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DOC # 0735805  
01/15/2009 08:54 AM Deputy: SG

**OFFICIAL RECORD**

Requested By:

ACCURATE LIEN & CONTRACTOR

ASSISTANCE

Douglas County - NV  
Karen Ellison - Recorder

Page: 1 of 64 Fee: 102.00  
BK-0109 PG- 2483 RPTT: 0.00



- Parcel ID: 1320-30-701-016
- Parcel ID: 1320-30-701-017
- Parcel ID: 1320-30-701-018
- Parcel ID: 1320-30-701-019
- Parcel ID: 1320-30-701-020
- Parcel ID: 1320-30-802-025
- Parcel ID: 1320-30-802-026

Recording Requested by and Return to:

Action Construction, Inc.

✓ PO Box 2154  
Stateline, NV 89449

Title on Document: Notice of Lien

This page added to provide additional information required by NRS 111.312  
Sections 1-2 (Additional Recording Fee Applies)

This cover page must be typed or printed clearly in black ink only.

APN: See Exhibit A for Legal Description

**Recorded at the Request of and  
Return Recorded Document To:**

Action Construction, Inc.  
PO Box 2154  
Stateline, NV 89449

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**NOTICE OF LIEN (NRS 108.226)**

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is : \$ 301,500.46
2. The total amount of all additional or changed work, materials and equipment, if any, is \$ 109,044.00
3. The total amount of all payments received to date is \$ 340,575.18
4. The amount of the lien, after deducting all just credits and offsets, is: \$92,251.67
5. The name of the owner, if known, of the property is: Minden Gateway Center LLC c/o Emerald Assets/J. Lowden, 2248 Meridian Boulevard, Suite H, Minden, NV 89423-8620--- Minden Gateway Center LLC c/o Emerald Assets/J. Lowden, 3550 West 6<sup>th</sup> Street, Suite 400, Los Angeles, CA 90020---Minden Hotel LLC c/o Singh & Dhami, 4056 North Carson Street, Carson City, NV 89703---Sky West Investments, Inc., 3550 West 6<sup>th</sup> Street, Suite 400, Los Angeles, CA 90020---Sky West Investments, Inc., 2248 Meridian Boulevard, Suite H, Minden, NV 89423---J & J Lowden Family Trust (Jeffery Lowden, Diane Lowden, Diane Keith), 3550 West 6<sup>th</sup> Street, Suite 400, Los Angeles, CA 90020.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: Sky West Investments, Inc./J&J Lowden Family Trust/Minden Gateway Center LLC, 3550 West 6<sup>th</sup> Street, Suite 400, Los Angeles, CA 90020---Sky West Investments, Inc. /J&J Lowden Family Trust/Minden Gateway Center LLC, 2248 Meridian Boulevard, Suite H, Minden, NV 89423.
7. A brief statement of the terms of payment of the lien claimant's contract is: See Attached Invoices for Terms and Conditions.
8. A description of the property to be charged with the lien is: Minden Gateway Center Project Field Detentions and Sewer Systems, Highway 88 and 395, Minden, NV in Douglas County, Nevada,  
SEE EXHIBIT A FOR LEGAL DESCRIPTION

Action Construction, Inc.  
(Print Name of Lien Claimant)

By: Gregory S. Hunt (Authorized Signature)  
Print Signer Name: GREGORY S. HUNT  
Print Signer Title: PRESIDENT

STATE OF Nevada )  
COUNTY OF Douglas )

Gregory S. Hunt (print name), being first duly sworn on oath according to law, deposes and says:

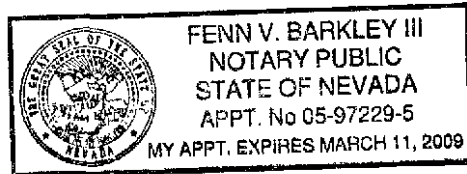
I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon the information and belief, and as to those matters, I believe them to be true.

By: Gregory S. Hunt (Authorized Signature)  
Print Signer Name: GREGORY S. HUNT  
Print Signer Title: PRESIDENT

Gregory S. Hunt  
(Authorized Signature of Lien Claimant)

Subscribed and sworn to before me this 6th day of the month of January of the year 2009.

Fenn V. Barkley III  
(Authorized Signature)



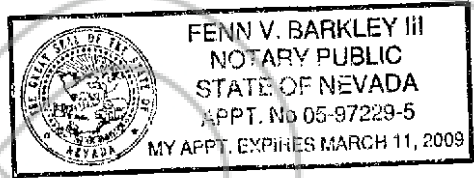
ACKNOWLEDGEMENT BY NOTARY PUBLIC

STATE OF Nevada Jss.  
County of Douglas Jss.

On 01/06/09 (Date) before me, the undersigned, a Notary Public in and for said state, personally appeared Gregory L. Hunt [ X ] Personally known to me

Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the attached instrument and acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her their signature(s) on the instrument the person(s), or their entity upon behalf for which the person(s) acted, executed the instrument.

Signature Fenn V. Barkley III  
Fenn V. Barkley III  
(Notary Name Printed)



CAPACITY CLAIMED BY SIGNER

Individual  
Subscribing Witness  
Corporate Officer(s)  
Partner(s)

Guardian  
Attorney-In-Fact  
Trustee(s)

Other President

Titles \_\_\_\_\_

Attention Notary: Although the information required below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized documents.

Title of Type of Document: \_\_\_\_\_

Date of Document: \_\_\_\_\_ (Date)

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_



Exhibit A-Legal Description

Parcel ID: 1320-30-701-016

Parcel ID: 1320-30-701-017

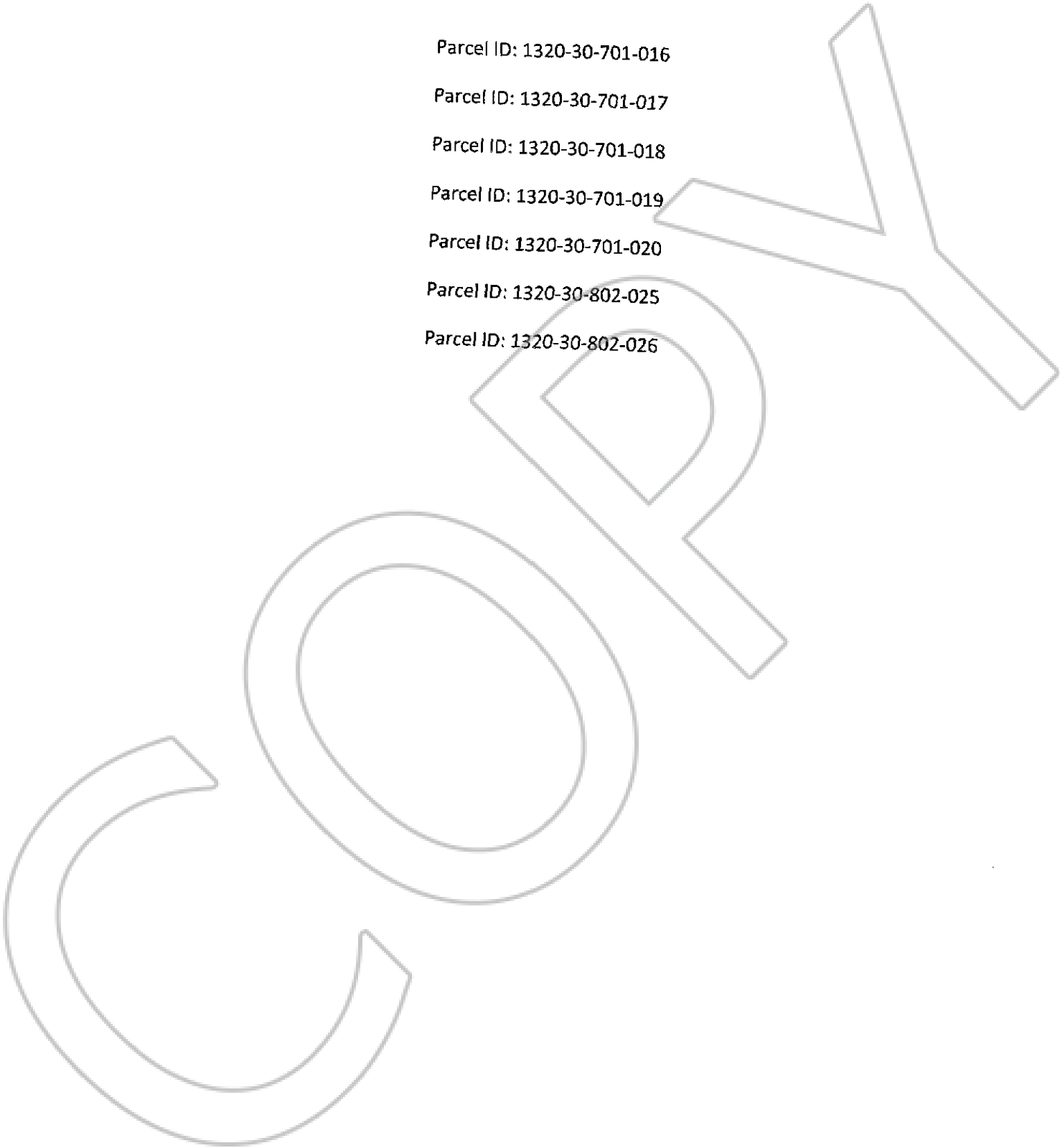
Parcel ID: 1320-30-701-018

Parcel ID: 1320-30-701-019

Parcel ID: 1320-30-701-020

Parcel ID: 1320-30-802-025

Parcel ID: 1320-30-802-026



**DESCRIPTION  
PARCEL 1**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of Section 30, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at a point on the easterly line of Tract 'E' as shown on the Record of Survey to Accompany a Lot Line Adjustment for Minden Properties, Inc. filed for record May 17, 1991 in the office of Recorder, Douglas County, Nevada as Document No. 250947, a found 5/8" rebar with plastic cap PLS 1586;

thence along said easterly line of Tract 'E' and the easterly line of Tract 'B-2' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788, North 26°35'00" East, 291.00 feet to the southeasterly corner of Tract 'B-1' as shown on said Parcel Map;

thence along the southerly line of said Tract 'B-1', North 64°00'17" West, 183.43 feet to the POINT OF BEGINNING;

thence South 25°59'43" West, 2.47 feet;

thence North 64°35'34" West, 96.85 feet;

thence South 00°22'11" West, 55.99 feet;

thence North 89°37'49" West, 25.00 feet;

thence South 00°22'11" West, 12.00 feet;

thence North 89°37'49" West, 20.00 feet;

thence North 00°22'11" East, 51.00 feet;

thence South 89°43'59" West, 45.00 feet;

thence North 00°22'53" East, 174.56 feet;

thence North 89°47'49" West, 65.04 feet;

thence North 00°22'11" East, 60.00 feet;

thence North 64°00'17" West, 20.43 feet;

thence North 00°22'11" East, 28.28 feet to a point on the right-of-way line of U.S.

Highway 395;

thence along said right-of-way line, South 64°00'17" East, 348.03 feet;

thence South 25°59'43" West, 9.00 feet to the northwest corner of said Tract 'B-

1';

thence along the boundary of said Tract 'B-1' the following courses:

South 25°59'43" West, 109.88 feet;

North 64°00'17" West, 36.68 feet;

South 25°59'43" West, 22.55 feet;

South 64°00'17" East, 19.91 feet;

Along the arc of a curve to the right, having a radius of 37.50 feet, central angle of 31°59'34" and arc length of 20.94 feet;

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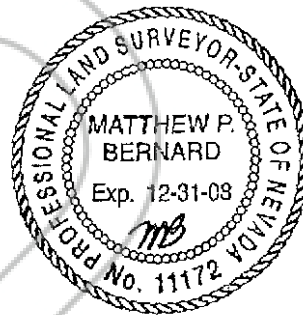


Along the arc of a reverse curve, having a radius of 22.50 feet, central angle of 31°59'34" and arc length of 12.56 feet to the POINT OF BEGINNING, containing 43,560 square feet (1.00 acres), more or less.

The Basis of Bearing of this description is South 26°35'00" West, the east line of Tracts 'B-1' and 'B-2' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788.

Note: Refer this description to your title company before incorporating into any legal document.

Prepared By: R.O. ANDERSON ENGINEERING, INC.  
P.O. Box 2229  
Minden, Nevada 89423



4-14-08

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**DESCRIPTION  
PARCEL 2**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of Section 30, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

BEGINNING at a point on the easterly line of Tract 'E' as shown on the Record of Survey to Accompany a Lot Line Adjustment for Minden Properties, Inc. filed for record May 17, 1991 in the office of Recorder, Douglas County, Nevada as Document No. 250947, a found 5/8" rebar with plastic cap PLS 1586;

thence along said easterly line of Tract 'E', North 64°42'46" West, 14.18 feet;

thence continuing along said easterly line, South 00°22'11" West, 134.60 feet;

thence North 63°56'19" West, 40.98 feet;

thence North 26°03'41" East, 39.50 feet;

thence North 63°56'19" West, 119.80 feet;

thence North 89°37'49" West, 29.56 feet;

thence North 00°22'29" East, 101.50 feet;

thence North 89°37'49" West, 45.50 feet;

thence North 00°22'11" East, 123.00 feet;

thence North 89°37'49" West, 19.50 feet;

thence North 00°22'11" East, 18.50 feet;

thence North 89°37'49" West, 48.50 feet;

thence North 00°22'11" East, 43.00 feet;

thence South 89°37'49" East, 49.50 feet;

thence North 00°22'11" East, 39.50 feet;

thence South 89°37'49" East, 63.50 feet;

thence North 00°22'11" East, 9.00 feet;

thence South 89°37'49" East, 20.00 feet;

thence North 00°22'11" East, 12.00 feet;

thence South 89°37'49" East, 25.00 feet;

thence North 00°22'11" East, 55.99 feet;

thence South 64°35'34" East, 96.85 feet;

thence North 25°59'43" East, 2.47 feet to a point on the southerly line of Tract 'B-1' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788;

thence along said southerly line, South 64°00'17" East, 183.43 feet to the southeasterly corner of said Tract 'B-1';

thence along the easterly line of Tract 'B-2' as shown on said Parcel Map and the easterly line of said Tract 'E', South 26°35'00" West, 291.00 feet to the POINT OF BEGINNING, containing 101,956 square feet (2.34 acres), more or less.

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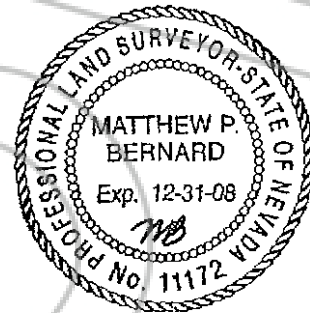




The Basis of Bearing of this description is South 26°35'00" West, the east line of Tracts 'B-1' and 'B-2' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788.

Note: Refer this description to your title company before incorporating into any legal document.

Prepared By: R.O. ANDERSON ENGINEERING, INC.  
P.O. Box 2229  
Minden, Nevada 89423



4-14-08

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**DESCRIPTION  
PARCEL 3**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of Section 30, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at a point on the easterly line of Tract 'E' as shown on the Record of Survey to Accompany a Lot Line Adjustment for Minden Properties, Inc. filed for record May 17, 1991 in the office of Recorder, Douglas County, Nevada as Document No. 250947, a found 5/8" rebar with plastic cap PLS 1586;

thence along said easterly line of Tract 'E', North 64°42'46" West, 14.18 feet;

thence continuing along said easterly line, South 00°22'11" West, 134.60 feet to the POINT OF BEGINNING;

thence continuing along said easterly line of Tract 'E' and the easterly line of the parcel shown as APN 1320-30-802-001 on the Record of Survey for MacDaddy, LLC etal filed for record January 31, 2007 in said office of Recorder, as Document No. 694124, South 00°22'11" West, 265.52 feet to a found 5/8" rebar with plastic cap PLS 6899;

thence along the southerly line of said parcel shown as APN 1320-30-802-001, North 63°56'19" West, 439.46 feet;

thence North 26°03'41" East, 93.77 feet;

thence South 63°56'19" East, 35.50 feet;

thence North 26°03'41" East, 79.50 feet;

thence South 63°56'19" East, 5.33 feet;

thence North 26°03'41" East, 20.50 feet;

thence South 63°56'19" East, 63.96 feet;

thence North 26°03'41" East, 25.00 feet;

thence North 63°56'19" West, 18.44 feet;

thence North 00°37'34" East, 122.09 feet;

thence South 89°37'49" East, 65.50 feet;

thence South 00°22'29" West, 101.50 feet;

thence South 89°37'49" East, 29.56 feet;

thence South 63°56'19" East, 119.80 feet;

thence South 26°03'41" West, 39.50 feet;

thence South 63°56'19" East, 40.98 feet to the POINT OF BEGINNING,

containing 96,448 square feet (2.21 acres), more or less.

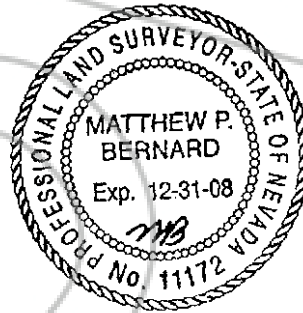
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The Basis of Bearing of this description is South 26°35'00" West, the east line of Tracts 'B-1' and 'B-2' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788.

Note: Refer this description to your title company before incorporating into any legal document.

Prepared By: R.O. ANDERSON ENGINEERING, INC.  
P.O. Box 2229  
Minden, Nevada 89423



4-14-08

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**DESCRIPTION  
PARCEL 4**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of Section 30, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at a point on the easterly line of Tract 'E' as shown on the Record of Survey to Accompany a Lot Line Adjustment for Minden Properties, Inc. filed for record May 17, 1991 in the office of Recorder, Douglas County, Nevada as Document No. 250947, a found 5/8" rebar with plastic cap PLS 1586;

thence along said easterly line of Tract 'E', North 64°42'46" West, 14.18 feet;  
thence continuing along said easterly line of Tract 'E' and the easterly line of the parcel shown as APN 1320-30-802-001 on the Record of Survey for MacDaddy, LLC etal filed for record January 31, 2007 in said office of Recorder, as Document No. 694124, South 00°22'11" West, 400.12 feet to the southeast corner of said parcel shown as APN 1320-30-802-001, a found 5/8" rebar with plastic cap PLS 6899;

thence along the southerly line of said parcel shown as APN 1320-30-802-001, North 63°56'19" West, 439.46 feet to the POINT OF BEGINNING;

thence continuing along said southerly line, North 63°56'19" West, 285.88 feet to a found "pk" nail and washer stamped PLS 6899, said point falling on the easterly right-of-way line of State Route 88;

thence along said easterly right-of-way line, North 00°22'11" East, 144.93 feet;

thence South 89°37'49" East, 159.82 feet;

thence North 00°22'11" East, 19.16 feet;

thence South 89°37'49" East, 25.00 feet;

thence North 00°22'11" East, 38.77 feet;

thence South 89°37'49" East, 83.50 feet;

thence South 00°22'11" West, 90.84 feet;

thence South 63°56'19" East, 97.48 feet;

thence South 26°03'41" West, 44.00 feet;

thence North 63°56'19" West, 4.83 feet;

thence South 26°03'41" West, 173.27 feet to the POINT OF BEGINNING,  
containing 70,510 square feet (1.62 acres), more or less.

