

RESOLUTION NO. 1779

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
GOLDEN AUTHORIZING AN AMENDMENT TO THE
CONSTRUCTION AGREEMENT FOR ROONEY FIELDS**

WHEREAS, by agreement with an effective date of May 18, 2006, the City entered into a Construction Agreement with American Civil Constructors, Inc., pertaining to the construction and installation of facilities of the Rooney Road Youth Sports Complex Project; and

WHEREAS, the Construction Agreement addresses potential removal of the improvements in future years; and

WHEREAS, obtaining a performance and payment bond in conjunction with the future removal obligations has proven to be difficult and expensive; and

WHEREAS, City Council wishes to authorize an amendment to the Construction Agreement pertaining to the obligation to provide performance and payment bonds as they relate to the removal obligations.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

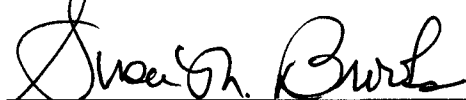
The Amendment to the Construction Agreement between the City of Golden and American Civil Constructors, Inc., in the form substantially as attached hereto as Exhibit A is approved. The City Manager is authorized to execute such agreement on behalf of the City.

Adopted this 14th day of June, 2007.



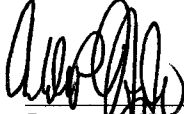
Charles J. Baroch
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:



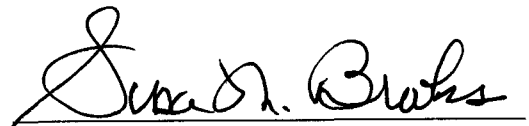
James A. Windholz
City Attorney

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I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular meeting thereof held on the 14th day of June, A.D., 2007.

(SEAL)

ATTEST:

A handwritten signature in cursive script, appearing to read "Susan M. Brooks", written over a horizontal line.

Susan M. Brooks, City Clerk of the City of
Golden, Colorado

Exhibit A

AMENDMENT TO CONSTRUCTION AGREEMENT

This Amendment to Construction Agreement is effective this ____ day of ____, 2007 and amends that certain "CONSTRUCTION AGREEMENT," with an effective date of May 18, 2006, between the CITY OF GOLDEN, Colorado, (the "CITY"), a body corporate and politic and AMERICAN CIVIL CONSTRUCTORS, INC., ("CONTRACTOR").

RECITALS

- A. The May 18, 2006 CONSTRUCTION AGREEMENT pertains to a project in Golden, Colorado, known as the Rooney Road Youth Sports Complex Project.
- B. Paragraph 18.C. of the CONSTRUCTION AGREEMENT imposes upon the CONTRACTOR certain obligations with respect to the potential future removal of the improvements that are installed and constructed pursuant to the CONSTRUCTION AGREEMENT. The obligations of Paragraph 18.C. carry forward for a period of 10 years from the date of final settlement.
- C. Paragraph 2.A. of the CONSTRUCTION AGREEMENT requires the CONTRACTOR to secure and deliver to the CITY performance and payment bonds that guaranty the CONTRACTOR'S performance under the CONSTRUCTION AGREEMENT.
- D. The parties wish to amend the CONSTRUCTION AGREEMENT to provide that the performance and payment bonds required by Paragraph 2.A. need not guaranty the obligations of the CONTRACTOR that are imposed by Paragraph 18.C. of the CONSTRUCTION AGREEMENT.

AGREEMENT

1. Paragraph 2.A. of the CONSTRUCTION AGREEMENT shall be deleted and the following substituted in its place:

A. CONTRACTOR will deliver to CITY within seven (7) days of the execution of this Amendment to Construction Agreement fully executed performance and payment bonds in the principle amount of the Contract Sum, as required by the provisions of the Colorado Revised Statutes, pertaining to public construction contracts. The performance and payment bonds tendered by the CONTRACTOR in compliance with this paragraph need not guaranty, nor shall they be construed as a guarantee, of any of the CONTRACTOR's obligations as specifically set forth in paragraph 18.C. of this Agreement. The form of such bonds and the sureties shall be subject to approval by the CITY.

