

RESOLUTION NO. 1682

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
GOLDEN APPROVING AN AGREEMENT WITH AMERICAN
CIVIL CONSTRUCTORS FOR DESIGN BUILD SERVICES FOR
PHASE ONE OF THE ROONEY ROAD SPORTS COMPLEX**

WHEREAS, Jefferson County is the owner of certain land referenced herein as the "Property";
and

WHEREAS, the City of Golden has entered into an agreement with Jefferson County to
construct and operate a regional sports complex on the Property; and


WHEREAS, the funding for construction of phase one of this complex is provided through
Jefferson County Open Space Joint Venture grants awarded in 2002 (\$2,000,000) and 2003 (\$1,000,000),
and a grant from the Table Mountain Soccer Association(\$500,000); and

WHEREAS, American Civil Constructors of Littleton, Colorado has been selected as most
qualified to provide design build services for this project in the amount of \$2,886,686.

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

The Agreement for design build services for construction of phase one of the Rooney Road
Sports Complex with American Civil Constructors is approved in essentially the same form as the copy
of such agreement accompanying this resolution. The Mayor is authorized to execute the Agreement on
behalf of the City.

Adopted this 11th day of May, 2006.


C. J. Baroch
Charles J. Baroch
Mayor

ATTEST:

Dominique Foubert, Deputy
Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:

James A. Windholz
James A. Windholz
City Attorney

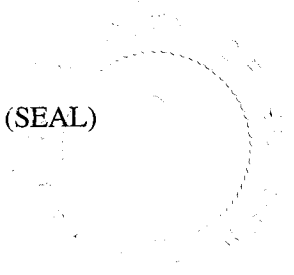
Resolution No. 1682

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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 regular meeting thereof held on the 11th day of May, A.D., 2006.

(SEAL)

ATTEST:


Dominique Laube, Deputy
Susan M. Brooks, City Clerk of the City of
Golden, Colorado

CONSTRUCTION AGREEMENT

THIS AGREEMENT is effective May 18th, 2006 between the CITY OF GOLDEN, Colorado (the "CITY"), 911 10th Street, Golden, Colorado, a body corporate and politic, and AMERICAN CIVIL CONSTRUCTORS, INC. ("CONTRACTOR"), and for and in consideration of the mutual covenants and obligations contained herein the CONTRACTOR shall perform the following and the parties agree as follows:

1. Scope of Work.

The "Work" shall refer to the ROONEY ROAD YOUTH SPORTS COMPLEX PROJECT, and shall consist of all design, construction, and follow-up necessary to complete the construction of seven synthetic turf athletic, two of which are practice fields, as specified in the Contract Documents, and more specifically in Section V (SYNTHETIC TURF DESIGN/BUILD SPECIFICATIONS) of Exhibit B attached hereto.. This project shall include the remaining field design, delivery and installation of fine grading, porous aggregate base fill, synthetic turf, and turf in-fill in compliance with the Contract Documents.

2. Commencement of Work-Time of Completion -Liquidated Damages.

A. CONTRACTOR will deliver to the CITY within seven days of the execution of this agreement fully executed performance and payments bonds in the principal amount of the Contract Sum, as required under the provisions of the Colorado Revised Statutes pertaining to public construction contracts. The form of such bonds and the sureties, shall be subject to approval by the CITY.

B. CONTRACTOR agrees to commence work under this Agreement within seven calendar days after issuance of a Notice to Proceed from the CITY, and, subject to Section 26 below, to substantially complete the Work within 182 calendar days of issuance of the Notice to Proceed, and to fully complete the work within 212 calendar days of issuance of the Notice to Proceed. "Substantial Completion" occurs when the work has progressed to the point where it is sufficiently complete, in compliance with the Contract Documents, so that the work can be utilized for the purpose for which it is intended.

C. CONTRACTOR agrees to complete the design portion of the Work, and to submit same to CITY for review and approval, within 60 calendar days of issuance of the Notice to Proceed by CITY. CONTRACTOR shall not commence Work at the project site until said design has been reviewed and approved by CITY, or CONTRACTOR may perform ancillary work at the site prior to approval of the design by CITY, but only if agreed to in writing by CONTRACTOR and CITY.

D. The parties agree that the CITY will incur damages if the work is not timely completed, that the amount of damages is and will be difficult to ascertain, and that liquidated damages are appropriate. Therefore, the CONTRACTOR shall be liable for liquidated damages in the amount of \$500 per day for each day that the work is not timely substantially completed.

3. Contract Sum/Payment.

A. The CITY shall pay the CONTRACTOR the sum of \$ 2,886,686.00 dollars for the Work subject to the CITY's acceptance of the Work and any deductions. The CITY represents

to CONTRACTOR that it has appropriated sufficient funds to pay the Contract Sum. Change orders which result in an increased Contract Sum above that as originally appropriated are prohibited unless lawful appropriations to cover the cost of the same are made, or unless additional such changes are provided for under a remedy-granting provision. The City also represents that sufficient funds have been appropriated for written change orders which increase the contract sum.

B. CONTRACTOR shall submit Applications for Payment to CITY on a monthly basis on such forms as agreed upon by CITY and CONTRACTOR.

C. CITY shall make progress payments on the basis of CONTRACTOR's Applications for Payment, approximately twenty one (21) days after receipt of the CONTRACTOR's Application for Payment, subject to approval by CITY, as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in CONTRACTOR's bid and proposal (and in case if Unit Price Work based on the number of units completed).

D. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made.

1. 90% of Work completed (with the balance being retainage). If Work has been 50% completed as determined by the CITY, and if the character and progress of the Work have been satisfactory to the CITY, as long as the character and progress of the Work remain satisfactory to the CITY, there will be no additional retainage except as provided by State law.