The Basis of Bearing of this description is South 26°35'00" West, the east line of Tracts 'B-1' and 'B-2' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788.

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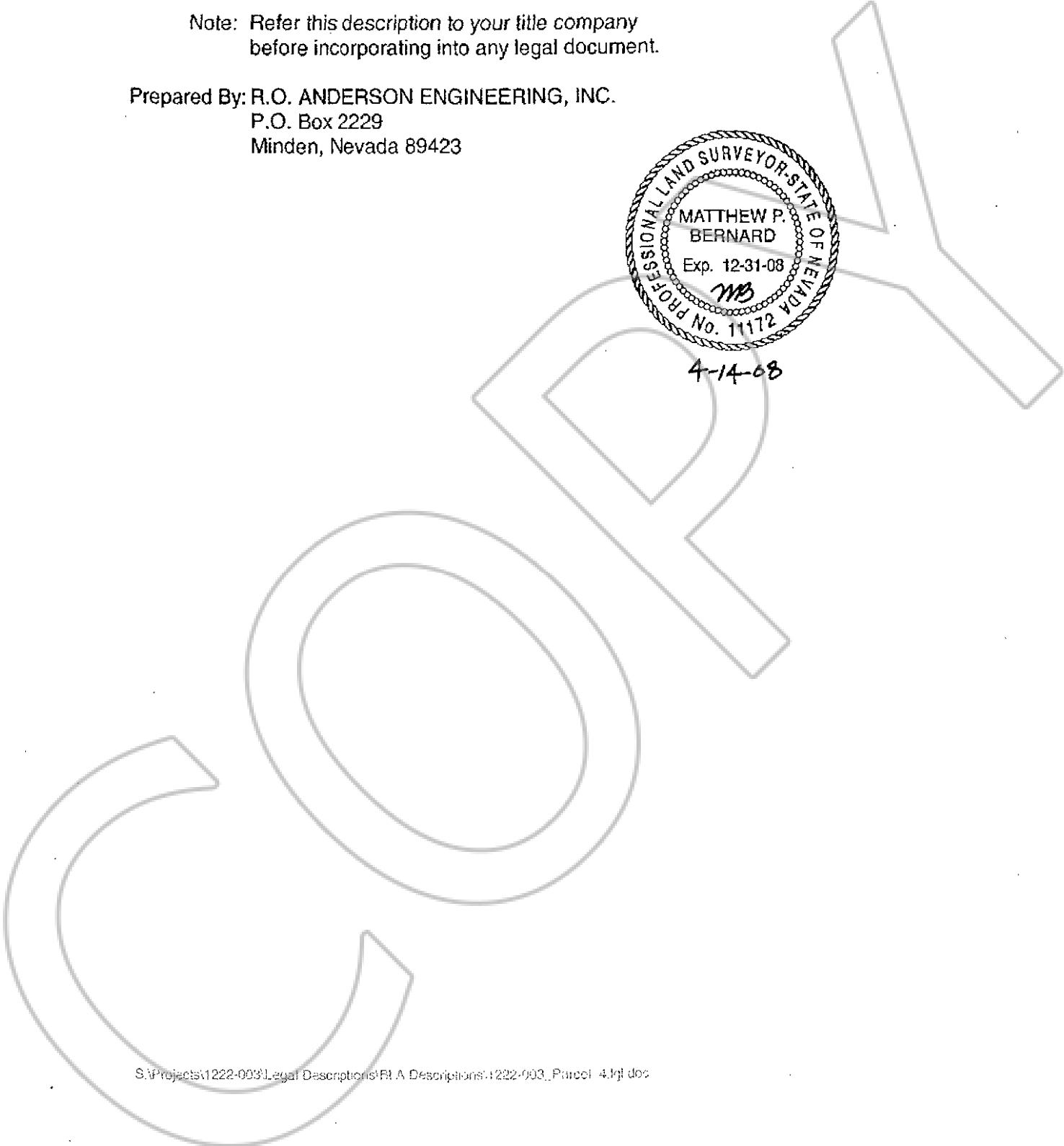


Note: Refer this description to your title company  
before incorporating into any legal document.

Prepared By: R.O. ANDERSON ENGINEERING, INC.  
P.O. Box 2229  
Minden, Nevada 89423



4-14-08



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**DESCRIPTION  
PARCEL 5**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of Section 30, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at a point on the easterly line of Tract 'E' as shown on the Record of Survey to Accompany a Lot Line Adjustment for Minden Properties, Inc. filed for record May 17, 1991 in the office of Recorder, Douglas County, Nevada as Document No. 250947, a found 5/8" rebar with plastic cap PLS 1586;

thence along said easterly line of Tract 'E', North 64°42'46" West, 14.18 feet;

thence continuing along said easterly line of Tract 'E' and the easterly line of the parcel shown as APN 1320-30-802-001 on the Record of Survey for MacDaddy, LLC etal filed for record January 31, 2007 in said office of Recorder, as Document No. 694124, South 00°22'11" West, 400.12 feet to the southeast corner of said parcel shown as APN 1320-30-802-001, a found 5/8" rebar with plastic cap PLS 6899;

thence along the southerly line of said parcel shown as APN 1320-30-802-001, North 63°56'19" West, 725.34 feet to a found "pk" nail and washer stamped PLS 6899, said point falling on the easterly right-of-way line of State Route 88;

thence along said easterly right-of-way line, North 00°22'11" East, 323.19 feet to the POINT OF BEGINNING;

thence continuing along said easterly right-of-way line, North 00°22'11" East, 216.46 feet;

thence South 89°37'49" East, 269.82 feet;

thence South 00°22'11" West, 152.79 feet;

thence South 89°37'49" East, 20.00 feet;

thence South 00°22'11" West, 9.00 feet;

thence South 89°37'49" East, 25.50 feet;

thence South 00°22'11" West, 57.50 feet;

thence North 89°37'49" West, 129.81 feet;

thence North 00°22'11" East, 2.83 feet;

thence North 89°37'49" West, 185.52 feet to the POINT OF BEGINNING, containing 61,441 square feet (1.41 acres), more or less.

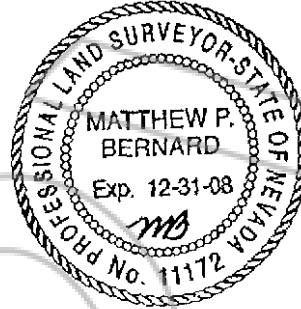
The Basis of Bearing of this description is South 26°35'00" West, the east line of Tracts 'B-1' and 'B-2' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788.

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Note: Refer this description to your title company  
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Prepared By: R.O. ANDERSON ENGINEERING, INC.  
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Minden, Nevada 89423



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COPY

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**DESCRIPTION  
PARCEL 6**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of Section 30, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at a point on the easterly line of Tract 'E' as shown on the Record of Survey to Accompany a Lot Line Adjustment for Minden Properties, Inc. filed for record May 17, 1991 in the office of Recorder, Douglas County, Nevada as Document No. 250947, a found 5/8" rebar with plastic cap PLS 1586;

thence along said easterly line of Tract 'E', North 64°42'46" West, 14.18 feet;  
thence continuing along said easterly line of Tract 'E' and the easterly line of the parcel shown as APN 1320-30-802-001 on the Record of Survey for MacDaddy, LLC etal filed for record January 31, 2007 in said office of Recorder, as Document No. 694124, South 00°22'11" West, 400.12 feet to the southeast corner of said parcel shown as APN 1320-30-802-001, a found 5/8" rebar with plastic cap PLS 6899;

thence along the southerly line of said parcel shown as APN 1320-30-802-001, North 63°56'19" West, 725.34 feet to a found "pk" nail and washer stamped PLS 6899, said point falling on the easterly right-of-way line of State Route 88;

thence along said easterly right-of-way line, North 00°22'11" East, 539.65 feet to the POINT OF BEGINNING;

thence continuing along said easterly right-of-way line, North 00°22'11" East, 21.92 feet to a found 5/8" rebar with plastic cap PLS 6899;

thence continuing along said easterly right-of-way line, along the arc of a curve to the right, non-tangent to the previous course, having a radial bearing of North 89°44'22" West, radius of 210.00 feet, central angle of 102°08'01" and arc length of 374.34 feet to a point on the right-of-way line of U.S. Highway 395;

thence along said right-of-way line of U.S. Highway 395, South 64°00'17" East, 126.06 feet;

thence South 00°22'11" West, 28.28 feet;  
thence South 64°00'17" East, 20.43 feet;  
thence South 00°22'11" West, 60.00 feet;  
thence South 89°47'49" East, 65.04 feet;  
thence South 00°22'53" West, 174.56 feet;  
thence North 89°43'59" East, 45.00 feet;  
thence South 00°22'11" West, 60.00 feet;  
thence North 89°37'49" West, 63.50 feet;  
thence South 00°22'11" West, 39.50 feet;  
thence North 89°37'49" West, 49.50 feet;  
thence South 00°22'11" West, 43.00 feet;

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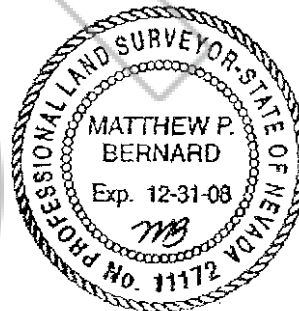


thence South 89°37'49" East, 48.50 feet;  
thence South 00°22'11" West, 18.50 feet;  
thence South 89°37'49" East, 19.50 feet;  
thence South 00°22'11" West, 27.00 feet;  
thence North 89°37'49" West, 83.50 feet;  
thence North 00°22'11" East, 66.50 feet;  
thence North 89°37'49" West, 52.00 feet;  
thence North 00°22'11" East, 57.50 feet;  
thence North 89°37'49" West, 25.50 feet;  
thence North 00°22'11" East, 9.00 feet;  
thence North 89°37'49" West, 20.00 feet;  
thence North 00°22'11" East, 152.79 feet;  
thence North 89°37'49" West, 269.82 feet to the POINT OF BEGINNING,  
containing 120,869 square feet (2.77 acres), more or less.

The Basis of Bearing of this description is South 26°35'00" West, the east line of Tracts 'B-1' and 'B-2' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788.

Note: Refer this description to your title company before incorporating into any legal document.

Prepared By: R.O. ANDERSON ENGINEERING, INC.  
P.O. Box 2229  
Minden, Nevada 89423



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**DESCRIPTION  
PARCEL 7**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of Section 30, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at a point on the easterly line of Tract 'E' as shown on the Record of Survey to Accompany a Lot Line Adjustment for Minden Properties, Inc. filed for record May 17, 1991 in the office of Recorder, Douglas County, Nevada as Document No. 250947, a found 5/8" rebar with plastic cap PLS 1586;

thence along said easterly line of Tract 'E', North 64°42'46" West, 14.18 feet;

thence continuing along said easterly line of Tract 'E' and the easterly line of the parcel shown as APN 1320-30-802-001 on the Record of Survey for MacDaddy, LLC etal filed for record January 31, 2007 in said office of Recorder, as Document No. 694124, South 00°22'11" West, 400.12 feet to the southeast corner of said parcel shown as APN 1320-30-802-001, a found 5/8" rebar with plastic cap PLS 6899;

thence along the southerly line of said parcel shown as APN 1320-30-802-001, North 63°56'19" West, 725.34 feet to a found "pk" nail and washer stamped PLS 6899, said point falling on the easterly right-of-way line of State Route 88;

thence along said easterly right-of-way line, North 00°22'11" East, 144.93 feet to the POINT OF BEGINNING;

thence continuing along said easterly right-of-way line, North 00°22'11" East, 178.26 feet;

thence South 89°37'49" East, 185.52 feet;

thence South 00°22'11" West, 2.83 feet;

thence South 89°37'49" East, 181.81 feet;

thence South 00°22'11" West, 66.50 feet;

thence South 89°37'49" East, 83.50 feet;

thence South 00°22'11" West, 96.00 feet;

thence North 89°37'49" West, 20.00 feet;

thence South 00°37'34" West, 122.09 feet;

thence South 63°56'19" East, 18.44 feet;

thence South 26°03'41" West, 25.00 feet;

thence North 63°56'19" West, 63.96 feet;

thence South 26°03'41" West, 20.50 feet;

thence North 63°56'19" West, 5.33 feet;

thence South 26°03'41" West, 79.50 feet;

thence North 63°56'19" West, 35.50 feet;

thence North 26°03'41" East, 79.50 feet;

thence South 63°56'19" East, 4.83 feet;

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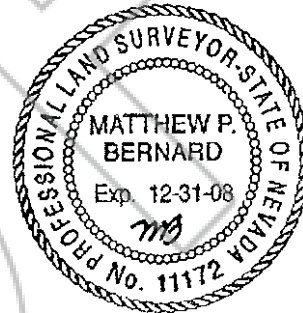


thence North 26°03'41" East, 44.00 feet;  
thence North 63°56'19" West, 97.48 feet;  
thence North 00°22'11" East, 90.84 feet;  
thence North 89°37'49" West, 83.50 feet;  
thence South 00°22'11" West, 38.77 feet;  
thence North 89°37'49" West, 25.00 feet;  
thence South 00°22'11" West, 19.16 feet;  
thence North 89°37'49" West, 159.82 feet to the POINT OF BEGINNING,  
containing 86,088 square feet (1.98 acres), more or less.

The Basis of Bearing of this description is South 26°35'00" West, the east line of Tracts 'B-1' and 'B-2' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788.

Note: Refer this description to your title company  
before incorporating into any legal document.

Prepared By: R.O. ANDERSON ENGINEERING, INC.  
P.O. Box 2229  
Minden, Nevada 89423



4-14-08

S:\Projects\1222-003\Legal Descriptions\SLA Descriptions\1222-003 Parcel 7.fig.doc

**Exhibit A  
LEGAL DESCRIPTION**

All that real property situated in the County of Douglas, State of Nevada, described as follows:  
PARCEL 1:

A parcel of land located within a portion of Section 30, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

BEGINNING at a point on the easterly line of Tract 'E' as shown on the Record of Survey to Accompany a Lot Line Adjustment for Minden Properties, Inc. filed for record May 17, 1991 in the office of Recorder, Douglas County, Nevada as Document No. 250947, a found 5/8" rebar with plastic cap PLS 1586;

Thence along said easterly line of Tract 'E', North 64°42'46" West, 14.18 feet;  
Thence continuing along said easterly line, South 00°22'11" West, 134.60 feet;  
Thence North 63°56'19" West, 40.98 feet;  
Thence North 26°03'41" East, 39.50 feet;  
Thence North 63°56'19" West, 119.80 feet;  
Thence North 89°37'49" West, 29.56 feet;  
Thence North 00°22'29" East, 101.50 feet;  
Thence North 89°37'49" West, 45.50 feet;  
Thence North 00°22'11" East, 123.00 feet;  
Thence North 89°37'49" West, 19.50 feet;  
Thence North 00°22'11" East, 18.50 feet;  
Thence North 89°37'49" West, 48.50 feet  
Thence North 00°22'11" East, 43.00 feet;  
Thence South 89°37'49" East, 49.50 feet;  
Thence North 00°22'11" East, 39.50 feet;  
Thence South 89°37'49" East, 63.50 feet;  
Thence North 00°22'11" East, 9.00 feet;  
Thence South 89°37'49" East, 20.00 feet;  
Thence North 00°22'11" East, 12.00 feet;  
Thence South 89°37'49" East, 25.00 feet;  
Thence North 00°22'11" East, 55.99 feet;  
Thence South 64°35'34" East, 96.85 feet;  
Thence North 25°59'43" East, 2.47 feet to a point on the southerly line of Tract 'B-1' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788;  
Thence along said southerly line, South 64°00'17" East, 183.43 feet to the southeasterly corner of said Tract 'B-1';  
Thence along the easterly line of Tract 'B-2' as shown on said Parcel Map and the easterly line of said Tract 'E', South 26°35'00" West, 291.00 feet to the POINT OF BEGINNING.

The Basis of Bearing of this description is South 26°35'00" West, the east line of Tracts 'B-1' and 'B-2' as shown on the Parcel Map for Raymond D. May filed for record December 23, 2004 in said office of Recorder as Document No. 632788.

A portion of APN's 1320-30-701-001, 012, 013, 015



Said land further described as Parcel 2 on Record of Survey to Support a Boundary Line Adjustment for Minden Gateway Center, LLC, filed for record with the Douglas County Recorder on May 8, 2008 as Document No. 722798, Official Records, Douglas County, Nevada.

PARCEL 2:

A non-exclusive easement for pedestrian and vehicular ingress, egress, parking and incidental purposes as created by that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions and Grant of Easements recorded May 8, 2008, in Book 0508, Page 1566 as Instrument No. 722796, Official Records, Douglas County, Nevada.

DRAFT



Mindan Gateway Center Site Work  
 Change Order

CONTRACT: Field Detection and Sensor System

CHANGE ORDER NO. 1

The Contractor is hereby authorized to make the following changes to the Scope of Work for the referenced contract, subject to the provisions of the contract documents:

Item #1: Test Change Order is authorized to incorporate field detection and sensor system changes mandated by local jurisdictions. See attached Change Order 1 Detail for cost breakdown.

Justification: Douglas County, Town of Mandan, Windsor/Gandhiville Sanitation District, and Esment Negotiation Requirements.