2. Paragraph 18.C. of the CONSTRUCTION AGREEMENT shall be amended to add the following new subparagraph (5), which shall read:

- (5) The performance and payment bonds obtained and delivered to the CITY in conjunction with this Agreement need not encompass or guaranty the obligations of the CONTRACTOR pursuant to this Paragraph 18.C. However, in the event that the

CITY invokes the removal provisions pursuant to this Paragraph 18.C., the CITY may, at the time it directs such removal, require the CONTRACTOR to obtain such performance and payment bonds as may be specific to the removal work. Notwithstanding the "maximum compensation" payable to the CONTRACTOR for removal as provided herein, the CONTRACTOR shall be compensated for the actual costs of obtaining such performance and payment bonds.

3. As compensation to the CITY for the amendments provided herein, CONTRACTOR shall pay to the CITY the sum of \$21,951. Such compensation shall be payable by means of a credit to the first available Application for Payment (following execution of this Amendment) submitted by the CONTRACTOR to the CITY pursuant to paragraph 3 of the CONSTRUCTION AGREEMENT.

4. All other provisions of the CONSTRUCTION AGREEMENT not inconsistent with the provisions of this Amendment to Construction Agreement shall remain in full force and effect.

CITY OF GOLDEN

CONTRACTOR

American Civil Constructors, Inc.

By: Michael C. Bestor, City Manager

By: _____
Capacity _____

AMENDMENT TO CONSTRUCTION AGREEMENT

This Amendment to Construction Agreement is effective this 23rd day of MAY, 2007 and amends that certain "CONSTRUCTION AGREEMENT," with an effective date of May 18, 2006, between the CITY OF GOLDEN, Colorado, (the "CITY"), a body corporate and politic and AMERICAN CIVIL CONSTRUCTORS, INC., ("CONTRACTOR").

RECITALS

- A. The May 18, 2006 CONSTRUCTION AGREEMENT pertains to a project in Golden, Colorado, known as the Rooney Road Youth Sports Complex Project.
- B. Paragraph 18.C. of the CONSTRUCTION AGREEMENT imposes upon the CONTRACTOR certain obligations with respect to the potential future removal of the improvements that are installed and constructed pursuant to the CONSTRUCTION AGREEMENT. The obligations of Paragraph 18.C. carry forward for a period of 10 years from the date of final settlement.
- C. Paragraph 2.A. of the CONSTRUCTION AGREEMENT requires the CONTRACTOR to secure and deliver to the CITY performance and payment bonds that guaranty the CONTRACTOR'S performance under the CONSTRUCTION AGREEMENT.
- D. The parties wish to amend the CONSTRUCTION AGREEMENT to provide that the performance and payment bonds required by Paragraph 2.A. need not guaranty the obligations of the CONTRACTOR that are imposed by Paragraph 18.C. of the CONSTRUCTION AGREEMENT.

AGREEMENT

1. Paragraph 2.A. of the CONSTRUCTION AGREEMENT shall be deleted and the following substituted in its place:

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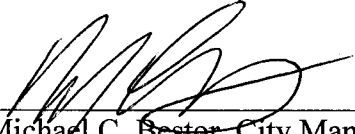
2. Paragraph 18.C. of the CONSTRUCTION AGREEMENT shall be amended to add the following new subparagraph (5), which shall read:

- (5) The performance and payment bonds obtained and delivered to the CITY in conjunction with this Agreement need not encompass or guaranty the obligations of the CONTRACTOR pursuant to this Paragraph 18.C. However, in the event that the CITY invokes the removal provisions pursuant to this Paragraph 18.C., the CITY may, at the time it directs such removal, require the CONTRACTOR to obtain such performance and payment bonds as may be specific to the removal work. Notwithstanding the "maximum compensation" payable to the CONTRACTOR for removal as provided herein, the CONTRACTOR shall be compensated for the actual costs of obtaining such performance and payment bonds.

3. As compensation to the CITY for the amendments provided herein, CONTRACTOR shall pay to the CITY the sum of \$21,951. Such compensation shall be payable by means of a credit to the first available Application for Payment (following execution of this Amendment) submitted by the CONTRACTOR to the CITY pursuant to paragraph 3 of the CONSTRUCTION AGREEMENT.

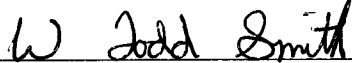
4. All other provisions of the CONSTRUCTION AGREEMENT not inconsistent with the provisions of this Amendment to Construction Agreement shall remain in full force and effect.

CITY OF GOLDEN


By: Michael C. Bestor, City Manager

CONTRACTOR

American Civil Constructors, Inc.

By: 
Capacity DIVISION MANAGER