2. 90% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory the CITY.

E. Upon Substantial Completion in an amount sufficient to increase total payments to Contractor to 95% of the Contract Price, less such amounts as the CITY may withhold in accordance state law or other provisions of this Agreement.

F. Final Payment. Upon final completion and acceptance of the Work the CITY shall pay the remainder of the Contract Price in accordance with the final settlement procedures for public construction contracts, as provided by the Colorado Revised Statutes.

4. Indemnification.

The CONTRACTOR agrees to indemnify and hold harmless the CITY, its officers, representatives, agents, employees, from and against all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the Work to be performed under this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligent act or omission, error, professional error, mistake, accident, or other fault of the CONTRACTOR, any Subcontractor of the CONTRACTOR, or any officer, employee, or agent of the CONTRACTOR. The obligations of this section shall not apply to damages which the CITY shall become liable by final judgment to pay to a third party as a result of the negligent act or omission, error, professional error, mistake, accident, or other fault of the CITY.

5. **Insurance.**

A. CONTRACTOR agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following insurance coverages:

(1) Workers' Compensation Insurance as required by the Labor Code of the State of Colorado and Employers' Liability Insurance.

(2) General Liability of \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

(3) Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than \$500,000 for anyone occurrence, with respect to each of the CONTRACTOR's owned, hired or non-owned vehicles assigned to or used in performance of the services. In the event that the CONTRACTOR's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of the CONTRACTOR who utilizes an automobile in providing services to the CITY under this Agreement.

(4) Property insurance to protect the Work in progress in an amount equal to the Contract Sum.

B. CONTRACTOR shall procure and maintain, and shall cause any subcontractor of the CONTRACTOR to procure and maintain, the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the CITY. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the CONTRACTOR pursuant to Section 4 of this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

C. Certificates of Insurance shall be completed by the CONTRACTOR's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the CITY prior to commencement of any services under this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the CITY. The completed Certificates of Insurance shall be sent to:

The CITY of Golden
Attn: Risk Management
911 10th Street
Golden, CO 80401

D. Failure on the part of the CONTRACTOR to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of the Agreement upon which the CITY may immediately terminate this Agreement, or at its discretion the CITY may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the CITY shall be repaid by the CONTRACTOR to the CITY upon demand, or the CITY may offset the cost of the premiums against any monies due to CONTRACTOR from the CITY.

E. The parties hereto understand and agree that the CITY, its officers and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations, or any other rights, immunities, and protections provided by Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the CITY, its officers, or its employees.

6. **Assignments.**

The CONTRACTOR shall not assign the whole or any part of the Agreement or any monies due or to become due thereunder without the written consent of the CITY.

7. **Subcontracting.**

A. The CONTRACTOR may utilize the services of specialty subcontractors on those parts of the Work which are performed by specialty subcontractors.

B. The CONTRACTOR shall be responsible to the CITY for the acts and omissions of its subcontractors.

C. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and the CITY.

8. **Separate Contracts.**

The CITY may enter into other agreements in connection with the Work, including agreements for removal of hazardous material as provided in Section I(A). The CONTRACTOR shall afford other contractors reasonable opportunity for the introduction and storage of third-party contractor's materials, machinery, equipment, supplies, and the execution of their work, and shall properly conduct and coordinate its work with theirs.

9. **Laws, Permits, Licenses, and Regulations.**

The CONTRACTOR shall conform to all applicable federal and state laws, municipal ordinances, and the laws, rules and regulations of all authorities having jurisdiction over any matter related to the Work. The CONTRACTOR shall obtain all permits and pay for licenses and approvals necessary for the construction/performance of the Work and give all required notices.

10. **Operations and Storage Areas.**

All operations of the CONTRACTOR (including storage of materials, supplies, and equipment) shall be confined to areas authorized by the CITY. The CONTRACTOR shall be liable for any and all damages caused by it to such premises.

11. **Cleanup Practices.**

The CONTRACTOR shall maintain general cleanup practices to keep all streets, alleys, sidewalks, public ways, or other premises as free from material and debris as the character of the Work will permit. Upon completion of any part of the Work, CONTRACTOR shall, within reasonable time, remove all surplus material and debris, and leave right-of-way and premises in a safe, acceptable (as determined by the CITY) condition. Under no circumstances shall the CONTRACTOR allow any condition to exist which creates a nuisance, fire hazard, or an

environment injurious to health or safety, or an attraction for humans or animals during or after construction.

12. **Payment Withheld.**

A. The CITY may withhold payment or, on account of subsequently discovered evidence, as may be necessary to protect the CITY from loss on account of anyone or more of the following:

- (1) Defective work not remedied.
- (2) Claims filed or notice indicating probable filing of claims of other parties against the CONTRACTOR.
- (3) Failure of the CONTRACTOR to make payments properly to subcontractors or for labor, material, equipment or equipment rental.
- (4) A reasonable doubt that the Agreement can be completed for the balance then unpaid.
- (5) Damage to another Contractor..
- (6) Failure or refusal by the CONTRACTOR to comply with a written instruction of the CITY within a reasonable time (as determined by the City) which may affect final completion of the Work.
- (7) Unsatisfactory prosecution of the Work.
- (8) Any other violation of or failure to comply with the provisions of the Agreement.
- (9) Being in arrears to the CITY for any invoices.

B. The right to withhold payment shall not preclude the CITY from declaring the CONTRACTOR in default of this Agreement.

13. **Final Payment-Release.**

A. The acceptance of final payment by the CONTRACTOR shall operate as a release to the CITY of all claims by the CONTRACTOR for all things done or furnished in connection with the Agreement and for every act and neglect of the CITY and others relating to or arising out of the Work under the Agreement, except for claims previously made in writing and not settled.