Item #1: Increases the Contract Sum by:

Item #1: Decreases the Contract Term by:

N/A calendar days

SUMMARY

1	Original Contract Sum	\$	501,502.68		
2	Net changes by previously approved Change Orders:	\$	0		
3	Contract Sum prior to this Change Order:	\$	501,502.68		
4	Contract Sum will be increased by this Change Order in the amount of:	\$	109,049.41		
5	Revised Contract Sum including this Change Order:	\$	610,552.09		
6	Original number of calendar days to complete the contract:	N/A	calendar days		
7	Contract Term will be exchanged by:	N/A	calendar days		
8	Revised number of days to complete the contract:	N/A	calendar days		
9	Revised date of Completion by this Change Order:	Unchanged			

Not valid until signed by Owner, Contractor, and Construction Manager.

This change authorization constitutes full and complete compensation for all labor, equipment, materials, overhead, profit, any and all indirect costs, and time adjustment to perform the above described change. All other costs are non-compensable.

CONTRACTOR:

By: *[Signature]*  
 Title: *[Title]*

CONSTRUCTION MANAGER:

By: *[Signature]*  
 Title: *[Title]*

Project Name: *[Project Name]*

Project Name: *[Project Name]*

Date: *6/30/08*

Date: *6-20-08*

Date: *7/1/08*

TO: Justin - X203  
 BK- 0109  
 PG- 2504  
 0735805  
 Page: 22 Of 64  
 01/15/2009

TON (775)885 0178  
 (3 pages)





**Minden Gateway Center Sitework  
Action Construction Change Order No. 1 Detail  
Field Detention and Sewer System**

Field Detention and Sewer System Contract is hereby amended to include changes to the following items:

- 1) On-Site Field Detentions:
- 2) Off-Site Field Detentions:
- 3) Sewer:

*JJ*  
7/1/08  
~~\$110,483.00~~ **\$103,483.**  
 \$ 4,103.00  
 \$ 1,458.00  
*JJ*  
7/1/08

Scope adjustment

*JJ*  
7/1/08  
~~\$121,044.00~~ **\$109,044.**  
*JJ*  
7/1/08

**COOPER**

*J.N.*  
6-27-08



BK- 0109  
PG- 2506

0735805 Page: 24 Of 64 01/15/2009



**Action Construction Company**

Post Office Box 2154

Stateline, NV 89449

**Invoice**

Date	Invoice #
9/26/2008	FD&SS CO#1

Phone #	Fax #
(530) 542-9353	(530) 542-1882
E-mail	sewercam@yahoo.com

Bill To
Sky West Investments, Inc. 2248 Meridian Blvd Ste. H Minden, NV 89423 Manager MBI

Contract	P.O. No.
Fld Dententios&Sewer System	Minden Gateway

Description	Quantity	Rate	Amount
Field Dententions & Sewer Systems to Date per Change Order # 1 Se attached Application & Certification for Payment / Exhibit D Sheets for Details Amount of Retention		23,750.00	23,750.00
		-10.00%	-2,375.00

<b>TOTAL</b>	\$21,375.00
<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$21,375.00





Mackin  
10437043

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**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND TRADE  
CONTRACTOR**

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**(Where The Construction Manager Is The  
Owner's Agent)**

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TRADE CONTRACTOR AGREEMENT NO. Field Detentions and Sewer System

**TABLE OF ARTICLES**

1. AGREEMENT
2. RELATIONSHIP OF PARTIES
3. TRADE CONTRACT DOCUMENTS
4. SCOPE OF WORK
5. TRADE CONTRACT PRICE
6. TRADE CONTRACTOR SURETY BONDS
7. PERFORMANCE OF WORK
8. INTERPRETATION
9. OWNER'S OBLIGATIONS
10. TRADE CONTRACTOR'S OBLIGATIONS
11. LABOR RELATIONS
12. INSURANCE
13. INDEMNIFICATION
14. CHANGES, CLAIMS AND DELAYS
15. PAYMENT
16. DISPUTE RESOLUTION
17. RECOURSE BY OWNER
18. TERMINATION BY TRADE CONTRACTOR
19. MISCELLANEOUS PROVISIONS

---

This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

April 24, 2008

Mr. Greg Hunt  
Action Construction

Re: **Minden Gateway Center Contract Amendment No. 1 -  
Demolition & Grading, Underground Water, Field Detentions and Sewer,  
Storm Drain & Concrete Base**

This Amendment No. 1 changes the Owner's name on each of your contracts from Minden Gateway Center, LLC to Sky West Investments, Inc. All addressing for correspondence remains the same. Jeffrey Lowden shall continue to sign all contractual agreements. Sky West Investments, Inc. shall take on the role as the owner/developer of the center for Minden Gateway Center, LLC.

Accepted:

  
Greg Hunt

**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND TRADE CONTRACTOR  
(Where The Construction Manager Is The Owner's Agent)**

**ARTICLE 1  
AGREEMENT**

This Trade Contractor Agreement is made effective as of the Eighteenth  
day of March in the year 2008 by and between the

**OWNER**  
(Name and Address)

Minden Gateway Center, LLC  
2248 Meridian BLVD Ste. H  
Minden, NV 89423

SEE AMENDMENT # 1

and the  
**TRADE CONTRACTOR**  
(Name and Address)

Action Construction Co.  
PO Box 2154  
Stateline, NV 889449-2154

for work in connection with the following  
**PROJECT**  
(Description of Project)

Minden Gateway Center, LLC  
US Highway 395  
Minden, NV 89423

The **ARCHITECT/ENGINEER** for the Project is  
(Name and Address)

RO Anderson  
1603 Esmeralda Ave.  
Minden, NV 89423

The **CONSTRUCTION MANAGER** is  
(Name and Address)

Metcalf Builders, Inc.  
751 Basque Way  
Carson City, NV 89706

Notice to the parties shall be given at the above addresses.



**ARTICLE 2**

**RELATIONSHIP OF PARTIES**

**2.1 PROJECT ORGANIZATION** This Trade Contractor Agreement is for the performance of work described herein in connection with the construction of the Project. The Owner also may enter into separate agreements with other trade contractors for other portions of the Project. The Owner has entered or will enter into a Construction Management Agreement with the Construction Manager, and a design agreement with the Architect/Engineer.

**2.2 TRADE CONTRACTOR IS INDEPENDENT CONTRACTOR** The Trade Contractor shall perform its obligations under this Trade Contractor Agreement using its best skill, care and diligence as an independent contractor.

**2.3 CONSTRUCTION MANAGER IS OWNER'S AGENT** The Construction Manager will represent the Owner as its agent in the administration and management of this Trade Contractor Agreement. Any instructions, reviews, approvals, orders or directions given to the Trade Contractor by the Construction Manager will be given on behalf of and as agent for the Owner. The Trade Contractor shall be obligated to respond and/or perform as if the same were given directly by the Owner.

**2.4 CONSTRUCTION MANAGER NOT IN PRIVITY WITH TRADE CONTRACTOR** This Trade Contractor Agreement shall not give the Trade Contractor any claim or right of action against the Construction Manager. The Trade Contractor and its subcontractors shall not be beneficiaries of any obligations of the Construction Manager. This Trade Contractor Agreement shall not create a contractual relationship between any parties except the Owner and the Trade Contractor.

**ARTICLE 3**

**TRADE CONTRACT DOCUMENTS**

**3.1 TRADE CONTRACT DOCUMENTS** The Trade Contract Documents, all of which collectively comprise this Trade Contractor Agreement, consist of this Standard Form of Agreement Between Owner and Trade Contractor, and the following listed documents, schedules and attachments which are all incorporated herein by reference and made a part hereof:  
(List all documents including special, supplementary or other contract conditions, specifications, drawings, addenda, modifications, alternates, schedules including those identified in Article 5, attachments, and other documents which together form the Trade Contractor Agreement.)

**3.2 INCONSISTENCIES WITH OTHER DOCUMENTS** Where any provision of the documents incorporated by reference into this Trade Contractor Agreement is inconsistent with any provision of this Standard Form of Agreement Between Owner and Trade Contractor, this Standard Form of Agreement Between Owner and Trade Contractor shall govern.

**ARTICLE 4**

**SCOPE OF WORK**

**4.1 TRADE CONTRACT WORK** The Trade Contractor shall provide all labor, materials, equipment and services necessary to complete the following work for the Project, referred to as the Trade Contract Work, all of which shall be provided in full accordance with and as reasonably inferable from the Trade Contract Documents.

In accordance with Exhibits A - E attached hereto & made a part hereof.

**4.2 TEMPORARY SERVICES** The Owner will provide the Trade Contractor the following temporary services at the Project site during the performance of this Trade Contractor Agreement at no charge to the Trade Contractor:

Upon notification from Trade Contractor, Owner shall have temporary fencing erected around site perimeter.

The Trade Contractor shall provide, at its own expense, all other necessary temporary services for the completion of its Trade Contract Work.



ARTICLE 5

TRADE CONTRACT PRICE

5.1 TRADE CONTRACT PRICE As full compensation for performance by the Trade Contractor of the Trade Contractor Agreement, the Owner agrees to pay the Trade Contractor in the manner described below, subject to all applicable provisions of this Trade Contractor Agreement:

.1 the lump sum price of Three Hundred One Thousand Five Hundred dollars and 46/100 Dollars (\$ 301,500.46 ) subject to additions and deductions as provided for in the Trade Contractor Agreement; and/or

.2 unit prices in accordance with the attached schedule of unit prices and estimated quantities, if any, which is incorporated by reference and identified in Paragraph 3.1; and/or

.3 time and material rates and prices in accordance with the attached schedule of labor and material costs which is incorporated by reference and identified in Paragraph 3.1; and/or

.4 other basis of compensation as described below: N/A

The lump sum price, unit prices, time and material rates and prices and/or other compensation are hereinafter referred to as the Trade Contract Price.

ARTICLE 6

TRADE CONTRACTOR SURETY BONDS

6.1 BONDS The Trade Contractor shall furnish the Owner, as the named Obligee, payment and performance bonds securing the faithful performance of this Trade Contractor Agreement and securing all associated Trade Contractor payment obligations as follows:

Trade Contractor Performance Bond (check appropriate box)

Required XX Not Required

Trade Contractor Payment Bond (check appropriate box)

Required XX Not Required

6.2 PENAL SUM OF BONDS Any required performance or payment bonds shall be in the full amount of the Trade Contract Price, unless otherwise specified herein, and shall be in a form and by a surety reasonably acceptable to the Owner.

6.3 COST OF BONDS The Trade Contract Price includes the cost of required performance and payment bonds. The Trade Contractor shall be paid, without retainage, for the cost of any required performance or payment bonds as part of the first progress payment hereunder.

6.4 FAILURE TO PROVIDE BONDS In the event the Trade Contractor shall fail to promptly provide any required bonds, the Owner may terminate this Trade Contractor Agreement for default pursuant to Article 17.

ARTICLE 7

PERFORMANCE OF WORK

7.1 DATE OF COMMENCEMENT The Date of Commencement is the effective date of this Trade Contractor Agreement as first written above unless otherwise set forth below: (Insert here any special provisions concerning Notices to Proceed and the Date of Commencement.)





ARTICLE 8

INTERPRETATION

7.2 PROJECT SCHEDULE The Trade Contractor shall promptly furnish the Construction Manager on an ongoing basis with any scheduling information requested by the Construction Manager for the Trade Contract Work. In consultation with the Trade Contractor, the Construction Manager shall incorporate the Trade Contract Work and work of other trade contractors into an overall Project Schedule for the entire Project. The Trade Contractor shall be bound by the Project Schedule provided, however, that nothing in this Trade Contractor Agreement shall relieve the Trade Contractor of any liability for any unexcused failure to comply with its original schedule and/or any completion dates. The Project Schedule and all subsequent changes and additional details thereto shall be submitted to the Trade Contractor promptly and reasonably in advance of the required performance. The Construction Manager shall have the right to coordinate the Trade Contractors, including the right, if necessary, to change the time, order and priority in which the various portions of the Trade Contract Work and the other work associated with the Project shall be performed.

7.3 TRADE CONTRACTOR PERFORMANCE The Trade Contractor shall use its best care, skill and diligence in supervising and directing the Trade Contract Work. The Trade Contractor shall have total responsibility and control over the performance of the Trade Contract Work, including sole responsibility for the construction means, methods, techniques, sequences and procedures for coordinating and completing the various portions of the Trade Contract Work, unless the Trade Contractor Agreement gives other specific instructions concerning these matters.

7.4 USE OF OWNER EQUIPMENT The Trade Contractor, its agents, employees, subcontractors or suppliers shall use the Owner provided equipment only with the express written permission of the Owner and in accordance with Owner's terms and conditions for such use.

7.5 TRADE CONTRACT TIME The Trade Contract Work shall be substantially completed

In accordance with Exhibit C

subject to adjustments as provided for in the Trade Contract Documents, which is hereinafter referred to as the Trade Contract Time.

7.6 TIME IS OF THE ESSENCE Time is of the essence for both parties. They mutually agree to perform their respective obligations so that the Trade Contract Work may be completed in accordance with the Trade Contract Time and the Project may be completed in accordance with the Project Schedule.

8.1 INCONSISTENCIES AND OMISSIONS Should inconsistencies or omissions appear in the Trade Contract Documents, it shall be the duty of the Trade Contractor to so notify the Owner and Construction Manager in writing within three (3) working days of the Trade Contractor's discovery thereof. Upon receipt of said notice, the Owner or Construction Manager shall instruct the Trade Contractor as to the measures to be taken and the Trade Contractor shall comply with the instructions. If the Trade Contractor performs work knowing of such inconsistencies or omissions or knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Owner and Construction Manager and advance approval by appropriate authorities, including the Owner, then the Trade Contractor shall perform the necessary remedial Work and shall bear all associated costs which would have been avoided if the Trade Contractor had properly given notice.

8.2 GOVERNING LAW This Trade Contractor Agreement shall be governed by the law in effect at the location of the Project, except that the conflict of laws rules shall not apply.

8.3 SEVERABILITY AND WAIVER The partial or complete invalidity of any one or more provisions of this Trade Contractor Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Trade Contractor Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

8.4 ATTORNEYS' FEES Should either party employ an attorney to institute suit or demand arbitration to enforce any of the provisions hereof, to protect its interests in any manner arising under this Trade Contractor Agreement, or to recover on a surety bond furnished by a party to this Trade Contractor Agreement, or to defend against any such suit or arbitration, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, charges, and expenses expended or incurred therein.

8.5 TITLES The titles given to provisions of this Trade Contractor Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

8.6 ENTIRE AGREEMENT This Trade Contractor Agreement is solely for the benefit of the signatories otherwise except as specifically provided otherwise, and represents the entire and integrated agreement between the parties and, unless specifically provided otherwise, supersedes all prior negotiations, representations, or agreements, either written or oral.



ARTICLE 9

OWNER'S OBLIGATIONS

9.1 AUTHORIZED REPRESENTATIVE The Owner and Construction Manager shall each designate one or more persons who shall be their authorized representative(s). Such authorized representative(s) shall be the only person(s) the Trade Contractor shall look to for instructions, orders and/or directions, except in an emergency.

9.2 DESIGN The Owner shall retain or employ an Architect/Engineer to provide all required architectural, engineering and design services for the Project including, without limitation, structural, mechanical and electrical engineering services.

9.3 STORAGE Unless otherwise specified in Article 4, the Construction Manager will coordinate available areas for storage of the Trade Contractor's material and equipment during performance of the Trade Contract Work. Unless otherwise agreed upon, the Owner shall reimburse the Trade Contractor for the additional costs of having to relocate such storage areas at the direction of the Construction Manager.

9.4 TIMELY COMMUNICATIONS The Construction Manager will establish and implement procedures for expediting and processing submittals, transmittals, and written approvals relating to the Trade Contract Work. Unless otherwise specified in the Trade Contract Documents, communications by and with the Trade Contractor's subcontractors, materialmen and suppliers shall be through the Trade Contractor.

9.5 ADDITIONAL SERVICES RENDERED OR MATERIALS FURNISHED The Owner agrees that, except as otherwise provided in this Trade Contractor Agreement, no claim for additional services rendered or materials furnished to the Trade Contractor shall be valid unless the Owner gives the Trade Contractor:

- .1 notice prior to the furnishing of the services and/or materials, except in an emergency affecting the safety of persons or property;
- .2 written notice of claim within seven (7) calendar days of first rendering such services or furnishing such materials; and
- .3 written compilations of the charges relating to such services or materials no later than the fifteenth (15th) day of the calendar month following that in which the services are rendered or materials furnished.

9.6 LAYOUT RESPONSIBILITY AND LEVELS Unless otherwise provided, the Owner shall establish principal axis lines of the building and site whereupon the Trade Contractor shall layout and be strictly responsible for the accuracy of the Trade

Contract Work and for any loss or damage to the Owner or others by reason of the Trade Contractor's failure to set out or perform its Trade Contract Work correctly. The Trade Contractor shall exercise prudence so that the actual final conditions and details of its Trade Contract Work shall result in alignment of finish surfaces.

9.7 OWNER ABILITY TO PAY The Owner, upon written request from the Trade Contractor, shall furnish evidence of adequate Project financing from time to time as the Trade Contractor may request. Furnishing such evidence shall be a condition precedent to the Trade Contractor's obligation to commence or continue the Trade Contract Work.

ARTICLE 10

TRADE CONTRACTOR'S OBLIGATIONS

10.1 RESPONSIBILITIES The Trade Contractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Trade Contract Work in accordance with and as reasonably inferable from the Trade Contract Documents. The Trade Contractor shall be responsible for taking field dimensions, providing tests, ordering materials and all other actions as required to perform the Trade Contract Work within the Trade Contract Time and to comply with the Project Schedule.

10.2 TRADE CONTRACTOR'S OBLIGATIONS FOR SITE VISITATION The Trade Contractor acknowledges that it has visited the Project site and visually inspected the general and local conditions which could affect the Trade Contract Work. Any failure of the Trade Contractor to reasonably ascertain from a visual inspection of the site, the general and local conditions which could affect the Trade Contract Work, will not relieve the Trade Contractor from its responsibility to properly complete the Trade Contract Work without additional expense to the Owner.

