Gunnison County shall make a partial release of the security upon acceptance of the Improvements, in accordance with paragraph 6 above. The amount released shall be the full security, less the amounts that Gunnison County has reserved the right to retain in paragraph 7.C, above, such amounts to be released in accordance with paragraph 7.C, above.

B. Upon Developer's entering into a contract or contracts for construction of Improvements hereunder, Developer and Gunnison County may negotiate an addendum to this Agreement setting forth such reasonable schedule for partial releases of the security in accordance with the anticipated construction schedule. In such circumstance, Gunnison County shall designate and authorize Gunnison County Manager to make the partial

release(s) hereunder after consultation with appropriate Gunnison County staff.

9. Developer's Default. In the event of any default hereunder by the Developer, Gunnison County shall give notice to the Developer specifying the nature of such default, which notice shall be given by facsimile transmission or by certified mail with return receipt requested addressed to the Developer at: 34 Lucile Place, Gunnison, Colorado 81230. In the event the Developer does not remedy such default to the satisfaction of Gunnison County within 14 days following such notice, Gunnison County may elect, in its discretion to exercise all remedies available to it, including but not limited to:

A. To specifically enforce the terms and conditions of this Agreement;

B. To draw upon or otherwise obtain the benefit of the security;

C. To exercise any other rights and obtain any other remedies provided by law;

D. To obtain from the Developer either an extension of Gunnison County's security hereunder to guarantee the completion of the Improvements only on the conditions: (1) that suitable additional security is provided to Gunnison County to guarantee the construction of said Improvements within the new time period determined by Gunnison County; and (2) that Gunnison County determines that it would not be detrimental to the interest of Gunnison County, the public or the owners of property within the Project to allow such extension; and (3) that Gunnison County determines that it would not be in conflict with the conditions of the approved Land Use Change Permit.

E. To engage a manager to supervise the completion of improvements as identified herein. The costs incurred for hiring a manager shall be the responsibility of the Developer and may be withdrawn by Gunnison County from the security. Furthermore, all Gunnison County staff time spent thereafter on this Project shall be calculated at an hourly rate and shall be charged to the Developer and may be withdrawn from security.

10. Notice. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered or mailed by registered or certified mail, return receipt requested to the required party at the following addresses:

Gunnison County: Board of Gunnison County Commissioners
of the County of Gunnison, Colorado
c/o Gunnison County Attorney
200 East Virginia
Gunnison, CO 81230

Developer: Albert and Angela Roper
34 Lucile Place
Gunnison, CO 81230

11. Recording of Agreement. Upon its execution, this Agreement shall be recorded by the Developer and shall be a covenant running with the property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

12. Retention of Police Powers. Gunnison County retains the power and right to impose additional requirements upon Developer with regard to the Project if the failure to do so would place the public or owners of property within the Project in a perilous condition, or in the event of substantially changed conditions; that is, nothing in this Agreement is or shall be construed to be a bargaining away of Gunnison County's police power.

13. Transfer or Assignment. No transfer or assignment of any of the rights or obligations of the Developer under this Agreement shall be permitted without prior written approval of Gunnison County which approval shall not unreasonably be withheld.

14. Title and Authority. The Developer expressly warrants and represents to Gunnison County that the Developer has full power and authority to enter into this Agreement. The Developer understands that Gunnison County is relying on such representations and warranties in entering into this Agreement.

15. Litigation. Nothing contained herein shall prevent either party from obtaining a judicial determination of the violation of its rights hereunder; provided however, that written notice to the other party advising the other party of the alleged violation, and advising that in the event the matter is not resolved by the parties within 14 days thereafter, shall be a condition precedent to the commencement of any litigation.

16. Time of Essence. It is mutually agreed that time of performance is an essential part of this Agreement and that all terms, covenants and conditions herein shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

17. Venue and Choice of Law. This Agreement is entered into in Gunnison County, Colorado and it is agreed that the exclusive jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado. The exclusive choice of law pertaining to this transaction shall be that of the State of Colorado without giving effect to Colorado choice of law principles.