B. No payment shall operate to release the CONTRACTOR from any obligations under the Agreement.

14. **CONTRACTOR's Responsibility.**

The following are CONTRACTOR's responsibilities:

A. The CONTRACTOR shall have charge of and be responsible for the entire Work under the Agreement up to its completion and final acceptance by the CITY .

B. The CONTRACTOR shall perform all work and furnish all supplies, materials, machinery, equipment, tools, plant, works, labor, transportation, superintendence, facilities, services, means, methods, techniques, insurance, and utilities necessary or proper to perform and complete all Work required by and in accordance with the Agreement and pay all taxes, if any, incidental to performing said Work and furnishing such items.

C. The CONTRACTOR shall be completely responsible for:

(1) All construction means, methods, techniques, sequences, and coordination of all Work and services under the Agreement;

(2) All day-to-day working conditions at the job site, including in part safety of all persons and property, including coordination with the existing residential trash collection activities;

(3) The supervision, direction, and control of all Work and services under the Contract; and

(4) All safety procedures and precautions necessary in connection with the Work and services.

15. **Mutual Responsibility of CONTRACTORS.**

If, through acts or neglect on the part of the CONTRACTOR, any other contractor or subcontractor shall suffer loss or damage to its work, the CONTRACTOR agrees to settle with such other contractor or subcontractor by agreement or arbitration if such other contractor or subcontractor shall so settle. If such other contractor or subcontractor asserts any claim against the CITY on account of any damage alleged to have been so sustained, the CITY shall notify the CONTRACTOR who shall indemnify and save harmless the CITY against such claims and for any costs in connection with such claims including all costs and attorney fees incurred by the CITY.

16. **Protection of Work.**

The CONTRACTOR, at no additional expense to the CITY , shall at all times safely guard and protect its work; provide, erect, and maintain barriers around all excavations or obstructions to prevent accidents; and provide, place, and maintain during the night sufficient lights, signals, and signs for this purpose on or near the Work. The CONTRACTOR shall at all times, until its completion and final acceptance, protect its work apparatus, equipment, and material from accidental or any other damage; and make good any damages thus occurring at no additional costs to the CITY. All risk of loss or damage to the Work prior to final acceptance by the CITY shall be with the CONTRACTOR.

17. **Protection of Property.**

Intentionally deleted.

18. **Changed or Extra Work.**

A. The CITY may at any time during the progress of the Work make necessary alterations of, deviations from, additions to, or deletions from the Agreement, or may require the performance of extra work neither covered by the specifications nor included in the bid, but forming a part of the Work contracted for; provided however, the CONTRACTOR shall not proceed with any such change or extra work without a written change order approved and signed by the CITY. Such changes or extra work shall not invalidate the Agreement, but the difference in cost shall be added to or deducted from the amount of the Agreement, as the case may be. Adjustments, if any, in the amounts to be paid to the CONTRACTOR by reason of any such change or extra work shall be submitted to the CITY for determination in writing as to whether or not a change or extra work was involved, and if so, the amount due to the CONTRACTOR.

B. In giving verbal instructions, the CITY shall have authority to require the CONTRACTOR to make minor changes (as determined by the City) that do not involve extra cost or time of performance and are not inconsistent with the purposes of the Work.

C. The CITY may at any time during the progress of the Work, or during the 10 year period commencing with the date of final settlement, require CONTRACTOR to remove any portion of, or all of, the improvements installed and/or constructed pursuant to this Agreement, and to return the property to substantially the same condition as it existed prior to commencement of the Work. Direction to undertake removal of any or all such improvements shall be initiated by the issuance of a written change order. CONTRACTOR will be compensated for such removal based upon time and materials, calculated in the same manner as with change orders issued during the progress of the Work, provided, however, that the maximum compensation to the CONTRACTOR shall be limited as provided herein.

(1) The compensation payable to the CONTRACTOR for removal of all Phase I turf, base rock, perimeter curbing, and capping (but not removal) of collector drains shall not exceed \$235,000.00 if the Change Order is issued in calendar year 2007.

(2) For years subsequent to calendar year 2007, the maximum compensation provided herein shall be increased at a rate equal to the consumer price index for the Denver metropolitan area.

(3) The maximum compensation provided for in this subparagraph includes transportation costs associated with disposal of turf, base rock and perimeter curb, as well as any landfill fees charged with respect to disposal of the turf material. Landfill fees associated with any base rock and perimeter curb shall not be included in the calculation of the maximum compensation, but, if such landfill fee is charged, may be charged by CONTRACTOR to the City in addition to the maximum.

(4) The maximum compensation provided in this subparagraph shall not include costs associated with removal and disposition of parking lot and roadway improvements, if such improvements are ordered removed, nor shall the maximum compensation include increased costs of improvement removal directly attributable to settling of the landfill.

19. **Claims for Concealed or Unknown Conditions.**

Intentionally deleted.

20. **Temporary Suspension of the Work.**

The CITY may suspend the Work, wholly or in part, for such period or periods of time as the CITY may deem necessary due to unsuitable weather or such other conditions as reasonably considered unfavorable by the City for the diligent prosecution of the Work. During periods of suspension, the CONTRACTOR shall protect the Work from possible damage.

21. **CITY and Duties of the CITY's Field Representative.**

A. The CITY may place representatives at the Work to keep the CITY informed as to the progress of the Work and the manner in which it is being done; to keep records; act as liaison between the CONTRACTOR and the CITY; and to call the attention of the CONTRACTOR to any deviations from the Agreement, but failure of the representatives to call the attention of the CONTRACTOR to faulty work or deviations from the Agreement shall not constitute acceptance of said work.