10.3 SHOP DRAWINGS, SAMPLES, PRODUCT DATA AND MANUFACTURERS' LITERATURE

10.3.1 SUBMITTAL PROCEDURE The Trade Contractor promptly shall submit to the Construction Manager, for review and/or approval by the Architect/Engineer, all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Trade Contract Documents. The Trade Contractor shall be responsible to the Owner for the accuracy and conformity of its submittals to the Trade Contract Documents. The Trade Contractor shall prepare and deliver its submittals to the Construction Manager in a manner consistent with the Project Schedule and in such time and sequence so as not





to delay the performance of the Trade Contract Work or other work associated with the Project. The review and/or approval of any Trade Contractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Trade Contract Documents unless express written approval is obtained from the Construction Manager, for the Owner, specifically authorizing such deviation, substitution or change. In the event that the Trade Contract Documents do not contain complete submittal requirements pertaining to the Trade Contract Work, the Trade Contractor agrees upon request to submit in a timely fashion to the Construction Manager for review and/or approval by the Architect/Engineer, any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Construction Manager, Owner or Architect/Engineer.

**10.3.2 ACCURACY** The Construction Manager, Owner, and Architect/Engineer are entitled to rely on the accuracy and completeness of any professional certifications required by the Trade Contract Documents concerning the performance criteria of systems, equipment or materials, including all calculations relating thereto and any governing performance requirements.

#### **10.4 COORDINATION AND COOPERATION**

The Trade Contractor shall:

- .1 cooperate with the Construction Manager, other trade contractors and all others whose work or services may require coordination with the Trade Contract Work ;
- .2 specifically note and immediately advise the Construction Manager of any interference with the Trade Contract Work; and
- .3 participate in the preparation of coordination drawings and work schedules involving the Trade Contract Work.

**10.5 AUTHORIZED REPRESENTATIVE** The Trade Contractor shall designate one or more persons who shall be the authorized Trade Contractor's representative(s). Such authorized representative(s) shall be the only person(s) to whom the Owner or Construction Manager shall issue instructions, orders or directions, except in an emergency.

**10.6 COMMUNICATIONS** Unless otherwise provided in the Trade Contract Documents, the Trade Contractor shall communicate with the Owner, Architect/Engineer, separate contractors and/or other trade contractors and suppliers of Owner, regardless of tier, through the Construction Manager.

**10.7 TESTS AND INSPECTIONS** The Trade Contractor shall schedule all required tests, approvals and inspections of the Trade Contract Work or portions thereof at appropriate times so as not to delay the progress of the Trade Contract Work or other work related to the Project. The Trade Contractor shall give proper written notice to all required parties of such tests,

approvals and inspections. The Trade Contractor shall bear all expenses associated with tests, inspections and approvals required by the Trade Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Construction Manager and Owner. Unless otherwise required by the Trade Contract Documents, required certificates of testing, approval or inspection shall be secured by the Trade Contractor and promptly delivered to the Construction Manager.

**10.8 WORKMANSHIP** Every part of the Trade Contract Work shall be executed in accordance with the Trade Contract Documents in a workmanlike manner. All materials used in the Trade Contract Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Trade Contract Work, and shall be new except such materials as may be expressly provided in the Trade Contract Documents to be otherwise.

**10.9 MATERIALS FURNISHED BY OTHERS** In the event the scope of the Trade Contract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Trade Contractor to examine the items so provided and thereupon handle, store and install the items, unless otherwise provided in the Trade Contract Documents, with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts or omissions of the Trade Contractor shall be the responsibility of the Trade Contractor and may be deducted from any amounts due or to become due the Trade Contractor under this Trade Contractor Agreement.

**10.10 SUBSTITUTIONS** No substitutions shall be made in the Trade Contract Work unless permitted in the Trade Contract Documents and only then upon the Trade Contractor first receiving all approvals required under the Trade Contract Documents for substitutions.

**10.11 WARRANTY** The Trade Contractor warrants the Trade Contract Work against all deficiencies and defects in materials and/or workmanship and as called for in the Trade Contract Documents. The Trade Contractor agrees to satisfy such warranty obligations which appear within the warranty period established in the Trade Contract Documents without cost to the Owner. Unless otherwise specified in the Trade Contract Documents, the Trade Contractor shall warrant the Trade Contract Work as described above for a period of one (1) year from the date(s) of substantial completion of all or each designated portion of the Trade Contract Work or acceptance or use by the Owner of each designated area, system, equipment and/or item, whichever is sooner. The Trade Contractor further agrees to furnish any special warranties that shall be required in accordance with the Trade Contract Documents for the Trade Contract Work prior to final payment.



## 10.12 UNCOVERING AND CORRECTION OF WORK

### 10.12.1 UNCOVERING OF IMPROPERLY COVERED WORK

If required in writing by the Construction Manager, the Trade Contractor must uncover any portion of the Trade Contract Work which has been covered by the Trade Contractor in violation of the Trade Contract Documents or contrary to a directive issued to the Trade Contractor. Upon receipt of a written directive, the Trade Contractor shall uncover such Trade Contract Work for inspection and then restore the uncovered work to its original condition at the Trade Contractor's time and expense.

### 10.12.2 UNCOVERING OF PROPERLY COVERED WORK

The Construction Manager may direct the Trade Contractor to uncover portions of the Trade Contract Work for inspection at any time. Except as provided in Subparagraph 10.12.1, the Trade Contractor Agreement shall be adjusted by change order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Trade Contract Documents, provided the Construction Manager had not previously instructed the Trade Contractor to leave the work uncovered. If the Trade Contractor uncovers Trade Contract Work pursuant to such a directive and such work upon inspection does not comply with the Trade Contract Documents, then the Trade Contractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Trade Contract Documents; provided, however, that if the Trade Contractor is not responsible for the nonconforming condition, the Trade Contractor Agreement shall be equitably adjusted by change order for the cost and time of uncovering, correcting and restoring such work.

**10.12.3 CORRECTION OF WORK** The Trade Contractor is required to correct in a timely fashion any Trade Contract Work rejected by the Construction Manager or Owner which fails to comply with the Trade Contract Documents whether observed prior to the commencement of the warranty period(s) or during the warranty period(s) established under Paragraph 10.11. The Trade Contractor shall correct at its own cost and time and bear the expense of additional services for any nonconforming Trade Contract Work for which it is responsible.

**10.13 CLEAN-UP** The Trade Contractor shall follow the Construction Manager's clean-up directions, and

- .1 at all times keep the Project and premises free from debris resulting from the Trade Contract Work; and
- .2 broom clean each work area prior to discontinuing work in each area. If the Trade Contractor fails to immediately commence compliance with clean-up duties within twenty-four (24) hours after written notification from the Construction Manager of noncompliance, the Construction Manager may implement appropriate clean-up measures without further notice and the cost thereof shall be deducted from

any amounts due or to become due the Trade Contractor under this Trade Contractor Agreement.

## 10.14 SAFETY OF PERSONS AND PROPERTY

**10.14.1 SAFETY** The Trade Contractor is required to perform the Trade Contract Work in a safe manner. The Trade Contractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

- .1 employees and other persons at the site;
- .2 materials and equipment stored at on-site or off-site locations for use in performance of the Trade Contract Work; and
- .3 the Project and all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Trade Contract Work.

**10.14.2 LAWS AND NOTICES** The Trade Contractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

**10.14.3 SAFETY RESPONSIBILITY** The Trade Contractor shall have full responsibility for implementing appropriate safety measures pertaining to the Trade Contract Work, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent thereto from injury, loss or damage.

**10.14.4 EXTREME CARE** The Trade Contractor shall exercise extreme care in carrying out any Trade Contract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. At all times relevant hereto, the Trade Contractor shall use properly qualified individuals or entities to carry out the Trade Contract Work in a safe manner so as to reduce the risk of personal injury or property damage.

**10.14.5 PROPERTY DAMAGE** The Trade Contractor is required to promptly remedy any loss or damage caused to the work, materials, equipment and property referred to in Clauses 10.14.1.2 and 10.14.1.3 if said loss or damage is not fully compensated by insurance required under the Trade Contractor Agreement, but only to the extent caused in whole or in part by the fault or negligence of the Trade Contractor and/or persons or entities performing work for or on behalf of the Trade Contractor, regardless of tier, who have furnished labor, materials or services relating to the Trade Contractor Agreement and for whose acts the Trade Contractor may be liable. The Trade Contractor shall not be required to remedy any loss or damage



which is not attributable to the fault or negligence of the Trade Contractor or of any person or entity for whose acts the Trade Contractor may be liable.

**10.14.6 TRADE CONTRACTOR'S SAFETY REPRESENTATIVE** The Trade Contractor is required to designate an individual at the site in the employ of the Trade Contractor who shall act as the Trade Contractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Trade Contractor in writing to the Construction Manager, the designated safety representative shall be the Trade Contractor's project superintendent.

**10.14.7 LOADING OF STRUCTURES** The Trade Contractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures or site so as to give rise to an unsafe condition or create an unreasonable risk of personal injury or property damage. The Trade Contractor shall have the right to request, in writing from the Construction Manager, loading information concerning the structures at the site.

**10.14.8 NOTICE OF ACCIDENTS** The Trade Contractor shall give prompt written notice to the Owner and the Construction Manager of any accident involving personal injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500.00) in value, or any failure that could have resulted in serious personal injury, whether or not such an injury was sustained. A detailed written report shall be furnished if requested by the Construction Manager.

**10.14.9 ACCIDENT PREVENTION** Prevention of accidents at the site is the responsibility of the Trade Contractor, its employees, subcontractors and suppliers, and all other trade contractors, persons and entities at the site. The Trade Contractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Construction Manager and Owner, including, but not limited to, requirements imposed by the Trade Contract Documents. The Trade Contractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Trade Contract Work which the Construction Manager deems unsafe until corrective measures satisfactory to the Construction Manager shall have been taken. The Construction Manager is not responsible for identifying unsafe practices, and the Construction Manager's failure to stop the Trade Contractor's unsafe practices shall not relieve the Trade Contractor of the responsibility therefor. The Trade Contractor shall indemnify the Construction Manager and Owner for fines and penalties imposed on the Construction Manager or Owner as a result of safety violations, but only to the extent that such fines or penalties are caused by the Trade Contractor's failure to comply with applicable safety requirements.

**10.15 PERMITS, FEES AND LICENSES** The Trade Contractor shall give adequate notices to authorities pertaining to the Trade Contract Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Trade Contract Work in accordance with the Trade Contract Documents. The Trade Contractor shall be compensated for additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of this Trade Contractor Agreement.

**10.16 DELEGATION OR SUBCONTRACTING OF DUTIES** The Trade Contractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Trade Contractor Agreement without the prior written approval of the Owner. Approval shall not be unreasonably withheld.

#### 10.17 MATERIALS SAFETY

**10.17.1 HAZARDOUS MATERIALS** Should the Trade Contractor encounter asbestos, polychlorinated biphenyl (PCB) or other hazardous substances at the site which potentially are harmful to persons or property, then the Trade Contractor shall take all steps required by the Trade Contract Documents and by law to protect persons and property from injury or damage, including stopping the Trade Contract Work in the affected areas and promptly advising the Owner and Construction Manager in writing of the conditions encountered at the site.

Should the Trade Contractor be required to stop the Trade Contract Work in any area of the Project as a result of hazardous substances located at the site, then the Trade Contractor shall not resume its Trade Contract Work in the affected area until:

- .1 the hazardous substances have been removed or made harmless,
- .2 the Owner and Trade Contractor agree in writing to commence Trade Contract Work in all or a portion of the area,
- .3 the Owner orders the Trade Contract Work to proceed in the affected area and the parties agree, or
- .4 the matter is resolved through arbitration as provided for in this Trade Contractor Agreement.

**10.17.2 TRADE CONTRACTOR'S CONSENT** The Trade Contractor shall not be required to perform Trade Contract Work in areas containing asbestos, PCBs, or any other hazardous substances defined by the Trade Contract Documents, without the Trade Contractor's consent.

**10.17.3 MATERIAL SAFETY DATA SHEETS** Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Trade Contract Work shall be submitted to the Construction





Manager by the Trade Contractor. MSD sheets obtained by the Construction Manager from other trade contractors or sources shall be made available to the Trade Contractor by the Construction Manager.

**ARTICLE 11  
LABOR RELATIONS**

(State here any conditions, obligations or requirements relative to labor relations and their effect on the Project. Legal counsel is recommended.)

**ARTICLE 12  
INSURANCE**

**12.1 TRADE CONTRACTOR'S INSURANCE** Prior to start of the Trade Contract Work, the Trade Contractor shall procure for the Trade Contract Work and maintain in force Workers' Compensation insurance, Employer's Liability insurance, Comprehensive Automobile Liability insurance, Comprehensive or Commercial General Liability insurance on an occurrence basis, and any other insurance required of Trade Contractor under the Trade Contractor Agreement. The Trade Contractor's insurance shall include contractual liability insurance covering the Trade Contractor's obligations under this Trade Contractor Agreement.

**12.2 MINIMUM LIMITS OF LIABILITY** The Trade Contractor's Comprehensive or Commercial General Liability insurance and Comprehensive Automobile Liability insurance, as required by Paragraph 12.1, shall be written with limits of liability not less than the following:

See Insurance Requirements Exhibit attached hereto and made a part hereof.

**.1 Comprehensive General Liability Insurance including completed operations**

a. Combined Single Limit Bodily Injury and Property Damage \$ \_\_\_\_\_ ♦  
Each Occurrence

\$ \_\_\_\_\_ ♦  
Aggregate

or

b. Bodily Injury \$ \_\_\_\_\_ ♦  
Each Occurrence

\$ \_\_\_\_\_ ♦  
Aggregate

c. Property Damage \$ \_\_\_\_\_ ♦  
Each Occurrence

\$ \_\_\_\_\_ ♦  
Aggregate

**.2 Commercial General Liability Insurance**

a. Each Occurrence \$ \_\_\_\_\_ ♦

b. General Aggregate \$ \_\_\_\_\_ ♦

c. Products/Completed Operations Aggregate \$ \_\_\_\_\_ ♦

d. Personal and Advertising Injury Limit \$ \_\_\_\_\_ ♦

**.3 Comprehensive Automobile Liability Insurance**

a. Combined Single Limit Bodily Injury and Property Damage \$ \_\_\_\_\_ ♦  
Each Occurrence

or

b. Bodily Injury \$ \_\_\_\_\_ ♦  
Each Person

\$ \_\_\_\_\_ ♦  
Each Occurrence

c. Property Damage \$ \_\_\_\_\_ ♦  
Aggregate



**12.3 NUMBER OF POLICIES** Comprehensive or Commercial General Liability insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess and/or umbrella liability policies.

**12.4 CANCELLATION, RENEWAL OR MODIFICATION** The Trade Contractor shall maintain in effect all insurance coverage required under this Trade Contractor Agreement at the Trade Contractor's sole expense and with insurance companies mutually agreeable to the Owner and Trade Contractor. All insurance policies shall contain a provision that the coverages afforded thereunder shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to the Construction Manager and Owner, unless otherwise specifically required in the Trade Contract Documents. Certificates of Insurance, or certified copies of policies reasonably acceptable to the Owner, shall be filed with the Owner and Construction Manager prior to the commencement of the Trade Contract Work. In the event the Trade Contractor fails to obtain or maintain any insurance coverage required under this Trade Contractor Agreement, the Owner may purchase such coverage and charge the expense thereof to the Trade Contractor, or terminate this Trade Contractor Agreement for default pursuant to Article 17. The Trade Contractor shall maintain completed operations liability insurance for two years after acceptance of the Trade Contract Work, substantial completion of the Project, or to the time required by the Trade Contract Documents, whichever is longer. The Trade Contractor shall furnish the Construction Manager evidence of such insurance at the time of completion of the Trade Contract Work.

## 12.5 PROPERTY INSURANCE

**12.5.1 BUILDER'S "ALL RISK" BY OWNER** The Owner shall obtain and maintain property insurance upon the entire Project, including all existing structures in which any Trade Contract Work is to be performed, as well as all Project structures which are fully or partially owned or occupied by Owner or its affiliates for the full cost of replacement at the time of any loss. This insurance shall include as insureds the Owner, Architect/Engineer, Construction Manager, trade contractors and all subcontractors and suppliers. This insurance shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" coverage including at a minimum coverage for theft, vandalism, malicious mischief, inland transit, collapse, falsework, temporary buildings, debris removal, flood, earthquake, wind, testing, and damage resulting from defective design, workmanship or material. The Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The Owner shall be responsible for all premiums and any co-insurance penalties, exclusions, sublimits or deductibles. Such insurance shall be primary and noncontributing in respect to any insurance of the Construction Manager, the Trade Contractors and all subcontractors and suppliers. Upon written request of the

Trade Contractor, the Construction Manager will provide the Trade Contractor with a copy of the Builder's Risk policy of insurance and any other property or equipment insurance in force for the Project and procured by the Owner. The Owner will advise the Trade Contractor if a Builder's Risk policy of insurance is not in force.

**12.5.2 PROPERTY INSURANCE BY TRADE CONTRACTOR** If the Owner has not purchased Builder's Risk insurance for the full insurable value of the Trade Contract Work, less a reasonable deductible, then the Trade Contractor may procure such insurance as will protect the interests of the Trade Contractor, its subcontractors and their subcontractors in the Trade Contract Work, and, by appropriate Trade Contract change order, the cost of such additional insurance shall be reimbursed to the Trade Contractor.

**12.5.3 TRANSIT INSURANCE** If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Trade Contractor Agreement, the Trade Contractor shall procure and maintain at the Trade Contractor's own expense property and equipment insurance for portions of the Trade Contract Work stored off-site or in transit.

**12.6 WAIVER OF RIGHTS** The Owner and Trade Contractor waive all rights against each other and the Construction Manager, the Architect/Engineer, the consultants, agents and employees of any of them and all other trade contractors for loss or damage to the extent covered by Builder's Risk or any other property, transit or tools and equipment insurance, except such rights as they may have to the proceeds of such insurance.

## 12.7 SUBROGATION

**12.7.1 WAIVER** The Owner and the Trade Contractor shall have insurers waive all rights of subrogation which they may have against the Construction Manager, Architect/Engineer, other trade contractors, and their subcontractors and suppliers on all policies carried by the Owner on the Project and adjacent properties.