18. Severability. If any term or provision of this Agreement shall be invalid or unenforceable, the

remainder of this Agreement and the terms and provisions thereof shall not be affected thereby and all other terms and provisions of this Agreement shall be valid and enforceable to the full extent permitted by law.

19. Hold Harmless Clause. The Developer shall indemnify, defend and hold harmless Gunnison County, its officials, employees and agents from and against liability for damages, injury or death which may arise from the direct or indirect operations of the owner, Developer, contractors or subcontractors, which relate to the Project.

20. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

21. Entire Agreement. This Agreement contains the entire and only Agreement between the parties regarding development improvements, and no oral statements or representations not contained in this Agreement shall be of any force and effect between the parties. This Agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

IN WITNESS WHEREOF the parties have executed this Agreement the date first above written.

BOARD OF GUNNISON COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Jonathan Houck, Chairperson

ATTEST:

_____
Deputy Gunnison County Clerk

ALBERT ROPER

By: _____

STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 28th day of October, 2019 by Albert Roper, Developer herein.

LAUREN HIBBARD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20194022379
My Commission Expires June 14, 2023

Witness my hand and seal.
My commission expires: 6/14/2023.

Notary Public

ANGELA ROPER

By: Angela Roper

LAUREN HIBBARD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20194022379
My Commission Expires June 14, 2023

STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 28th day of October, 2019 by Angela Roper, Developer herein.

Witness my hand and seal.
My commission expires: 6/14/2023.

Notary Public

To place an order please call Customer Service at

970-243-5994

www.united-gj.com

www.telluridegravel.com

Customer Quotation & Contract

Date	10/15/2019	**Quote Valid Thru Date**	11/14/2019
Project	34 Lucile Place	**Project Address**	34 Lucile Place Gunnison, CO 81230
Customer	Howard Roper	**Quote Number**	Q524876-2
Company	Cash Sales-GJ /South	**Customer Number**	2114
Phone	(970)-497-6470	**Customer PO Number**	
Fax		**Project Tax Exempt**	No
E-Mail	aasmallengine@gmail.com		Terms: Net 30 Days From Invoice Date

Quoted By: Misty Grosse **Phone:** (970)-379-0598 **Email:** misty.grosse@unitedco.com

Product Code	Description	Quantity	Unit	Unit Price	Extended/Amount
16301	3/4" ROAD BASE	462	TON	$11.00	$5,082.00

	Delivered in Truck & Pup Additional charge to material price	Per	Ton	$0.00
	Delivered in Tandem Additional charge to material price	Per	Ton	$0.00
	Delivered in QuadTruck	Per	Ton	$0.00
	Fuel Surcharge Per Ton	Per	Ton	$0.47
	Environmental Fee Per Ton	Per	Ton	$0.10

Special Notes:

1. A conversion factor of 1.65 tons/yard was used to convert 280 yards to tons. Quantities are approximate and the total tons needed for the project may vary depending on compaction effort and moisture content of the material.
2. Trucking with a quad axel dump truck, with a capacity of 28-30 tons/load is available for $120/hour.

Note:

1) As of January 1st, 2020 please anticipate, at a minimum, an additional 5% increase on materials and environmental fees per ton per calendar year moving forward.
2) This is a three page quote with the terms & conditions and is job specific.
3) Price quoted is FOB the specified Pit location. If the delivery option is accepted the site must be accessible for the type of truck delivering the material.
4) United Companies will need a 60 day notice on any specialty or non-general sales type material and a firm quantity for production purposes. Any material produced for the project will be billed to the customer.
5) Each per ton price quoted is subject to the fuel surcharge.
6) Customer will need to establish an account with United Companies.
7) Prices do not include any applicable taxes. Tax exempt Certificates or Re-Sale Licenses must be presented prior to material pick up or taxes will be applied.
8) *All import is subject to United Companies inspection and acceptance. No trash, building* materials or contaminated material will be accepted. Any clean up or removal costs will be the responsibility of the customer. Pieces must be no larger than 2ft x 2ft x 8in. No steel without prior approval. Quantity of import must not exceed the quantity of purchased material without prior approval. Import fees may apply.
9) Material is quoted to be in spec when it is loaded into customer's trucks. Quality of material beyond this point is the responsibility of the customer. No additional testing is included and will be charged extra.
10) If the pricing, terms and conditions are accepted, please sign in the space provided and return the original hereof to United Companies.
11) Prices are good for 30 days. Please retain a copy for your files.