B. The presence or absence of representatives at the Work will be at the sole discretion of the CITY, and such presence, or absence of an observer will not relieve the CONTRACTOR of its responsibility to perform the Work satisfactorily as required in this Agreement.

22. **Construction Review.**

A. During the progress, the Work shall be subject to the review and observation of the CITY, who may be the representative referred to in Section 21 A above. The CONTRACTOR shall afford assistance to the CITY to make such review. If any work is covered up without approval or consent of the CITY, it will be uncovered for examination at the CONTRACTOR's expense if requested by the CITY.

B. The fact that the CITY is on the job site shall not be taken as an acceptance of the CONTRACTOR's work or any part of it. CONTRACTOR shall notify the CITY upon completion and the Work shall be given final review by the CITY. If all parts of the Work are acceptable and substantially comply with the intent of the Agreement, initial acceptance shall be made by the CITY. If parts of the Work are not acceptable and require additional work by the CONTRACTOR to complete the project, necessitating additional cost, the cost shall be paid for by the CONTRACTOR to the CITY.

C. All parts of the Work shall conform to the standards of construction set forth under the various items of the Agreement, and in general, to the intent thereof; and, if they do not conform, shall be made to do so by redoing or otherwise as instructed by the CITY without further cost to the CITY.

D. If after the commencement of the Work, the CITY determines that any work requires special inspection or approval not otherwise provided for, the CITY shall issue written authorization instructing the CONTRACTOR to order such special inspection or approval, and the CONTRACTOR shall give timely notice of its readiness and of the date arranged so the CITY may observe such inspecting or approval. If such special inspection reveals a failure of the Work to comply with the requirements of the Agreement or with respect to the performance of the Work with laws, ordinances, rules, regulations, or orders of any public entity having jurisdiction, the CONTRACTOR shall bear all costs thereof.

23. **Correction of Deficiencies.**

If the CONTRACTOR should neglect to prosecute the Work properly in accordance with the Agreement, the CITY may, after seven consecutive calendar days' written notice to the CONTRACTOR, without prejudice to any other remedy the CITY may have, correct such deficiencies in work and may deduct the cost thereof from the payment then or thereafter due the CONTRACTOR.

24. **Suspension of Work.**

The CITY may suspend and reinstate execution of the whole or any part of the work contracted for without invalidating the provisions of the Agreement in any way. Orders for suspension or reinstatement of the Work shall be issued by the CITY to the CONTRACTOR in writing. Contractor shall be allowed reasonable compensation for mobilization and demobilization if any single suspension period exceeds 30 days.

25. **Termination for Convenience.**

A. The CITY may terminate the Work by written notice to CONTRACTOR in whole or in part if such determination is in the CITY's best interest as determined solely by the CITY.

B. The CONTRACTOR, after receiving written notice, shall immediately cancel any outstanding commitments for procurement of materials, supplies, equipment and miscellaneous items. In addition, the CONTRACTOR shall use reasonable effort to cancel or divert any outstanding subcontracted commitments to the extent they relate to any of the Work terminated.

C. The CONTRACTOR shall submit the termination claim to the CITY within 30 days after the effective date of the termination notice. During the 30-day period, the CONTRACTOR may make a written request for a time extension in preparing the claim. Any time extension must be approved by the CITY. If the CONTRACTOR fails to submit the termination claim within the time allowed, the CITY may determine the amount due the CONTRACTOR, if any, by reason of the termination.

D. Subject to Paragraph (C) above, the CONTRACTOR and the CITY may agree upon the whole or any part of the amount to be paid the CONTRACTOR as a result of the termination. If the CONTRACTOR and the CITY fail to agree on the whole amount to be paid to the CONTRACTOR because of the termination of Work under this Section, the CITY shall determine, on the basis of information available to it, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay the CONTRACTOR the amounts determined as follows:

(1) For all completed and acceptable Work performed before the effective date of the Notice of Termination the total (without duplication of any time) of (a) the cost of such Work, (b) the cost of settling and paying claims arising out of the termination of Work under subcontractors or orders as. (This cost is exclusive of the amounts paid or payable on account of supplies delivered or services furnished by the subcontractor before the effective date of the Notice of Termination. These amounts shall be included in the cost on account of which payment is made.); and (c) a sum, for overhead and profit on the completed and acceptable Work as of the date of termination that the CITY and CONTRACTOR determine to be fair and reasonable, and

(2) The reasonable cost of the preservation and protection incurred and any other reasonable costs incidental to termination of the Work under the Contract Documents, including expenses incidental to the determination of the amount due to the CONTRACTOR as a result of the termination of Work under the Contract Documents. The total sum to be paid to the CONTRACTOR shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the amount of payments otherwise made and as further reduced by the contract Price of Work not terminated. Except for normal spoilage, and except to the extent that the CITY shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the CONTRACTOR the fair value, as determined by the CITY, of property which is destroyed, lost, stolen or damaged to the extent that it is undeliverable to the CITY.

The CONTRACTOR shall have the right to dispute any determination the CITY makes under this section. But, if the CONTRACTOR has failed to submit his claim in a timely fashion and has failed to request an extension of time, he shall have no such right or appeal. In any case where the CITY has determined the amount due and subject to the settlement procedures set out in Section 38-26-107 CRS, the CITY shall pay to the CONTRACTOR the following:

- (1) If there is not right of appeal hereunder or if no timely appeal has been made, the amounts so determined by the CITY; or
- (2) If a dispute proceeding is initiated, the amount finally determined in such dispute proceeding.