**12.7.2 ENDORSEMENT** If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

## ARTICLE 13

### INDEMNIFICATION

**13.1** The Trade Contractor shall indemnify and hold the Owner, Construction Manager, Architect/Engineer, and their consultants, agents and employees (the Indemnitees) harmless from



all claims for bodily injury and damage to property (excluding damage to the Project itself and other property damage from which the Trade Contractor is released from liability elsewhere in this Trade Contractor Agreement) that may arise from the performance of the Trade Contract Work, to the extent caused by the negligent acts or omissions of the Trade Contractor, its subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them are liable. The Trade Contractor shall not be required to indemnify or hold harmless any indemnitees for any acts, omissions or negligence of that indemnitee.

**13.2 NO LIMITATION UPON LIABILITY** To the fullest extent permitted by law, in any and all claims against the Owner, the Construction Manager, the Architect/Engineer, and other contractors or trade contractors, or any of their consultants, agents or employees, by any employee of the Trade Contractor, anyone directly or indirectly employed by the Trade Contractor or anyone for whose acts the Trade Contractor may be liable, the indemnification obligation under this Article 13 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Trade Contractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**13.3 ARCHITECT/ENGINEER EXCLUSION** The obligations of the Trade Contractor under this Article 13 shall not extend to the liability of the Architect/Engineer, the Architect/Engineer's consultants, agents or employees of any of them, arising out of:

- .1 the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or
- .2 the giving of or the failure to give directions or instructions by the Architect/Engineer, the Architect/Engineer's consultants, and agents or employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

**13.4 COMPLIANCE WITH LAWS** The Trade Contractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as laws) applicable to the Trade Contract Work including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, and all other laws with which the Trade Contractor must comply according to the Trade Contract Documents. The Trade Contractor shall be liable to the Owner and the Construction Manager for all loss, cost and expense attributable to any failure of the Trade Contractor, its employees and agents to comply with such laws, including, but not limited to, any fines, penalties or corrective measures.

**13.5 ROYALTIES, PATENTS AND COPYRIGHTS** The Trade Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Trade Contractor and incorporated in the Trade Contract Work. The Trade Contractor shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Trade Contractor harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner.

## ARTICLE 14

### CHANGES, CLAIMS AND DELAYS

#### 14.1 CHANGES

**14.1.1 TRADE CONTRACT CHANGE** A Trade Contract Change is any change in the Trade Contract Work within the general scope of the Trade Contractor Agreement including a change in the drawings, specifications or technical requirements of the Trade Contractor Agreement and/or a change in the Project Schedule affecting the performance of the Trade Contractor Agreement.

**14.1.2 CHANGE ORDER** By issuing a written order, the Owner, may require the Trade Contractor to make changes in the Trade Contract Work which are within the general scope of this Trade Contractor Agreement. Adjustments in the Trade Contract Price or Trade Contract Time, if any, resulting from such changes shall be set forth in a Trade Contract Change Order or a Trade Contract Construction Change Directive pursuant to the Trade Contract Documents. A Trade Contract Change Order is a written instrument signed by the Owner and the Trade Contractor stating their agreement upon the change in the scope of the Trade Contract Work, adjustment in the Trade Contract Price and/or Trade Contract Time. A Trade Contract Construction Change Directive is a written instrument prepared by the Construction Manager and signed by the Owner directing a change in the Trade Contract Work and stating a proposed adjustment, if any, in the Trade Contract Price or Trade Contract Time or both. A Trade Contract Construction Change Directive shall be used in the absence of agreement on the terms of a Trade Contract Change Order.

**14.1.3 TRADE CONTRACT CONSTRUCTION CHANGE DIRECTIVE** The Trade Contractor shall comply with all Trade Contract Construction Change Directives and promptly perform the required changes in the Trade Contract Work. The Trade Contractor shall evaluate the proposed adjustment in the Trade Contract Price or Trade Contract Time, if any, as set forth in the





Trade Contract Construction Change Directive and respond, in writing, to the Construction Manager stating the Trade Contractor's acceptance or rejection of the proposed adjustment and the reasons therefor. The Trade Contractor may agree to the Trade Contract Construction Change Directive and the terms of the proposed adjustment, if any, by signing the Trade Contract Construction Change Directive and returning it forthwith to the Construction Manager. Trade Contract Construction Change Directives agreed to by the Trade Contractor are effective immediately and become Trade Contract Change Orders in accordance with their terms.

**14.1.4 ADJUSTMENT IN TRADE CONTRACT PRICE** If a Trade Contract Change Order or Trade Contract Construction Change Directive requires an adjustment in the Trade Contract Price, the adjustment shall be established by one of the following methods:

- .1 mutual agreement on a lump sum with sufficient information to substantiate the amount;
- .2 unit prices already established in the Trade Contract Documents or if not established by the Trade Contract Documents then established by mutual agreement for the adjustment;
- .3 a mutually determined cost plus a jointly acceptable markup for overhead and profit; or
- .4 as may otherwise be required by the Trade Contract Documents.

**14.1.5 RESOLUTION OF ADJUSTMENT** If the Trade Contractor does not advise the Construction Manager promptly of the Trade Contractor's agreement or disagreement with a proposed adjustment, or if the Trade Contractor disagrees with the proposed method of adjustment, the method and the adjustment shall be determined by the Construction Manager on the basis of reasonable Trade Contractor expenditures and savings attributable to the change, including, in the case of an increase in the Trade Contract Price, a reasonable markup for overhead and profit. The Trade Contractor may contest the reasonableness of any adjustment determined by the Construction Manager. Pending final determination of costs the Trade Contractor may include in Trade Contractor Applications for Payment amounts not in dispute for work performed pursuant to properly authorized Trade Contract Construction Change Directives.

**14.1.6 INCIDENTAL CHANGES IN THE TRADE CONTRACT WORK** The Construction Manager may direct the Trade Contractor to perform incidental changes in the Trade Contract Work which do not involve adjustments in the Trade Contract Price or Trade Contract Time. Incidental changes shall be consistent with the scope and intent of the Trade Contract Documents. The Construction Manager shall initiate an incidental change

in the Trade Contract Work by issuing a written order to the Trade Contractor. Such written orders shall be carried out promptly and are binding on the parties.

**14.1.7 ADJUSTMENT OF UNIT PRICES** If a proposed Trade Contract Change Order alters original quantities to a degree that application of previously agreed upon unit prices would be inequitable to either the Owner or the Trade Contractor, the unit prices and/or the Trade Contract Price shall be equitably adjusted.

**14.1.8 DIFFERING SITE CONDITIONS** If conditions are encountered at the site which are:

- .1 subsurface or other physical conditions which differ materially from those indicated in the Trade Contract Documents, or
- .2 unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities in the area of the Project, written notice shall be given to the other party promptly before the conditions are disturbed and in no event later than seven (7) calendar days after first observance of the conditions and an equitable adjustment to the Trade Contract Price and Trade Contract Time shall be made by Trade Contract Change Order. If agreement cannot be reached by the parties, the party seeking an adjustment in the Trade Contract Price or Trade Contract Time may assert a claim in accordance with Paragraph 14.2.

**14.2 CLAIMS** A claim is a demand or assertion made in writing by the Trade Contractor seeking an adjustment in the Trade Contract Price and/or Trade Contract Time, an adjustment or interpretation of the terms of the Trade Contractor Agreement, or other relief arising under or relating to this Trade Contractor Agreement, including the resolution of any matters in dispute between the Owner and Trade Contractor in connection with the Project.

The Trade Contractor shall give the Owner and Construction Manager written notice of all claims within seven (7) calendar days of the date when the Trade Contractor knew of the facts giving rise to the event for which a claim is made.

#### **14.3 DELAY**

**14.3.1 TIME EXTENSION** The Trade Contractor is entitled to an extension of the Trade Contract Time in which to complete its Trade Contract Work if:

- .1 the Trade Contractor is delayed in the performance of the Trade Contract Work for any reason beyond the Trade Contractor's control, and without the Trade Contractor's fault or negligence, including delays caused in whole or in part



by the Owner, Construction Manager, Architect/Engineer or any other persons, entities or events, or

.2 the Trade Contract Work is delayed by order of the Owner, Construction Manager, or an authorized representative of either, or

.3 the Trade Contract Work is delayed for any reason or cause which the Owner concludes is an excusable delay.

Said extension shall be set forth in a Trade Contract Change Order for such time as the parties may agree is reasonable.

**14.3.2 DAMAGES FOR DELAY** Claims relating to time shall be made in accordance with applicable provisions of the Trade Contract Documents. This Article 14 does not preclude recovery of damages for delay by either party.

## ARTICLE 15

### PAYMENT

#### 15.1 GENERAL PROVISIONS

**15.1.1 SCHEDULE OF VALUES** Within fourteen (14) calendar days from the date of execution of this Trade Contractor Agreement, the Trade Contractor shall prepare and submit to the Construction Manager a Schedule of Values apportioned to the various divisions or phases of the Trade Contract Work. Each line item contained in the Schedule of Values shall be assigned a monetary price such that the total of all such items shall equal the Trade Contract Price. The Schedule of Values shall be prepared in such detail and be supported by such documents and proof as may be required by the Construction Manager.

**15.1.2 PAYMENT USE AND VERIFICATION** The Trade Contractor is required to pay for all labor, materials and equipment used in the performance of the Trade Contract Work through the most current period applicable to progress payments received. Reasonable evidence, satisfactory to the Construction Manager, may be required to show that all obligations relating to the Trade Contract Work are current before releasing any payment due on the Trade Contract Work. If required by the Construction Manager, before final payment is made for the Trade Contract Work, the Trade Contractor shall submit evidence satisfactory to the Construction Manager that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Trade Contract Work, have been paid or otherwise satisfied as set forth in Subparagraph 15.3.2.

**15.1.3 TRADE CONTRACTOR ASSIGNMENT OF RECEIVABLES** The Trade Contractor shall advise the Owner prior to

entering into this Trade Contractor Agreement of the existence of any assignments or security interests granted by the Trade Contractor to any general creditor, bank, lender, surety, factor or other entity in receivables or monies that may become due the Trade Contractor under this Trade Contractor Agreement and shall give the Owner prompt written notice of any such assignments or security interests granted by the Trade Contractor after entering into this Trade Contractor Agreement.

**15.1.4 PAYMENT NOT ACCEPTANCE** Payment to the Trade Contractor does not constitute or imply acceptance of any portion of the Trade Contract Work.

#### 15.2 PROGRESS PAYMENTS

**15.2.1 APPLICATIONS** The Trade Contractor shall submit to the Construction Manager monthly notarized applications for payment no later than the Twenty-fifth (25<sup>th</sup>) \_\_\_\_\_ day of the calendar month immediately following the month for which payment is requested. Trade Contractor's applications for payment shall be itemized and supported by the Trade Contractor's Schedule of Values and any other substantiating data as required by this Trade Contractor Agreement. Payment applications may include payment requests on account of properly authorized Trade Contract Construction Change Directives. The progress payment application shall include Trade Contract Work performed through the preceding calendar month. The Construction Manager will review the application and recommend to the Owner amounts payable by the Owner to the Trade Contractor. The Owner shall pay the amount otherwise due on any payment application, less any amounts as set forth below, no later than twenty (20) calendar days after the Trade Contractor has submitted a complete and accurate payment application. The Owner may deduct, from any progress payment, such amounts as may be retained pursuant to Subparagraph 15.2.5 below.

**15.2.2 STORED MATERIALS AND EQUIPMENT** Applications for payment may include materials and equipment not incorporated into the Trade Contract Work but delivered to and suitably stored on-site, or off-site, if approved by the Construction Manager. Approval of payment applications for stored materials and equipment shall be conditioned on submission by the Trade Contractor of bills of sale and proof of applicable insurance, or such other procedures satisfactory to the Construction Manager to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the site.

**15.2.3 PARTIAL LIEN WAIVERS AND AFFIDAVITS** As a prerequisite for payment, the Trade Contractor shall provide, in a form satisfactory to the Construction Manager, partial lien and claim waivers in the amount of the application for payment and affidavits from the Trade Contractor, and its subcontractors, materialmen and suppliers for the completed Trade Contract





Work. Such waivers may be conditional upon payment. In no event shall the Trade Contractor be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

**15.2.4 ADJUSTMENT OF TRADE CONTRACTOR'S PAYMENT APPLICATION** The Owner may reject or adjust a Trade Contractor payment application or nullify a previously approved Trade Contractor payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Trade Contractor is responsible therefor under this Trade Contractor Agreement:

- .1 the Trade Contractor's repeated failure to perform the Trade Contract Work as required by the Trade Contractor Agreement;
- .2 loss or damage arising out of or relating to the Trade Contractor Agreement and caused by the Trade Contractor to the Owner, or to the Construction Manager or othersto whom the Owner may be liable;
- .3 the Trade Contractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Trade Contract Work;
- .4 nonconforming or defective Trade Contract Work which has not been corrected in a timely fashion;
- .5 reasonable evidence of delay in performance of the Trade Contract Work such that the work will not be completed within the Trade Contract Time, and that the unpaid balance of the Trade Contract Price is not sufficient to offset any liquidated damages or actual damages that may be sustained by the Owner as a result of the anticipated delay caused by the Trade Contractor;
- .6 reasonable evidence demonstrating that the unpaid balance of the Trade Contract Price is insufficient to cover the cost to complete the Trade Contract Work;
- .7 third-party claims involving the Trade Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Trade Contractor furnishes the Owner with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims if established; and
- .8 such amounts as are owed by the Trade Contractor on any claim for additional services rendered or materials furnished to the Trade Contractor in accordance with Paragraph 9.5 of this Agreement.

The Owner or Construction Manager shall give written notice to the Trade Contractor, at the time of disapproving or nullifying an application for payment, of the specific reasons therefor. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

**15.2.5 RETAINAGE** From each progress payment made prior to the time the Trade Contractor has substantially completed its Trade Contract Work, as determined by the Construction Manager, the Owner shall retain Ten ( 10 ) percent ♦ of the amount otherwise due after deduction of any amounts as provided in Subparagraph 15.2.4 of this Agreement. The Owner may, in its sole discretion, reduce the amount to be retained hereunder at any time.

**15.2.6 PAYMENT UPON SUBSTANTIAL COMPLETION** When the Trade Contractor has substantially completed its Trade Contract Work, as determined by the Construction Manager, the Owner shall pay the Trade Contractor all amounts retained to date, less (a) an amount equal to one hundred and fifty percent (150%) of the value of the Trade Contract Work remaining to be completed, as determined by the Construction Manager; plus (b) any amounts withheld for the reasons set forth in Subparagraph 15.2.4 of this Agreement.

**15.2.7 PAYMENT DELAY** If for any reason not the fault of the Trade Contractor, the Trade Contractor does not receive a progress payment from the Owner within seven (7) calendar days after the time such payment is due, as defined in Subparagraph 15.2.1, then the Trade Contractor, upon giving seven (7) calendar days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop its Trade Contract Work until payment of the full amount owing to the Trade Contractor has been received. The Trade Contract Price and Trade Contract Time shall be equitably adjusted by a Trade Contract Change Order to reflect reasonable cost and delay resulting from shutdown, delay and start-up.

**15.3 FINAL PAYMENT**

**15.3.1 APPLICATION** Upon acceptance of the Trade Contract Work by the Construction Manager, and upon the Trade Contractor furnishing evidence of fulfillment of the Trade Contractor's obligations in accordance with the Trade Contract Documents, the Trade Contractor shall submit its application for final payment. The Construction Manager will review the Trade Contractor's final payment application and recommend to the Owner an amount payable by the Owner to the Trade Contractor.

**15.3.2 REQUIREMENTS** Along with its application for final payment, the Trade Contractor shall furnish to the Construction Manager:

ARTICLE 16

DISPUTE RESOLUTION

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Trade Contract Work for which the Owner or its property or the Construction Manager or the Owner's surety might in any way be liable, have been paid or otherwise satisfied;
- .2 consent of the Trade Contractor's surety to final payment, if required;
- .3 satisfaction of closeout procedures as may be required by the Trade Contractor Agreement;
- .4 certification that insurance required by the Trade Contractor Agreement to remain in effect beyond final payment pursuant to this Trade Contractor Agreement is in effect and will not be canceled or allowed to expire without at least thirty (30) calendar days' written notice to the Construction Manager, unless a longer period is stipulated in the Trade Contract Documents; and
- .5 other data if required by the Owner or Construction Manager, such as receipts, releases, and waivers of liens effective upon payment to the extent and in such form as may be designated by the Owner or Construction Manager.

Acceptance of final payment by the Trade Contractor shall constitute a waiver of all claims by the Trade Contractor except those previously made in writing and identified by the Trade Contractor as unsettled at the time of final application for payment.

**15.3.3 TIME OF PAYMENT** Final payment of the balance of the Trade Contract Price, less any amount retained pursuant to Subparagraph 15.2.5 of this Agreement, shall be made to the Trade Contractor within Forty-five (45) days after the Trade Contractor has submitted a complete and accurate application for final payment.

**15.3.4 LATE PAYMENT INTEREST** Progress payments or final payment due and unpaid under this Trade Contractor Agreement shall bear interest from the date payment is due at the rate provided in this Trade Contractor Agreement or, in the absence thereof, at the legal rate prevailing at the place of the Project.

**15.4 BOND AND MECHANIC'S LIEN RIGHTS** In the event that any applicable law, statute, regulation or bond requires Trade Contractor to take any action prior to the expiration of the reasonable time for payment referenced in Paragraphs 15.2 and 15.3, in order to preserve or protect the Trade Contractor's rights, if any, with respect to mechanic's liens or bond claims, then the Trade Contractor may take that action prior to the expiration of the reasonable time for payment and such action will not be in violation of this Trade Contractor Agreement nor considered premature for purposes of preserving and protecting the Trade Contractor's rights.

**16.1 INITIAL DISPUTE RESOLUTION** If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to arbitration. Issues to be mediated are subject to the exceptions in Paragraph 16.2 for arbitration. Once one party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request.

**16.2 AGREEMENT TO ARBITRATE** Any controversy or claim arising out of or relating to this Agreement or its breach which is not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. Notwithstanding Paragraph 8.2, this agreement to arbitrate shall be governed by the Federal Arbitration Act.

**16.3 NOTICE OF DEMAND** Notice of the demand for arbitration shall be filed in writing with the other party to this Trade Contractor Agreement and with the American Arbitration Association. The demand for arbitration shall be made as required in the Trade Contract Documents or within a reasonable time after written notice of the claim, dispute or other matter in question has been given, but in no event shall it be made when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitation. The location of the arbitration proceedings shall be at the office of the American Arbitration Association nearest the Project site, unless the parties agree otherwise.