Appendix A

STANDARD TERMS AND CONDITIONS – MATERIAL SALES

Applicability. The accompanying quotation/confirmation of sale/invoice and these terms (collectively, the "***Order***") comprise the entire agreement between the parties, and supersedes all prior or contemporaneous communications, understandings, agreements, negotiations, representations and warranties. These terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms.
Payment. Payment terms are net 30 days from date of purchase or sooner as may be required by applicable law. Late payments shall accrue a finance charge of one and one-half percent (1½%) 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 Order in a timely manner.

Taxes. Buyer is responsible for payment of all taxes and duties of any nature whatsoever, including any local, state and federal taxes. Buyer agrees to indemnify and hold Seller harmless from any and all costs and expenses associated with any levy or attempted levy of any such taxes on Seller.

Suspension; Termination. In addition to any other remedies available to Seller, Seller may suspend or terminate this Order with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Order (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.

Shipment; Delivery Conditions. Unless otherwise agreed in writing, all materials purchased by Buyer shall be FOB Seller's plant sourcing the Order. 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 orders 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.

Title and Risk of Loss. Title and risk of loss passes to Buyer at the time the 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 at Buyer's location.

Warranty. Seller warrants that the goods herein will conform to the specifications provided to Seller prior to manufacture or shipment of the materials. 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 Order.

Time. If Seller agrees to deliver the goods, Seller shall make reasonable efforts to deliver the goods by the specified delivery date and shall provide notice to Buyer of any expected delays in delivery. Seller is not responsible for failure to supply material
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 Order 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 Order.
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 and all damages related to this Order shall be limited to replacement of materials sold hereunder. **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 ORDER.**

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; (ii) any act or omission by or on behalf of Buyer, its employees, and agents; or (iii) the negligent or alleged wrongful installation of Seller's materials.

13. Loading Responsibilities. Buyer releases Seller from any liability for any damage to Buyer's vehicle during the loading process. Prior to loading, Buyer shall first verify the weight capacity of Buyer's vehicle and shall ensure that any loaded vehicle leaving or entering Seller's property is in full compliance with all applicable laws, including without limitation weight laws. Buyer is solely responsible for securing the load on any vehicles loaded for Buyer's benefit and shall securely fasten a tarp to all loose loads or take any other necessary action to prevent product from escaping the vehicle.

14. Applicable Law. This Order, and the rights, duties, obligations and remedies of the parties shall be governed by or construed in accordance with the laws of the state of Seller's plant sourcing the Order.

15. **Miscellaneous**. (A) 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. (B) Unless otherwise stated in this Agreement or the quote provided herewith, prices quoted shall be good for a period of thirty days. (C) Prices are based upon estimated quantities. If quantities vary more than ten percent (10%) from estimated quantities, prices are subject to adjustment corresponding with any resulting increase in Seller's costs. (D) All funds paid to Buyer from a third party, for the materials or any portion of the materials sold to Buyer hereunder shall be deemed in trust for the payment of all materials, and such funds shall not become the property of Buyer nor many any portion of such funds be used by Buyer for any purpose, until full payment is made for all materials sold by Seller to Buyer hereunder. (E) For a copy of Safety Data Sheets or product label information, please contact Seller at the phone number or address set forth on the attached page for alternate delivery method or visit 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 ORDER, SHALL BE SUBMITTED TO AND RESOLVED BY BINDING ARBITRATION BY A SINGLE ARBITRATOR IN THE COUNTY AND STATE OF SELLER'S SOURCE PLANT FOR THE ORDER. 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 ORDER, 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.

Date _____

Accepted by: (signature)_____

For Customer (Official Customer Name)_____

Name of Customer's representative_____

Title of Customer's representative: _____

Date _____

Sales Rep (Signature) _____

Sales Rep Name Misty Grosse