In arriving at the amount due to the CONTRACTOR under this Section there shall be deducted:

- (1) All unliquidated advance or other payments on account therefore to the CONTRACTOR, applicable to the termination portion of the Work;
- (2) Any claim which the CITY may have against the CONTRACTOR in connection with this Contract; and
- (3) The agreed price for, or the proceeds of sale of any materials, supplies or other things kept by the CONTRACTOR or sold, under the provisions of this section and not otherwise recovered by or credited to the CITY.

Except as provided above, CONTRACTOR shall not be paid on account of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

E. Termination of the Agreement or portion thereof shall not relieve the CONTRACTOR of contractual responsibilities for the Work completed.

26. Extension of Contract Period.

A. The CONTRACTOR expressly covenants and agrees that in undertaking to complete the Work within the time specified in Section 2 of this Agreement, it has taken into consideration and made allowances for all delays and hindrances incidental to such Work, whether resulting from delays in securing materials or workers, or otherwise.

B. If the CONTRACTOR is delayed in the prosecution and completion of the Work by any cause beyond its control, it shall have no claim or right of action for damages from the CITY for any such cause or delay. The CONTRACTOR may, in such case, be granted an extension of the time specified for completion of the Work as the CITY may approve in writing on account of such delay; provided, however, that claim for such extension of time is made by the CONTRACTOR to the CITY in writing within three calendar days from the beginning of any such alleged cause for delay. The CITY may also consider payments to the CONTRACTOR for de-mobilization or re-mobilization costs related to the delay.

C. The CITY, at its sole discretion, may waive the said requirements and grant extensions of time.

27. **Default.**

The CITY may declare the Agreement in default for anyone or more of the following reasons as determined by the CITY in its sole discretion:

A. Failure to complete the Work within the Agreement period or any extension thereof granted by the CITY.

B. Failure or refusal to comply with an instruction of the CITY within a reasonable time.

C. Failure or refusal to perform any work or repair any defective or unacceptable work brought to the attention of the CONTRACTOR by the CITY in writing.

D. Bankruptcy or insolvency, or the making of an assignment for the benefit of creditors.

E. Failure to provide a qualified superintendent, or sufficient and competent workers or subcontractors to carry on the Work in a satisfactory and workmanlike manner; or failure to prosecute the Work in accordance with the agreed schedule of completion.

F. Failure to provide proper materials, equipment, or supplies.

G. Failure to comply with any provisions of the Agreement as determined by the CITY.

H. Disregard or violations of laws, ordinances, rules, or regulations or order of any governmental entity having jurisdiction of the Work or matters related thereto.

I. Failure to prosecute the Work with sufficient competence or rapidity to insure the proper completion of the Work within the required time.

J. Breach of any provision of the Agreement by the CONTRACTOR's and/or subcontractors.

28. **In Default-Procedure For Declaring.**

The CITY may declare the Agreement in default by giving written notice to the CONTRACTOR. Said notice shall contain the reason or reasons for default and shall fix a day certain after the date of said notice, when the Agreement shall be declared in default, unless the CONTRACTOR remedies the default to the CITY's satisfaction or makes satisfactory arrangements with the CITY for its remedy prior to the day certain fixed in said notice for declaring the Agreement in default. The CITY may, at its sole option, extend the day certain for declaring the Agreement in default without prejudice to the CITY's right to thereafter declare the Agreement in default. If the CONTRACTOR fails to remedy to default or make arrangements for its remedy prior to the date set for declaring the Agreement in default, or any extension thereof, the Agreement shall be declared in default.

29. **In Default-Completion Of.**

A. In the event the CITY takes over the Work and prosecutes the same to completion, the CONTRACTOR shall peaceably relinquish possession of said work or the parts thereof specified in the notice of declared default to the CONTRACTOR.

B. All money due the CONTRACTOR shall be retained until the Work is completed and all expenses and costs have been deducted and any money due the CITY after such deductions or adjustments have been made as herein provided shall be paid by the CONTRACTOR.

C. Neither the CITY, nor any of its officers, representatives, agents, or employees shall be liable or accountable in any way to the CONTRACTOR for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefore. If the costs of completion, including all proper charges, are less than the original Agreement price, the amount so saved shall be paid to the CONTRACTOR.

D. The CITY, notwithstanding the method used in completing the Agreement shall not forfeit the right to recover damages from the CONTRACTOR for the CONTRACTOR's failure to complete the entire Agreement. The CONTRACTOR shall not be entitled to any claim for damages on account of the method used by the CITY in completing the Agreement.

30. **Warranty.**

CONTRACTOR warrants the Work will be of first class quality, merchantable, and fit for the purpose for which it is intended. CONTRACTOR warrants that title to the Work will pass to the CITY free of all claims and encumbrances of third parties. In addition to other promises and warranties contained herein, the CONTRACTOR specifically warrants to the CITY that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform to the requirements of the Agreement. Work not conforming to these requirements may be considered defective. This warranty shall not apply to the turf, which warranty shall be provided to the CITY by the Contractor who provides/installs the turf.

Neither the final certificate of payment nor any provision in the Agreement nor partial or entire occupancy of the premises by the CITY shall constitute an acceptance of work not done in accordance with the Agreement or relieve the CONTRACTOR of liability in respect to any expressed or implied warranties or responsibility for faulty materials or workmanship. This warranty will have no time limit except those prescribed by law.