**16.4 AWARD** The arbitration award shall be final. Judgement upon the award maybe confirmed in any court having jurisdiction.

**16.5 WORK CONTINUATION AND PAYMENT** The Trade Contractor shall carry on the Trade Contract Work and maintain the Project Schedule pending final resolution of a claim including arbitration, unless the Trade Contractor Agreement has been terminated or the Trade Contract Work suspended as provided for in this Trade Contractor Agreement, or the parties otherwise agree in writing to a partial or total suspension of the Trade Contract Work. If the Trade Contractor is continuing to perform in accordance with this Trade Contractor Agreement, the Owner shall continue to make payments as required by the Trade Contractor Agreement.



**16.6 NO LIMITATION OF RIGHTS AND REMEDIES** Nothing in this Article shall limit any rights or remedies not expressly waived by the Trade Contractor which the Trade Contractor may have under lien laws or surety bonds.

**16.7 MULTIPARTY PROCEEDING** The parties agree that all parties necessary to resolve a claim shall be parties to the same arbitration proceeding. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the consolidation of arbitrations.

**16.8 COST OF DISPUTE RESOLUTION** The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration or litigation shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation.

## ARTICLE 17

### RECOURSE BY OWNER

#### 17.1 FAILURE OF PERFORMANCE

**17.1.1 NOTICE TO CURE** If the Trade Contractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Project Schedule, or it fails to make prompt payment to its workers, subcontractors or suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Trade Contractor Agreement, the Trade Contractor may be deemed in default of this Trade Contractor Agreement. If the Trade Contractor fails within three (3) working days after written notification to commence and continue satisfactory correction of such default, with diligence and promptness, then the Owner without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

.1 supply such number of workers and quantity of materials, equipment and other facilities as the Owner and/or Construction Manager shall deem necessary for the satisfactory correction of such default, which the Trade Contractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Trade Contractor, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

.2 contract with one or more additional trade contractors, to perform such part of the Trade Contract Work as the Owner and/or Construction Manager shall determine will provide the most expeditious correction of the default and charge the cost thereof to the Trade Contractor;

.3 withhold payment of moneys due the Trade Contractor in accordance with Subparagraph 15.2.4 of this Trade Contractor Agreement; and

.4 in the event of an emergency affecting the safety of persons or property, the Owner may immediately proceed to commence and continue satisfactory correction of such default per (.1) or (.2) above, without first giving three (3) working days' written notice to the Trade Contractor, but shall then give prompt written notice of such action to the Trade Contractor.

**17.1.2 TERMINATION BY OWNER FOR DEFAULT** If the Trade Contractor fails to commence and satisfactorily continue correction of a default within three (3) working days after the written notification issued under Subparagraph 17.1.1, then the Owner may, in lieu of or in addition to the remedies set forth in Subparagraph 17.1.1, issue a second written notification to the Trade Contractor. Such notice shall state that if the Trade Contractor fails to commence and continue correction of the default within seven (7) working days of the second written notification, the Trade Contractor Agreement may be terminated and the Owner may use any materials, implements, equipment, appliances or tools furnished by or belonging to the Trade Contractor to complete the Trade Contract Work. The Owner also may furnish those materials, equipment and/or employ such workers or trade contractors as the Owner and/or Construction Manager shall deem necessary to maintain the orderly progress of the Trade Contract Work. A written notice of termination shall be issued by the Owner to the Trade Contractor at the time the Trade Contractor Agreement is terminated.

All costs incurred by the Owner in performing the Trade Contract Work, including reasonable overhead, profit and attorneys' fees, shall be deducted from any moneys due or to become due the Trade Contractor under this Trade Contractor Agreement. The Trade Contractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Trade Contract Price. If the unpaid balance of the Trade Contract Price for Work performed in accordance with the Trade Contractor Agreement exceeds the expense of finishing the Trade Contract Work, such excess shall be paid to the Trade Contractor.

**17.1.3 USE OF TRADE CONTRACTOR'S EQUIPMENT** If the Owner performs work under this Article, or subcontracts such work to be so performed, the Owner shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, belonging or delivered to the Trade Contractor and located at the Project for the purpose of completing any remaining Trade Contract Work. Immediately upon completion of the Trade Contract Work, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Trade Contract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Trade Contractor, shall be returned to the Trade





Contractor in substantially the same condition as when they were taken, reasonable wear and tear excepted.

## 17.2 BANKRUPTCY

**17.2.1 TERMINATION ABSENT CURE** If Trade Contractor files a petition under the Bankruptcy Code, this Trade Contractor Agreement shall terminate if the Trade Contractor or the Trade Contractor's trustee rejects the Trade Contractor Agreement or, if there has been a default, the Trade Contractor is unable to give adequate assurance that the Trade Contractor will perform as required by this Trade Contractor Agreement or otherwise is unable to comply with the requirements for assuming this Trade Contractor Agreement under the applicable provisions of the Bankruptcy Code.

**17.2.2 INTERIM REMEDIES** If the Trade Contractor is not performing in accordance with the Project Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Owner, while awaiting the decision of the Trade Contractor or its trustee to reject or to assume this Trade Contractor Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Project Schedule.

The Owner may offset against any sums due or to become due the Trade Contractor under this Trade Contractor Agreement all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorneys' fees.

The Trade Contractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Trade Contract Price. If the unpaid balance of the Trade Contractor Agreement exceeds the expense of finishing the Trade Contract Work, such excess shall be paid to the Trade Contractor.

## 17.3 SUSPENSION BY OWNER FOR CONVENIENCE

**17.3.1 OWNER SUSPENSION** Should the Owner order the Trade Contractor in writing to suspend, delay, or interrupt the performance of the Trade Contractor Agreement or any part which affects the Trade Contract Work for such period of time as may be determined to be appropriate for the convenience of the Owner, and not due to any act or omission of the Trade Contractor, or any other person or entity for whose acts or omissions the Trade Contractor may be liable, then the Trade Contractor shall immediately suspend, delay or interrupt that portion of the Trade Contract Work as ordered by the Owner.

**17.3.2 ADJUSTMENTS** The Trade Contract Price and the Trade Contract Time shall be equitably adjusted for the cost and delay resulting from any such suspension, including any increases in the cost of materials, equipment, construction equipment and a reasonable overhead and profit.

## 17.4 TERMINATION BY OWNER FOR CONVENIENCE

**17.4.1 TERMINATION BY OWNER FOR CONVENIENCE** The Owner may, without cause, terminate its Trade Contractor Agreement with the Trade Contractor. The Trade Contractor shall immediately stop the Trade Contract Work, follow the Owner's and/or Construction Manager's instructions regarding shutdown and termination procedures, and mitigate all costs.

**17.4.2 ADJUSTMENTS** If the Work is so terminated, the Trade Contractor may recover from the Owner payment for all Trade Contract Work performed in accordance with the Trade Contractor Agreement, all costs from the termination, plus a reasonable profit.

## ARTICLE 18

### TERMINATION BY TRADE CONTRACTOR

If the Trade Contract Work has been stopped for thirty (30) calendar days because the Trade Contractor has not received progress payments as required under Article 15, or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Trade Contractor, then the Trade Contractor may terminate this Trade Contractor Agreement upon giving the Owner and Construction Manager seven (7) calendar days' written notice. Upon such termination, Trade Contractor shall be entitled to recover from the Owner payment for all Trade Contract Work performed in accordance with the Trade Contractor Agreement, all costs resulting from the termination, plus a reasonable profit.



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ARTICLE 19

MISCELLANEOUS PROVISIONS

19.1 INTERPRETATION Except as expressly stated to the contrary, indemnities against, releases from, assumptions of and limitations on liability expressed in this Trade Contractor Agreement, as well as waivers of subrogation rights, shall apply even in the event of the fault, negligence or strict liability of the party indemnified or released or whose liability is limited or assumed or against whom rights of subrogation are waived, and shall extend to the officers, directors, employees, licensors, agents, affiliates, partners and related entities of such party.

19.2 REMEDIES The parties' rights, liabilities, responsibilities and remedies with respect to this Trade Contractor Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Trade Contractor Agreement.

19.3 CONSEQUENTIAL DAMAGES Neither party shall be responsible or held liable for any indirect, incidental, special or consequential damages of any nature whatsoever, including, without limitation, liability for loss of use of property, loss of profits or other revenue, interest, loss of product, increased expenses or business interruption, however the same may be caused.

This Trade Contractor Agreement is effective as of the date first written above.

ATTEST: \_\_\_\_\_

OWNER: Minden Gateway Center, LLC ◆

BY: [Signature] ◆

PRINT NAME: Jeffrey Lowden ◆

PRINT TITLE: Jeffrey Lowden ◆

ATTEST: \_\_\_\_\_

TRADE CONTRACTOR: Action Construction CO

BY: [Signature] ◆

PRINT NAME: GREGORY LEE HUNT ◆

PRINT TITLE: PRES. ◆

Exhibit A  
Minden Gateway Center  
Field Detentions & Sewer System

Provide all labor, material, equipment, trenching, shoring, protection, lifting, hoisting, erection, scaffolding, tools, supervision, licenses, permits, layout, material handling, taxes and levies, code compliance, protection, and daily clean-up associated with construction of field detentions and installation of sewer system, per the plans and specifications dated 1/31/08 and the Geotechnical Report dated November 2006, including but not limited to the following:

- 1) Provide safety barricades at all open trenches and comply with all federal and state OSHA requirements, including obtaining NDEP Permit.
- 2) Coordinate and ensure timely submittals to Construction Manager within 10 days of Contract execution, including but not limited to certifications, applicable demolition and dust control permits and acknowledgement of designated haul routes.
- 3) Remove all debris, spoil and grubbing generated during the excavation process from the jobsite and properly dispose of in the appropriate landfill or licensed recycling yard.
- 4) Apply for and obtain encroachment permits from local and state jurisdictions as required for any off-site work. Include all traffic control as required for the portion of the work.
- 5) Coordinate with fellow Trade Contractors as necessary.
- 6) Coordinate any on-site delivery and storage of materials with Construction Manager.
- 7) Provide highest due diligence and best effort in utilizing spoil material in site balance.
- 8) Provide all grout, piping, bedding, stone reducers, vents and compaction as necessary for a complete field detention installation as shown on the plans.
- 9) Wrap all fields in geotextile as specified.
- 10) Furnish and install on-site sewer, lines, connections, terminations, and all associated work.
- 11) Bring all manholes and access lids to finish grade as specified.
- 12) Furnish and install all associated manholes, clean-outs, terminations, laterals to inside curb at each pad as defined on sheet C-13, connections, and taps.
- 13) Shade and bed lines as set forth in plans, specs, and by the local municipal sanitation district.
- 14) Stake and flag all clean-outs, manholes, lateral terminations with tamper-proof risers and bold green paint.
- 15) Mark lateral locations with S-scribe in curb.
- 16) Sawcut, excavate, backfill, compact, base and permanently patch all laterals and connections in adjacent rights of way. If permanent patching is not required, provide temporary patching and maintenance.
- 17) Coordinate associated on-site and off-site surveying, staking, testing, and inspecting provided by the Owner.
- 18) Relocate and Protect all existing utilities and vaults throughout the course of construction and adjust to new grades.
- 19) Maintain project schedule with qualified labor and proper delivery coordination, including all mobilizations and any and all overtime costs required, at no additional cost to the Owner.
- 20) Provide clean-up and removal of debris generated by this portion of the work on a daily basis and leave jobsite in a clean and orderly manner at close of each business day.
- 21) No extras shall be allowed for export or import of required material.
- 22) As-built, contemporaneous record documentation and 3 copies of operations and maintenance manuals.
- 23) Exclusions:
  - a) Dry Side Utilities
  - b) SPPCO relocations
  - c) Sewer capacity fees
  - d) Master NDOT Permit and Fees.

End of Work Scope



# Drawings Log

Metcalf Builders, Inc.

Date: 3/12/2008

01-PC-024 Minden Gateway Center

Project Manager: Jonathan Young

Number	Title	Date	Revision	Sketch	Current	Comments
Civil						
C1	COVER PAGE	1/31/08			<input checked="" type="checkbox"/>	
C2	LEGEND ABBREVIATIONS & NOTES	1/31/08			<input checked="" type="checkbox"/>	
C3	DEMOLITION & EROSION CONTROL PLAN	1/31/08			<input checked="" type="checkbox"/>	
C4	MASTER SITE PLAN	1/31/08			<input checked="" type="checkbox"/>	
C5	LINE AND CURVE TABLE PLAN	1/31/08			<input checked="" type="checkbox"/>	
C5.1	LINE AND CURVE TABLE	1/31/08			<input checked="" type="checkbox"/>	
C6	OVERALL UTILITY PLAN	1/31/08			<input checked="" type="checkbox"/>	
C7	OVERALL GRADING PLAN	1/31/08			<input checked="" type="checkbox"/>	
C8	GRADING PLAN I	1/31/08			<input checked="" type="checkbox"/>	
C9	GRADING PLAN II	1/31/08			<input checked="" type="checkbox"/>	
C10	GRADING PLAN III	1/31/08			<input checked="" type="checkbox"/>	
C11	GRADING PLAN IV	1/31/08			<input checked="" type="checkbox"/>	
C12	EXISTING PARCEL & EASEMENT PLAN	1/31/08			<input checked="" type="checkbox"/>	
C13	PROPOSED PARCEL & EASEMENT PLAN	1/31/08			<input checked="" type="checkbox"/>	
C14	PLAN & PROFILE STA. 0+00 TO 10+50	1/31/08			<input checked="" type="checkbox"/>	
C15	PLAN & PROFILE STA. 0+00 TO 11+50	1/31/08			<input checked="" type="checkbox"/>	
C16	PLAN & PROFILE STA. 0+00 TO 7+50	1/31/08			<input checked="" type="checkbox"/>	
C17	PLAN & PROFILE STA. 0+00 TO 3+75	1/31/08			<input checked="" type="checkbox"/>	
C18	PLAN & PROFILE STA. 0+00 TO 3+50	1/31/08			<input checked="" type="checkbox"/>	

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 0109

Exhibit B

# Drawings Log

Metcalfe Builders, Inc.

Date: 3/12/2008

01-PC-024 Minden Gateway Center

Project Manager: Jonathan Young

Number	Title	Date	Revision	Sketch	Current	Comments
Civil						
C19	PLAN & PROFILE STA. 0+00 TO 4+00	1/31/08			<input checked="" type="checkbox"/>	
C20	DETAILS	1/31/08			<input checked="" type="checkbox"/>	
C21	DETAILS	1/31/08			<input checked="" type="checkbox"/>	
C22	DETAILS	1/31/08			<input checked="" type="checkbox"/>	
C23	DETAILS	1/31/08			<input checked="" type="checkbox"/>	
C24	DETAILS	1/31/08			<input checked="" type="checkbox"/>	
C25	DETAILS	1/31/08			<input checked="" type="checkbox"/>	
C26	FIELD #1 (DETENTION)	1/31/08			<input checked="" type="checkbox"/>	
C27	FIELD #2 (DETENTION)	1/31/08			<input checked="" type="checkbox"/>	
C28	FIELD #3 (DETENTION)	1/31/08			<input checked="" type="checkbox"/>	
C29	FIELD #4 (DETENTION)	1/31/08			<input checked="" type="checkbox"/>	
C30	FIELD #5 (DETENTION)	1/31/08			<input checked="" type="checkbox"/>	
C31	FIELD #6 (DETENTION)	1/31/08			<input checked="" type="checkbox"/>	
C32	FIELD #7 (DETENTION)	1/31/08			<input checked="" type="checkbox"/>	
C33	DETAILS	1/31/08			<input checked="" type="checkbox"/>	
C34	DETAILS	1/31/08			<input checked="" type="checkbox"/>	
C35	R.O.W. EXHIBIT	1/31/08			<input checked="" type="checkbox"/>	
C36	NDOT DETAILS	1/31/08			<input checked="" type="checkbox"/>	
C37	DETAILS	1/31/08			<input checked="" type="checkbox"/>	
GEO-TECH REP	PRELIMINARY GEOTECHNICAL INVESTIGATION CORNER STONE MARKET PLACE	11/1/06			<input checked="" type="checkbox"/>	Black Eagle Consulting, Inc. - Geotechnical & Construction Services
Landscape						
L1	LANDSCAPE NOTES, SCHEDULE, & DETAILS	1/31/08			<input checked="" type="checkbox"/>	
L2	LANDSCAPE PLAN	1/31/08			<input checked="" type="checkbox"/>	



# Drawings Log

Metcalfe Builders, Inc.

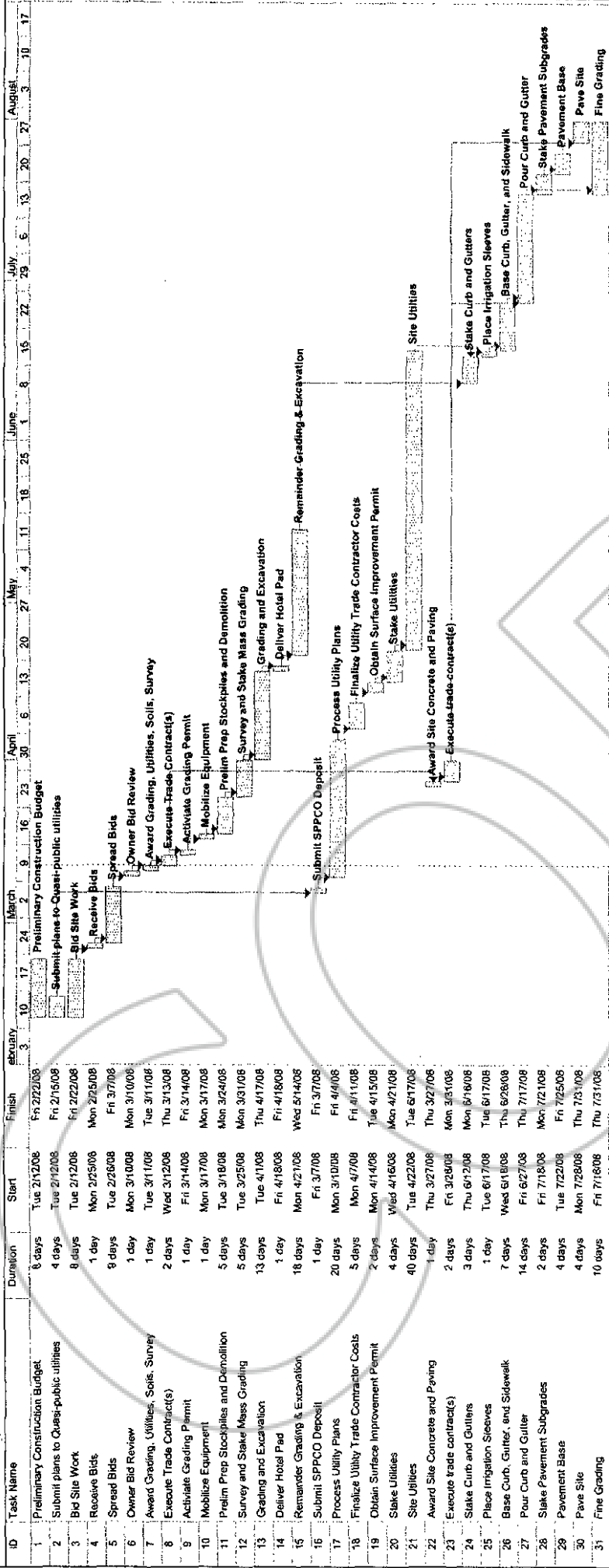
Date: 3/12/2008

01-PC-024 Minden Gateway Center


Project Manager: Jonathan Young

Number Landscape	Title	Date	Revision	Sketch	Current	Comments
L3	LANDSCAPE PLAN	1/31/08			<input checked="" type="checkbox"/>	
L4	LANDSCAPE PLAN	1/31/08			<input checked="" type="checkbox"/>	
L5	LANDSCAPE PLAN	1/31/08			<input checked="" type="checkbox"/>	
L6	LANDSCAPE PLAN	1/31/08			<input checked="" type="checkbox"/>	
L7	IRRIGATION, NOTES, SCHEDULE, & DETAILS	1/31/08			<input checked="" type="checkbox"/>	
L8	IRRIGATION PLAN	1/31/08			<input checked="" type="checkbox"/>	
L9	IRRIGATION PLAN	1/31/08			<input checked="" type="checkbox"/>	
L10	IRRIGATION PLAN	1/31/08			<input checked="" type="checkbox"/>	
L11	IRRIGATION PLAN	1/31/08			<input checked="" type="checkbox"/>	
L12	IRRIGATION PLAN	1/31/08			<input checked="" type="checkbox"/>	
L13	LANDSCAPE DETAILS	1/31/08			<input checked="" type="checkbox"/>	

# MINDEN GATEWAY SITE WORK SCHEDULE



ID	Task Name	Duration	Start	Finish
1	Preliminary Construction Budget	8 days	Tue 2/12/08	Fri 2/22/08
2	Submit plans to Quest-public utilities	4 days	Tue 2/12/08	Fri 2/22/08
3	Big Site Work	8 days	Tue 2/12/08	Fri 2/22/08
4	Receive Bids	1 day	Mon 2/25/08	Mon 2/25/08
5	Spread Bids	1 day	Tue 2/26/08	Fri 3/7/08
6	Owner Bid Review	1 day	Mon 3/10/08	Mon 3/10/08
7	Award Grading, Utilities, Soils, Survey	1 day	Tue 3/11/08	Tue 3/11/08
8	Execute Trade Contract(s)	2 days	Wed 3/12/08	Thu 3/13/08
9	Activate Grading Permit	1 day	Fri 3/14/08	Fri 3/14/08
10	Mobilize Equipment	5 days	Tue 3/18/08	Mon 3/24/08
11	Prelim Prep Stockpiles and Demolition	5 days	Tue 3/18/08	Mon 3/24/08
12	Survey and Stake Mass Grading	5 days	Tue 3/25/08	Mon 3/31/08
13	Grading and Excavation	13 days	Tue 4/1/08	Thu 4/17/08
14	Deliver Hotel Pad	1 day	Fri 4/18/08	Fri 4/18/08
15	Remainder Grading & Excavation	18 days	Mon 4/21/08	Wed 5/14/08
16	Submit SPPCO Deposit	1 day	Fri 3/27/08	Fri 3/27/08
17	Process Utility Plans	20 days	Mon 3/10/08	Fri 4/4/08
18	Finalize Utility Trade Contractor Costs	5 days	Mon 4/7/08	Fri 4/11/08
19	Obtain Surface Improvement Permit	2 days	Mon 4/14/08	Tue 4/15/08
20	Stake Utilities	4 days	Wed 4/16/08	Mon 4/21/08
21	Site Utilities	40 days	Tue 4/22/08	Tue 6/17/08
22	Award Site Concrete and Paving	1 day	Thu 3/27/08	Thu 3/27/08
23	Execute trade contract(s)	2 days	Fri 3/28/08	Mon 3/31/08
24	Stake Curb and Gutters	3 days	Thu 6/2/08	Mon 6/16/08
25	Place Irrigation Sleeves	1 day	Tue 6/17/08	Tue 6/17/08
26	Base Curb, Gutter, and Sidewalk	7 days	Wed 6/18/08	Thu 6/25/08
27	Pour Curb and Gutter	14 days	Fri 6/27/08	Thu 7/17/08
28	Stake Pavement Subgrades	2 days	Fri 7/18/08	Mon 7/21/08
29	Pavement Base	4 days	Tue 7/22/08	Fri 7/25/08
30	Pave Site	4 days	Mon 7/28/08	Thu 7/31/08
31	Fine Grading	10 days	Fri 7/18/08	Thu 7/31/08

  
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**Exhibit 'D'**  
**METCALF BUILDERS, INC.**

Welcome to **METCALF BUILDERS, INC.** and the *Minden Gateway Center Project*. Attached are general project information, administrative requirements, and job-site safety rules. Compliance with these rules is mandatory for all subcontractors and their employees. Everyone benefits from a safe, clean, efficient job site. Your cooperation is appreciated.

Please read the attached; sign where indicated and return to the Project Superintendent before starting work on this project. Additional copies are available for you and your employees.

Thank you.

**I HAVE READ AND UNDERSTAND THE ATTACHED RULES AND INFORMATION AND I AGREE THAT ANY VIOLATIONS ON MY PART OR ANYONE WORKING UNDER MY SUPERVISION WILL BE GROUNDS FOR DISCIPLINARY ACTION OR DISCHARGE FROM THIS PROJECT.**

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Company: \_\_\_\_\_

**Project Information and Contact Numbers:**

Project Name: Minden Gateway Center  
Project Address: US Highway 395, Minden, NV 89423  
Project Phone: (775) 885-1844  
Project Fax: (775) 885-0178  
Project Manager: Jonathan Young (775) 691-1148 (Cell)  
Project Engineer: Nick Landis (775) 691-7536 (Cell)  
Project Superintendent: Bill Durand (775) 691-7534 (Cell)

**Emergency Phone Numbers:**

Fire: 911  
Police: 911  
Hospital: Minden Medical Center (775) 445-8000  
Emergency (775) 783-7800  
925 Ironwood Drive, Minden, NV 89423 Suite 1104  
Emergency Care: 911

## Administrative

**ALL VISITORS** must sign in with the MBI site superintendent upon arrival to the project. This includes the Trade Contractor's project manager and other office personal. Those not doing so will be considered to be trespassing on the property and could face legal action.

Weekday work hours: Monday through Friday, 7:00 A.M. – 7:00 P.M.

Weekend hours: Saturday 7:00 A.M. – 7:00 P.M. and is to be coordinated with the MBI supervision **with a minimum of 48 hours notice prior to that weekend.**

Daily reports are required of all Trade Contractors; they must be turned in by 9:00 A.M. the following workday to the job superintendent.

Progress meetings will be held as scheduled by the project superintendent and will be held at the site unless told otherwise. Subcontractor's Project Manager and/or Foreman are required to attend these meetings.

All Subcontractors are required to supply to the MBI superintendent, copies of your company's **Safety Policy (IIPP)** and copies of your **MSDS. (Material Safety and Data Sheets)**

All major deliveries will be reported to the MBI Superintendent. Please consult with the Superintendent for coordination of storage areas.

Metcalf Builders, Inc. does not provide a telephone for the Trade Contractors use. You will, however, be permitted the use of the MBI telephones for emergency use only!!

The following will be used to enforce safety on our projects;

- A. First offense will be in the form of a verbal warning at the time of the incident with a written notice to the applicable Subcontractor by the end of the day.
- B. The second offense will be a written notice with a \$ 100.00 fine against the Trade Contractor.
- C. The third offense will result in a \$500.00 fine against the Trade Contractor and the guilty person and/or Trade Contractor's dismissal from the job site.

## JOB SITE SAFETY RULES

### GENERAL:

All work is to be performed in accordance with Federal OSHA, State of Nevada and any local governing agencies safety requirements.

The MBI superintendent will inspect all electrical tools and cords weekly and any unsafe item will be removed from service until corrected. Failure to correct the unsafe condition will result in a safety violation.

All injuries and incidents are to be reported to the Project Superintendent immediately. A copy of the Trade Contractor's accident report must be submitted to MBI within 24 hours.

Safety meetings will be held at each progress meeting. Every Trade Contractor is also required to turn in safety meeting minutes from their own weekly tailgate safety meetings. Any Trade Contractor not participating will not be allowed to continue working on this project.

All equipment will be operated by persons authorized to operate that specific type of equipment.

The on site speed limit is 5 mph.

All trades shall park in areas designated by MBI unless arraignments are made with the MBI Project Superintendent.

Please report and unsafe conditions to the MBI Project Superintendent immediately.

### **PERSONAL PROTECTION**

Construction areas in and around the building are to be considered "HARD HAT AREAS" once the building walls are being erected. All employees and visitors are required to wear hard hats at all times.

**Shirts must be worn at all times. Removal of shirts is not permitted.**

**Work boots must be worn on all of our projects, tennis shoes are not allowed at any time.**

All personal will be made familiar with these projects safety rules before starting work.

Emergency telephone numbers will be displayed inside the MBI site job office trailer.

Eye and face protection must be worn when grinding, chipping, welding or cutting with the torch.

Safety harnesses should be used whenever a danger from falling is present, but always when working at a height of 6 feet or more above a working surface.

Appropriate warning signs shall be displayed whenever a danger to personal is present. Personal disregarding these warning signs are subject to removal from the job site.

Alcohol or unprescribed drugs will not be allowed on the job site at any time. Personal in violation will be removed from the job site. **SUBSTANCE ABUSE WILL NOT BE TOLERATED.**

### **FLOOR, ROOF OPENINGS AND PERIMETER PROTECTION**

Floor and roof openings shall be covered or barricaded. If coverings or barricades are removed for access or work, they must be replaced by the party that removed them immediately after the work is completed. Unprotected openings will never be left unattended.

Perimeter protection shall be provided at all elevated floors and roofs. Any party that removes this protection for any reason must also restore it to a safe condition.

### **SCAFFOLDING AND RAMPS**

Scaffolding will be properly constructed with solid footing, bracing and with scaffold boards in place and secured.

Guard rails and toe boards will be used at all, times when the work platform is more than 10 feet above the ground or floor.

Ramps will be properly constructed, braced and cleated. Ramp surfaces will be kept clean. Ice and/or mud will be removed immediately.

Tools and materials will be removed from the scaffold platforms before moving.

### **LADDERS**

Ladders will be maintained in good condition at all times. Damaged ladders will be removed from the job site.

Ladders will be erected with the proper pitch, with firm footing and extending 3 feet above the landing and secured at the landing.

Areas at the top of ladders will be kept free of debris.

Always face the ladder when ascending or descending.

### **EXCAVATIONS**

Any excavation more than 4 feet in depth will have sloped sides or shoring.

The excavated material will be stacked no closer than 2 feet from the sides of the excavation.

Ladders will be provided within 25 feet of the work area on excavations of more than 4 feet in depth.

All excavations will be provided with warning lines or barricaded.

All machinery shall have back-up alarms in operating condition.

### **ACETYLENE AND OXYGEN BOTTLES**

When in use, bottles must be stored in a vertical position and securely tied off.

When not in use, bottles will be stored in a vertical position, tied off with the caps in place.

Acetylene and oxygen bottles shall be stored separately from one another.

### **ELECTRICAL**

Extension cords will be three wire grounded type. Temporary electric power will be equipped with a suitable ground.

Extension cords will be protected from damage from traffic, sharp corners, pinching in doors, etc.

Portable tools will be double insulated or non-current carrying. Metal parts of the tool shall be grounded.

Only qualified personal will make electrical connections or repairs.

### **FIRE PROTECTION**

A fire extinguisher will be made available in the MBI job site office and identified for ready access. Please advise all personal of its location and use.

Fire extinguishers will always be nearby when refueling equipment, using any welding equipment or when cutting operations are in progress.

No more than 20 gallons of combustible or flammable liquids will be permitted to be stored on site at any one time, with none to be stored inside of the building at any time. Storage of these flammable liquids will be in approved containers and will be stored at least 25 feet from any structure.

Combustible trash will be removed from the building daily and not allowed to accumulate so as to present a danger of fire.

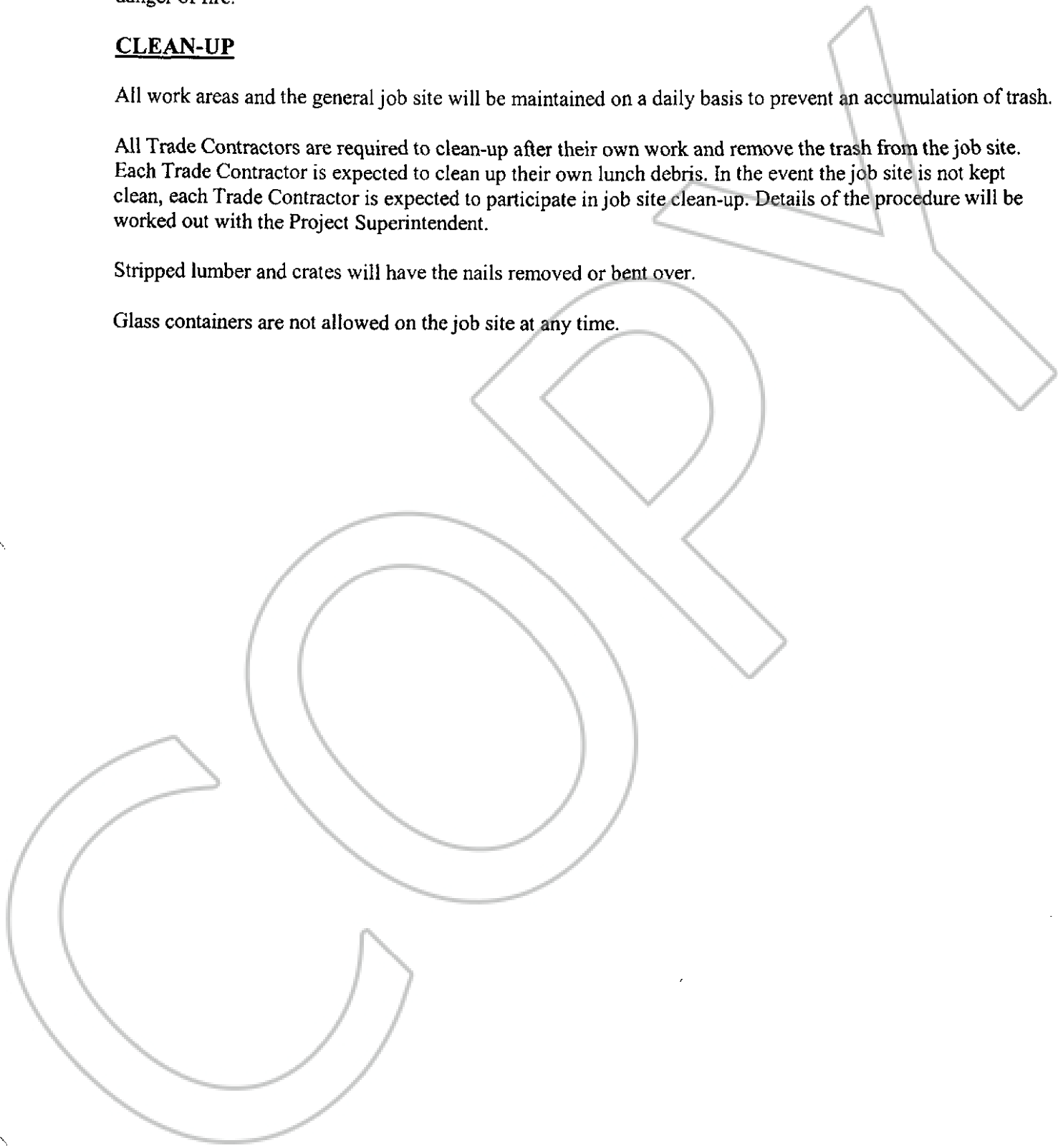
### **CLEAN-UP**

All work areas and the general job site will be maintained on a daily basis to prevent an accumulation of trash.

All Trade Contractors are required to clean-up after their own work and remove the trash from the job site. Each Trade Contractor is expected to clean up their own lunch debris. In the event the job site is not kept clean, each Trade Contractor is expected to participate in job site clean-up. Details of the procedure will be worked out with the Project Superintendent.

Stripped lumber and crates will have the nails removed or bent over.

Glass containers are not allowed on the job site at any time.





**EXHIBIT E  
INSURANCE REQUIREMENTS**

**Minden Gateway Center**

**1 Trade Contractor Insurance Requirements:**

- 1.1 Unless expressly waived in writing by the Owner, Contractors, as an independent contractor and not an employee of the Owner, must carry policies of insurance in amounts specified and pay all taxes and fees incident hereunto. The Owner shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:
- 1.2 Contractor has provided the required evidence of insurance to Owner and Construction Manager.
- 1.3 Owner has approved the insurance policies provided by the Contractor. Prior approval of the insurance policies by the Owner shall be a condition precedent to any payment of consideration under this Contract and the Owner's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the Owner to timely approve shall not constitute a waiver of the Condition.

**2 Insurance Coverage:**

- 2.1 The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance, conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the Owner, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:
  - 2.1.1 Final acceptance by the Owner of the completion of this Contract: or
  - 2.1.2 Such time as the insurance is no longer required by the Owner under the terms of this Contract.
- 2.2 Any insurance or self-insurance available to the Owner shall be in excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the Owner, Contractor shall





provide the Owner with renewal or replacement evidence of insurance no less than thirty (30) calendar days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the Owner and immediately replace such insurance or bond with an insurer meeting the requirements.