31. **The CITY Remedies Cumulative and Nonwaiver.**

A. No right or remedy conferred upon or reserved to the CITY by the Agreement shall be considered exclusive of any other remedy or contractual right, but the same shall be distinct, separate, and cumulative, and shall be in addition to every other remedy existing at law or in equity or by statute. Every remedy provided by the Agreement to the CITY may be exercised from time to time as often as the occasion may arise, or as may be deemed expedient. No delay or omission on the part of the CITY to exercise any right or remedy arising from any default on the part of the CONTRACTOR shall impair on such right or remedy or shall be construed to be a waiver of any such default or an acquiescence thereto, or otherwise affect the right of the CITY to enforce the same in the event of any subsequent breach or default by the CONTRACTOR.

B. If litigation is required to enforce provisions of the Agreement or remedy of default of the Agreement, the prevailing party shall be awarded costs, expert fees, and legal fees.

32. **Dispute Venue.**

In the event of any dispute arising under this Agreement, venue shall be in the District Court in and for the County of Jefferson, State of Colorado, notwithstanding that either of the parties hereto may find it necessary to take some action in furtherance hereof outside said County. Notwithstanding this Section, the parties may agree to binding arbitration to resolve disputes, defaults and other matters under this Agreement.

33. **Severability Clause.**

The provisions of this Agreement shall be deemed to be severable, and if any term, phrase or portion of the Agreement shall be determined to be unlawful or otherwise unenforceable, the remainder of the Agreement shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties.

34. **Entire Agreement.**

The "Contract Documents", all of which are incorporated by reference, are the entire Agreement between CONTRACTOR and the CITY, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein, or as agreed to in writing by the parties hereto. The "Contract Documents" consist of:

A. This Agreement, dated May 18th, 2006, consisting of (14) pages.

B. Exhibit 'A' attached, which is CONTRACTOR's memorandum and attached "Phase I Construction Cost Estimate", dated April 28, 2006 and consisting of (2) pages.

C. Exhibit 'B' attached, which is the Request for Bid/Proposals, dated January 7, 2004, consisting of five (5) pages.

D. Performance and Payments Bonds submitted to and approved by the CITY pursuant to Paragraph 2 of this Agreement.

CITY OF GOLDEN

CONTRACTOR:

By: _____

Michael C. Bestor, City Manager

By: _____

Title: Vice President

Attest:

Dominique Lambé, Deputy
Susan Brooks, City Clerk

APPROVED AS TO FORM:

James A. Windholz
James A. Windholz, City Attorney

Rooney Road Sports Complex Phase I Construction Cost Estimate

EXHIBIT A

2 1/2

Item	Description	Dimension	Units	Unit Cost	Extended Cost
1	Turf: 7 fields per Dale's dimensions	411,000	sq ft	\$ 3.15	\$ 1,294,650
2	Field drainage and outlet pipe connections	2,200	lin ft	\$ 14.07	\$ 30,954
3	Fine grading outside fields	500,000	sq ft	\$ 0.08	\$ 40,000
4	Fine grading for fields area	411,000	sq ft	\$ 0.08	\$ 32,880
5	Playground pea gravel and fabric liner	10,000	sq ft	\$ 1.26	\$ 12,600
6	Concrete curb and nailer for fields	4,175	lin ft	\$ 24.39	\$ 101,828
7	Hot mix asphalt access road	22,750	sq ft	\$ 2.50	\$ 56,875
8	Recycled asphalt road to Field 6	87,500	sq ft	\$ 1.05	\$ 91,875
9	Curb/gutter between fields and road	3,400	lin ft	\$ 18.66	\$ 63,444
10	Road base in gathering area	260,000	sq ft	\$ 0.50	\$ 130,000
11	Shade structures	3	each	\$ 10,000.00	\$ 30,000
12a	Vault Toilet - quad	1	each	\$ 60,000.00	\$ 60,000
12b	Vault Toilet - double	2	each	\$ 40,000.00	\$ 80,000
13	Information kiosk	1	each	\$ 10,000.00	\$ 10,000
14	Transition surfacing between tiers 1 and 2	1	LS	\$ 6,000.00	\$ 6,000
15	Interceptor drain	2,000	lin ft	\$ 50.00	\$ 100,000
16	Interceptor drain extension to pond	900	lin ft	\$ 50.00	\$ 45,000
17	Detention pond	1	each	\$ 22,000.00	\$ 22,000
18	Bleachers for fields 1 and 2	4	each	\$ 14,000.00	\$ 56,000
19	Asphalt parking lot	127,793	sq ft	\$ 0.63	\$ 80,510
20	Drainage rock and fine rock for the fields	411,000	sq ft	\$ 0.59	\$ 242,490
21	Design, public approval, submittal drawings	1	LS	\$ 75,000.00	\$ 75,000
22	Native seed disturbed areas	250,740	sq ft	\$ 0.19	\$ 47,641
23	Methane vent protection	10	each	\$ 1,260.00	\$ 12,600
24	Wood fence	3,000	lin ft	\$ 30.88	\$ 92,640
25	Chain link fence	2,420	lin ft	\$ 17.07	\$ 41,309
26	Bonding	1	LS	\$ 30,390.00	\$ 30,390

ROONEY EST. 3-28-06	Total Construction Cost Estimate = \$ 2,886,686
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Items which may be able to wait = Bleachers \$56K,
 Items which we "should" be able to save \$ = Design \$10-20K

01/10/2006

Estimate based on data from ACC



Memorandum - Confidential

1/2

Date: 4/28/2006
To: Mr. Rod Tarullo, CPRD
Director of Parks, Recreation, and Golf
City of Golden
1470 Tenth Street
Golden, CO 80401
From: W. Todd Smith, P.E. Ph: 800.725.5699 Fx: 303.797.0798
Subject: Exhibit A, Scope and Cost Information for Rooney Sports Complex Project

Rod,

Attached is the Scope and Cost information from the 3-28-06 Email ACC sent to the major parties involved. As discussed, the individual item costs and quantities may flex as the group nails down the specific details of the design, but we are confident the total project cost is good as you and I have discussed previously.