**3 General Requirements:**

- 3.1 **Certificate Holder:** Each liability insurance policy shall list Owner & Construction Manager as a certificate holder.
- 3.2 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, Owner, Construction Manager and their respective officers, employees and immune contractors shall be named as additional insured's for all liability arising from the Contract.
- 3.3 **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insured's.
- 3.4 **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insured's clause.
- 3.5 **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the Owner. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by Owner.
- 3.6 **Policy Cancellation:** Except for ten (10) calendar days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) calendar days prior written notice to Owner, the policy shall not be canceled, non-renewed or coverage and/ or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to Owner.
- 3.7 **Approved Insurer:** Each insurance policy shall be:
  - 3.7.1 Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and

3.7.2 Currently rated by A.M. Best as "A-VII" or better.

3.8 **Evidence of Insurance:** Prior to the start of any work, Contractor must provide the following documents to Owner:

3.8.1 Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Owner to evidence the insurance policies and coverage's required of Contractor.

3.8.2 Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Owner to evidence the endorsement of the Owner and Construction Manager as an additional insured.

3.8.3 Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

3.9 **Review and Approval:** Documents specified above must be submitted for review and approval by Owner prior to the commencement of work by Contractor. Neither approval by the Owner nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the Owner or others, and shall be in addition to and not in lieu of any other remedy available to the Owner under this Contract or otherwise. The Owner reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

#### 4 **Commercial General Liability Insurance:**

4.1 Minimum Limits required:

4.1.1 Two Million Dollars (\$2,000,000.00) – General Aggregate

4.1.2 Two Million Dollars (\$2,000,000.00) – Products & Completed Operations Aggregate

4.1.3 One Million Dollars (\$1,000,000.00) – Each Occurrence

4.1.4 Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising



from premises, operations, independent contractors, completed operation, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

**5 Business Automobile Liability Insurance:**

5.1 Contractor shall procure and maintain, during the term of this Contract, business automobile liability insurance in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. Coverage shall be for "any auto", including owned, non-owned and hired vehicles. The policy shall be written on ISO form CA 00 1 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

**6 Workers' Compensation and Employer's Liability Insurance:**

6.1 Contractor shall provide proof of the Worker's compensation insurance as required by Nevada Revised Statutes Chapters 616A through 616D inclusive.

6.2 Employer's Liability insurance with a minimum limit of \$500,000.00 each employee per accident for bodily injury by accident or disease.

6.3 Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that Contractor is a sole proprietor; that Contractor will not use the services of any employees in the performance of this Contract; that Contractor has elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A- 616D, inclusive.




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# INSTRUCTIONS FOR COMPLETION OF AGC DOCUMENT 520 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND TRADE CONTRACTOR (Where The Construction Manager Is The Owner's Agent)

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## GENERAL INSTRUCTIONS

### Standard Form

These instructions are for the information and convenience of the users of the AGC 520, *Standard Form of Agreement Between Owner and Trade Contractor (Where the Construction Manager is the Owner's Agent)* 1997 Edition. They are not part of the agreement nor a commentary on or interpretation of the standard form. The intent of the parties to a particular agreement controls its meaning and not that of the writers and publishers of the standard form. As a standard form, this agreement has been designed to establish the relationship of the parties in a standard situation. Recognizing that every project is unique, modifications will be required. See the recommendations for modifications on the next page.

### Legal and Insurance Counsel

This agreement has important legal and insurance consequences. Consultation with an attorney and an insurance advisor is encouraged with respect to its completion or modification.

## CONSTRUCTION MANAGEMENT

AGC 520, 1997 Edition, as the title indicates is for use as the agreement between the Owner and the Trade Contractor in the situation where the Construction Manager is the Owner's agent and the Owner contracts directly with all Trade Contractors. Note that AGC and the American Institute of Architects have jointly published two agreements for use as the agreement between the Owner and the Construction Manager in the situation where the Construction Manager is also the Constructor (AGC 565 - AIA 121/CMc and AGC 566 - AIA 131/CMc).

The following two diagrams on the next page illustrate the differences between the two types of construction management.



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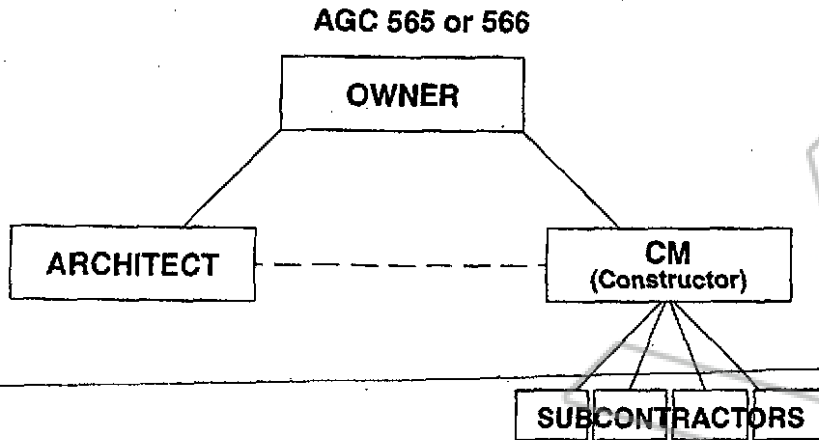
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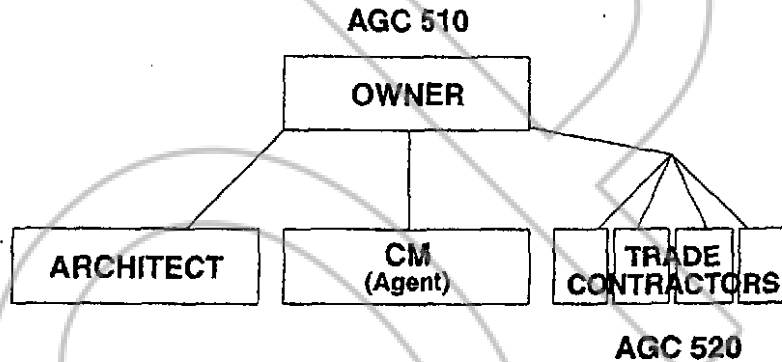
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## CONTRACTUAL RELATIONSHIPS WHERE THE CONSTRUCTION MANAGER IS THE CONSTRUCTOR



## CONTRACTUAL RELATIONSHIPS WHERE THE CONSTRUCTION MANAGER IS THE OWNER'S AGENT



This document, AGC 520 (1997 edition), is compatible with AGC Document 510, *Standard Form of Construction Management Agreement Between Owner and Construction Manager (Where the Construction Manager is the Owner's Agent and the Owner Enters Into All Trade Contractor Agreements)*, 1997 Edition. AGC 520 is not compatible with the AGC 565 or 566, two agreements where the construction manager is also the constructor. Use with other owner-construction manager agency agreements or general conditions may require modification.

### COMPLETING THE AGREEMENT

#### Completing Blanks

Diamonds in the margins indicate provisions requiring parties to fill in blanks with information.

#### Modifications

Supplemental conditions, provisions added to the printed agreement, may be adopted by reference. It is best for supplements to be attached to the agreement.

Provisions in the printed document that are not to be included in the agreement may be deleted by striking through the word,

sentence or paragraph to be omitted. It is recommended that unwanted provisions not be blocked out so that the deleted materials are illegible. The parties should be clearly aware of the material deleted from the standard form.

It is a good practice for both parties to sign and date modifications.

AGC 510 and 520 (1997 Editions) are available on the AGC Contract Documents on Disk software, AGC Publication number 1403.



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## AGC 520 ARTICLES

### Article 1

Article 1 identifies the parties to the Agreement, the Project that is the subject of the Agreement, as well as the Project Architect/Engineer and Construction Manager.

### Article 2

The relationships of the parties are described in this article.

### Article 3

The parties list all Trade Contract Documents in Paragraph 3.1.

### Article 4

The scope of the Trade Contract Work is to be described in Paragraph 4.1 as well as the temporary services provided by the Owner in Paragraph 4.2.

### Article 5

In this article the parties describe the manner of the Owner's payment to the Trade Contractor.

### Article 6

The requirement of surety performance and/or payment bonds, if any, is detailed in this article.

### Article 7

Among the Article 7 provisions, the parties establish a Date of Commencement, Trade Contract Time, and provide for the Trade Contractor's contributions to the Construction Manager's overall Project Schedule.

### Article 8

Article 8 provides for the governing law and other elements for contract interpretation.

### Article 9

The Owner's obligations are described in Article 9.

### Article 10

The Trade Contractor's obligations are described in Article 10.

### Article 11

Provisions relative to labor relations must be inserted or incorporated by reference. Legal counsel is recommended. If there are no labor provisions, the parties should so indicate in order that it is clear that their omission was not an oversight.

### Article 12

The insurance obligations of the parties are detailed in this article.

### Article 13

The parties' respective indemnification obligations are described in this article. Contractual indemnification is governed by state law. The states differ as to the types of indemnification agreements that they will enforce. Consultation with insurance and legal counsel with knowledge of the jurisdiction is recommended.

### Article 14

Article 14 provides for potential changes, claims and delays related to the Trade Contract Work.

### Article 15

Article 15 sets forth the provisions governing payments to the Trade Contractor.

### Article 16

Article 16 describes dispute resolution.

### Article 17

Article 17 provides for the Owner's termination of the Agreement for cause, as well as the Owner's suspension and termination for convenience.

### Article 18

The Trade Contractor has the right to terminate the Agreement for cause under certain conditions.

### Article 19

Miscellaneous provisions include a mutual waiver of consequential damages.



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Roll Up MGC Prepared by  
Greg Hunt 12/15/2008

**Minden Gateway Center Explanation of Invoices Due To Action Construction Co**

Page 1	Invoice Number	Contract Description / Amount	Date	Due Date	Invoice before retention	Retention	Invoice Amount (less retention & discounts)	Open Invoice Balances NOT PAID	Paid Invoices	Change order Increases	Late Invoices - 16.27 % Payment Delay	Balance to Complete
<b>Contract</b>	<b>Aggregate Base &amp; Storm Drain</b>	<b>Minden Gateway Center</b>										
0.932281204	Inv# 2	Aggregate Base & Storm Drain	06/08/2008	07/20/2008	\$24,193.50	\$ 2,419.35	\$ 21,774.15		\$ 21,774.15			
	Inv# 2	Aggregate Base & Storm Drain	06/09/2008	07/20/2008	\$109,949.85	\$ 10,994.99	\$ 98,954.86		\$ 98,954.86			
	Inv# 3	Aggregate Base & Storm Drain	06/24/2008	07/20/2008	\$20,542.75	\$ 2,054.28	\$ 18,488.47		\$ 18,488.47			
	#4	Aggregate Base & Storm Drain	07/07/2008	08/20/2008	\$15,000.00	\$ 1,500.00	\$ 13,500.00		\$ 13,500.00			
	#5	Aggregate Base & Storm Drain	07/16/2008	08/20/2008	\$130,872.80	\$ 13,087.28	\$ 117,785.52		\$ 117,785.52			
	Inv#6	Aggregate Base & Storm Drain	06/06/2008	09/20/2008	\$14,030.00	\$ 1,403.00	\$ 12,627.00		\$ 12,627.00			
	Inv#7	Aggregate Base & Storm Drain	08/14/2008	09/20/2008	\$15,872.50	\$ 1,587.25	\$ 14,285.25		\$ 14,285.25			
	Inv# 8	Aggregate Base & Storm Drain	08/25/2008	09/20/2008	\$10,942.50	\$ 1,094.25	\$ 9,758.25		\$ 9,758.25			
	Inv# 9	Aggregate Base & Storm Drain	09/10/2008	10/20/2008	\$23,539.96	\$ 2,354.00	\$ 21,185.96		\$ 21,185.96			
<b>Original Contract</b>		C.O.#2 - Delete 2 Grease Interceptors										
<b>Change Orders</b>		Change Order # 1								\$ (28,352.60)		
		\$ 371,582.92			\$363,843.86	\$ 36,384.40	\$ 327,459.46		\$ 327,459.46	\$ 10,493.15		
		\$ 10,493.15								\$ 38,845.75		
<b>Total w/ CO</b>		\$ 382,076.07			\$363,843.86							\$18,232.21
<b>Contract</b>	<b>Demolition &amp; Earthwork</b>											
	MG PR 1	Demolition & Earthwork	03/25/2008	04/20/2008	\$89,724.56	\$ 8,972.46	\$ 80,752.10		\$ 78,329.54			
	D&E PR 2	Demolition & Earthwork	04/23/2008	05/20/2008	\$162,858.59	\$ 16,285.86	\$ 146,572.73		\$ 146,392.73			
	#3	Demolition & Earthwork	07/07/2008	08/20/2008	\$29,806.86	\$ 2,980.69	\$ 26,826.17		\$ 26,826.17			
	Inv# 4	Demolition & Earthwork	08/25/2008	09/20/2008	\$22,323.88	\$ 2,232.39	\$ 20,091.49		\$ 20,091.49			
	Inv# 5	Demolition & Earthwork	09/10/2008	10/20/2008	\$25,000.00	\$ 2,500.00	\$ 22,500.00		\$ 22,500.00			
	Inv# D&E #2	Demolition & Earthwork	09/26/2008	10/20/2008	\$10,000.00	\$ 1,000.00	\$ 9,000.00		\$ 9,000.00			
<b>Original Contract</b>		\$ 371,457.38			\$ 339,513.89	\$ 33,951.40	\$ 305,562.49		\$ 294,139.93	\$		\$
<b>Change Orders</b>		\$			\$0.00							
<b>Total w/ CO</b>		\$ 371,457.38			\$339,513.89							\$31,943.49
<b>Contract</b>	<b>Dry Utilities</b>											
	Inv#1	Dry Utilities	07/24/2008	09/20/2008	\$84,368.00	\$ 8,436.80	\$ 75,931.20		\$ 75,931.20			
	Inv#2	Dry Utilities	08/06/2008	09/20/2008	\$145,117.15	\$ 14,511.72	\$ 130,605.43		\$ 130,605.43			
	Inv. DUCO #1	Dry Utilities	08/26/2008	10/20/2008	\$16,000.00	\$ 1,600.00	\$ 14,400.00		\$ 14,400.00			\$ 14,000.00
<b>Original Contract</b>		\$ 225,825.00			\$245,485.15	\$ 24,548.52	\$ 220,936.63		\$ 206,536.63	\$		\$
<b>Change Orders</b>		\$ 61,447.00										
<b>Total w/ CO</b>		\$ 287,272.00			\$245,485.15		\$ 14,400.00		\$ 14,400.00			\$41,786.86

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Action Construction Company  
Invoices for Minden Gateway Center  
All Transactions

Page 2 % Complete	Field Detentions & Sewer System	Contract Description / Amount	Date	Due Date	Invoice before retention	Retention	Invoice Amount (less retention & discounts)	Open Invoice Balances NOT PAID	Paid Invoices	Change order increases	Late Invoices Payment Delay	Balance to Complete
0.980446381	FD&SS PR1	Field Detentions & Sewer System	04/23/2008	05/20/2008	\$11,885.94	\$ 1,165.59	\$ 10,184.37	\$	\$ 10,184.37			
	Inv# 3	Field Detentions & Sewer System	06/08/2008	07/20/2008	\$28,149.64	\$ 2,814.96	\$ 25,334.68	\$	\$ 25,334.68			
	Inv# 2	Field Detentions & Sewer System	06/09/2008	07/20/2008	\$36,596.12	\$ 3,659.61	\$ 32,936.51	\$	\$ 32,936.51			
	Inv# 4	Field Detentions & Sewer System	07/16/2008	08/20/2008	\$287,302.73	\$ 28,730.27	\$ 258,572.46	\$	\$ 258,572.46			
	Inv# 5	Field Detentions & Sewer System	08/25/2008	09/20/2008	\$15,052.40	\$ 1,505.24	\$ 13,547.16	\$	\$ 13,547.16			
	Inv. FD&SS CO #1	Field Detentions & Sewer System	09/26/2008	10/20/2008	\$23,750.00	\$ 2,375.00	\$ 21,375.00	\$ 21,375.00	\$ 21,375.00		\$ 2,375.00	\$ 21,375.00
		Change Order #1								\$ 109,044.00		\$ 109,044.00
					\$402,516.83	\$ 37,876.87	\$ 340,575.18	\$ 21,375.00	\$ 340,576.18	\$ 109,044.00		\$
					\$402,516.83							\$8,027.63
	Underground Water											
	U w/ PR 1	Underground Water	04/23/2008	05/20/2008	\$22,402.60	\$ 2,240.26	\$ 19,557.47	\$	\$ 19,557.47			
	U w/ Inv# 2	Underground Water	08/22/2008	06/20/2008	\$47,595.08	\$ 4,759.51	\$ 42,835.57	\$	\$ 42,835.57			
	U w/ Inv# 3	Underground Water	06/24/2008	07/20/2008	\$122,902.42	\$ 12,290.24	\$ 110,612.18	\$	\$ 110,612.18			
	U w/ Inv#4	Underground Water	07/07/2008	08/20/2008	\$135,129.81	\$ 13,512.88	\$ 121,615.93	\$	\$ 121,615.93			
	Inv#5	Underground Water	07/24/2008	08/20/2008	\$19,508.33	\$ 1,950.83	\$ 17,557.50	\$	\$ 17,557.50			
		Change Order #1								\$ 45,313.00		\$ 45,313.00
					\$447,537.24	\$34,755.72	\$312,178.65	\$0.00	\$312,178.65	\$45,313.00	\$44,375.00	\$0.00
					\$							\$0.00
					\$447,537.24							\$0.00
	Grand	Total			\$1,598,895.97	\$ 167,514.71	\$ 1,506,712.41	\$ 44,775.00	\$ 1,480,889.85	\$ 119,537.15	\$44,375.00	\$ 99,990.18
		with change orders										
		Open Invoices										
		Total Retention to Date										
		Minimum Amount of Mechanics Lien to be paid to release lien according to signed contract per 15.2.7, line 6 & line 12										
		Balance to Complete										
		Make Payment to Action Construction CO/PO Box 7154, Stateline NV 89449										
		Per Contract Section 9.7, That Sky West/ Jeffery Lowden, shall provide evidence and Sky West Investments has the Ability to Pay Action Construction These Remaining Funds										

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