Sincerely,

A handwritten signature in cursive script that reads "W. Todd Smith".

W. Todd Smith, P.E.
Division Manager

1601 W Belleview Ave
Littleton, CO 80120

T 303 795 2582
F 303 797 0798
www.acconstructors.com

EXHIBIT B

DRAFT 12/29/03 REQUEST FOR BID Design/Build Services Rooney Road Youth Sports Complex

I. INTRODUCTION:

The City of Golden is procuring the design and construction of approximately 426,000 square feet of in-filled synthetic grass fields and approximately 105,000 square feet of a lighter grade turf between the playing surfaces on a site located off of Rooney Road. This request is for the first phase, which will include 7 fields. At total build out, in several years, the site will accommodate 18 fields.

The sports complex is to be constructed on a landfill that has been closed since 1979. Recently completed site work included the capping of the landfill, installation of a methane mitigation system, installation of the drainage layer, and the grading of the site to within minus 4 to 6 inches of the final grade. The successful bidder will be responsible for all design, construction, and follow-up necessary to complete the construction of seven synthetic turf fields, as specified. This project shall include the remaining field design, fine grading, porous aggregate base fill, artificial turf, and turf in-fill. (Are we including construction of the parking lot? If so, paved? Gravel?)

A mandatory pre-bid meeting will be held on January 19, 2004 at 10:00 am local time in the Windy Saddle Conference Room, Golden Community Center, 1470 10th Street, Golden, CO 80401.

II. MINIMUM QUALIFICATION CRITERIA:

For a bid to be considered, prospective contractors must demonstrate compliance with the following criteria.

- A. The team must be organized for the purpose of providing professional Design and/or Construction services with a minimum of three years of design or construction experience in the design and installation of synthetic turf fields.
- B. The team must have successfully completed at least three design-build athletic synthetic turf field projects within the last five years.
- C. The team must have the capability of assigning to the project at least one project manager who:
 1. Has five or more years experience in design, and /or construction, including design-build project experience.
 2. Can devote at least 75% of his or her time to the project during planning, design, preparation of construction documents, and construction as required.
- D. Demonstrated history of similar projects by supplying a list of names, addresses and phone numbers of the Owners and/or operators of at least three design-build projects of comparable complexity during the last five years. Provide original and final contract amounts; estimated and actual completion dates and a list of any claims filed.
- E. The team must have a proven ability for an immediate contract start-up as evidenced by past performance and current resources and personnel.
- F. The team must provide a list of any proposed subcontractors or design subconsultants or specialists who will be involved in this project. All proposed subcontractors or subconsultants will be evaluated and subject to approval by the City.
- G. Provide resumes of each member of the project team who would be assigned to the project.

- H. Provide an itemized cost proposal for performing the Work as described herein.
- I. Each team is welcome to provide additional information, which further details its qualifications. However, each firm must ensure that all required information is provided.
- K. Provide a letter stating the team's ability to meet the performance and payment bond requirements of this project.

III. SELECTION CRITERIA

Selection will be based solely on the information each firm provides. Each proposal will be evaluated and ranked in several areas including, but not limited to, the following:

- A. Quality of Proposal
- B. Personnel Qualifications
- C. Similar Project History
- D. Review of claims
- E. Price as determined by each firms proposal
- F. References
- G. Ability to meet Insurance and Bonding requirements
- H. Firm stability
- I. Cost Proposal will only be considered from firms that meet the established minimum qualifications.
- J. The best interests of the City of Golden.

The selection timeline is as follows:

Mandatory pre-bid submittal meeting	January 19, 2004 @ 10am
Bid submittal deadline	February 6, 2004 at 1:30 pm
Staff recommendation to City Council prepared by	February 12, 2004
City Council meeting to approve contract	February 26, 2004
Notice to Proceed issued	March, 2004

IV. METHOD OF AWARD:

The selection process may include an oral presentation/interview to support the proposal.

The City reserves the right to award the proposal not necessarily to the firm(s) with the lowest price, but to the firm that demonstrates the best ability to fulfill the requirements of this RFP.

The successful firm will provide products and services indicated in the proposal in compliance with the negotiated Contract. The Agreement, General Conditions, and Supplementary Conditions, which are included in this RFP Package, are substantially in the form which will be executed between the successful firm and the City of Golden.

Late Proposals will not be accepted under any circumstances, and any proposals so received shall be returned to the proposing firm unopened. In addition, telegraphic and/or proposals sent by electronic devices will not be accepted. Proposing firms will be expected to allow adequate time for delivery of their proposals either by airfreight, postal service, or other means. Sole responsibility rests with the proposing firm to see that their proposal is received on time. All proposals and copies thereof will be prepared at the submitter's expense, and upon submittal to the City of Golden, Proposals become a City record and therefore a public record.

Firms whose proposals do not meet mandatory requirements may be considered non-compliant and may be rejected.

V. SYNTHETIC TURF DESIGN/BUILD SPECIFICATIONS:

Bidders shall familiarize themselves with ordinances and statutes pertaining to public improvement. Bidder shall examine and determine the location and nature of the proposed work, in addition to the amount and character of the labor and materials required and any difficulties that should be anticipated.

The design shall include drawings and specifications stamped by a Colorado Professional Engineer or a Colorado Registered Architect, and must be submitted to the Owner as part of the proposal. Drawing and specifications shall be in sufficient detail to provide the Owner with enough information to properly evaluate the project scope and ensure quality.

The Contractor shall make and be responsible for all field dimensions and grades necessary for the proper fitting and completion of the work. Report any discrepancies to the owner at least five working days prior to the deadline established herein for submitting proposals.

All work on this project shall be guaranteed against defects in material and workmanship for a period of one year from the date of acceptance. The synthetic turf material will be warranted for a minimum of eight years from the date of acceptance. The Contractor shall properly correct any defects at no cost to the Owner. The turf manufacturer is required to have a representative on-site to certify installation and warranty compliance. Prior to final acceptance by the City the turf contractor must submit a written warranty that guarantees the usability and playability of the synthetic turf system for its intended use throughout the warranty period. The Contractor must submit an executed and notarized copy of the warranty documents and two additional copies of the maintenance manuals.

All Surveying, engineering, staking, and related work required for the successful completion of this project shall be the responsibility of the Contractor, and shall be performed by a Colorado registered surveyor, or under his/her responsible charge. Geotechnical reports will be provided by Jefferson County through the City of Golden upon request.

The Contractor shall provide all machinery, materials, and labor necessary to complete the installation of the synthetic turf fields. Upon completion of the fields provide a G-Max testing report to the Owner.

The Contractor shall strictly adhere to the manufacturer's instructions and installation procedures. Any variance from these requirements must be accepted in writing by the manufacturer's on-site representative and submitted to the Owner for approval. Installation shall not be altered in any way that may affect the product warranty.

The field pile fiber shall be a minimum height of 2 1/4 inches (finished and installed fabric height shall be 2-2 1/2 inches in height). The minimum pile weight will be 33 ounces per square yard. The minimum Denier rating will be 10,000. The minimum primary backing weight will be 8 ounces per square yard and the minimum secondary backing weight will be 15 ounces per square yard. The fiber shall be a proven athletic caliber yarn designed specifically for outdoor use and treated with UV inhibitor and stabilizers to resist the effects of ultraviolet degradation, heat, foot traffic, water and airborne pollutants. The fiber shall contain no toxic substances or heavy metals. In-fill can be a mix of sand and rubber or rubber only. G-max for the eight year warranty period shall be between 110 and 180. Bidders must submit turf product samples from the proposed manufacturers.

VI. SUBMITTALS WITH BID

Submitting firms must, as part of their proposal package, submit the following:

- A. Documents demonstrating compliance with the criteria established in Section II above.
- B. The itemized cost proposal, showing pricing from a minimum of three different manufacturers of synthetic turf material. Each of the three cost proposals must be itemized and totaled, with the synthetic turf manufacturer clearly identified in each.
- C. A project schedule that encompasses site investigation, surveying, design, and construction. For the purposes of this schedule, assume a Notice to Proceed is issued by the City no later than March 15, 2004.
- D. One product sample of the proposed turf from each proposed manufacturer. Said samples shall not exceed 2 feet by 2 feet in size, and must be clearly labeled as to manufacturer and product name.
- F. Specifications and product data from each synthetic turf manufacturer used to arrive at the bid, demonstrating compliance with the requirements of section 5 above.
- G. A design and lay-out of the proposed project in sufficient detail for the Owner to determine compliance with its project intent.
- H. Review comments regarding the enclosed form of agreement.
- I. A Bid Security in an amount equal to five (5) percent of the total amount of the bid is required to be submitted in conjunction with the sealed bid. The required security must be in the form of a certified or bank cashier's check made payable to OWNER or a Bid Bond provided by a surety company authorized to do business in the State of Colorado. The Bid Security of the successful BIDDER will be retained until such BIDDER has executed the Agreement and furnished the required contract security (performance and payment bonds) whereupon checks or bond furnished as Bid Security will be returned. If the Successful BIDDER fails to execute and deliver the Agreement and furnish the required contract security within 15 days of the Notice of Award, OWNER may annul the Notice of Award and Bid Security of that BIDDER will be forfeited. The bid security of other BIDDERS whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of the seventh day after the Effective Date of the Agreement or the forty-sixth day after the Bid opening, whereupon Bid security furnished by such BIDDERS will be returned. Bid security submitted with bids which are not competitive will be returned within seven days after the Bid opening.
- J. A fully executed Acceptance of Conditions Statement, which is attached as Exhibit 1.
- K. Five copies of the proposal and bid, sealed in an opaque envelope labeled "Rooney Road Sports Complex Proposal & Bid", are to be received by the City no later than 1:30 pm local time, February 6, 2004 at City of Golden, Community Center, 1470 10th Street, Golden, CO, 80401, attention: Vince Auriemma, P.E. At said date, time, and place, bids will be opened and read aloud. The location of the bid opening is the Beaver Brook Conference Room in the Golden Community Center.

CITY OF GOLDEN, COLORADO
Request for Bid for the Rooney Road Youth Sports Complex
December 23, 2003

EXHIBIT 1

ACCEPTANCE OF CONDITIONS STATEMENT

No City Council member, member of a Board or Commission, Municipal Judge, City Manager, City Attorney, or employee of the City of Golden or any such person's spouse, child, parent, brother, sister, dependent or person assuming a relationship being the substantial equivalent of the above, has an existing or pending, direct or indirect, financial, pecuniary, or personal interest in the submitting firm or this Request for Bid, except as follows: _____

I/we hereby agree to all instructions, terms and conditions, and specifications contained in this request for bid.

I acknowledge receipt of the following addenda: _____

Submitting Firm: _____

Address: _____

Telephone & Fax Numbers: _____

Submitted By: _____

(Signature)

Title: _____

Date: _____

Attest: _____

My Commission Expires: _____

[End of Request for Bid Document]