# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**Agenda Item:** Contractor Agreement; Lacy Construction Company, L

**Action Requested:** County Manager Signature

**Parties to the Agreement:** Lacy Construction and Gunnison County

**Term Begins:** June 16, 2015 **Term Ends:** 9/30/2015 **Grant Contract #:**

**Summary:**

The Board approved the award of the bid and Matthew's signature. I submitted the documents for review and signature

**Fiscal Impact:** $122,500.00

**Submitted by:** Marlene D. Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

**Finance Review:** (●) Required ( ) Not Required

Comments:
Cost is included in adopted 2015 budget

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 6/10/2015

**County Attorney Review:** (●) Required ( ) Not Required

Comments:
ok db 6/11/15

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 6/11/2015 Certificate of Insurance Required Yes (●) No ( )

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 6/11/2015

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: DCM Report

Agenda Date: 6/16/2015

*Revised April 2015*

# CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT ("Agreement") made effective the 8 day of JUNE, 2015, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 (herein "Gunnison County") and Lacy Construction Company, Ltd, whose address is P.O. Box 836, Crested Butte, CO 81230 (herein "Contractor").

## RECITALS

The Contractor desires to provide professional services regarding mobilization, crushing and stock piling of specified aggregate materials at various Gunnison County pits more fully identified in the Scope of Work and Maps attached hereto and incorporated herein by reference as Exhibit "A" ("Services") and Exhibit "C" respectively.

Gunnison County desires to engage Contractor to provide Services according to this Agreement.

## AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. SERVICES.

   Contractor shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Services as more specifically set forth on Exhibit "A". All Services shall be performed in a timely manner and in accordance with generally accepted standards for Contractor's profession and all applicable federal, state and local laws and regulations affecting the Services or the subject matter thereof. **Contractor acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so and may also award or delete specific pits from the bid request.** Contractor shall also furnish a Performance Bond in an amount no less than one hundred percent (100%) of the Contract Price set forth in Paragraph 4 herein, and substantially in the Bid Form attached hereto as Exhibit "B".

2. TERM.

   The term of this Agreement shall commence on the date first set forth above and shall terminate on September 30, 2015, unless sooner terminated or replaced as provided herein.

3. STRATEGIC RESULT.

   Execution of the Agreement will allow the Gunnison County Public Works Department to move toward achieving the strategic goal of providing adequately maintained roads for

residents and visitors. More specifically, 70% of County gravel road miles will be maintained as defined by revised service levels.

4. COMPENSATION, BONUS AND EXPENSES.

In consideration and exchange for Contractor's performance of the Services, during the Term, Gunnison County shall pay Contractor fees as more specifically not to exceed One Hundred Twenty Two Thousand Five Hundred Dollars ($122,500.00) pursuant to Contractor's Bid Itemization as identified in Exhibit "B" attached hereto and incorporated herein by reference.

The Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance subsistence, and profits, except as specifically set forth herein.

This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement without penalty to Contractor pursuant to paragraph 13 of this Agreement.

5. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement that Contractor shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Contractor will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverage's required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

a. Worker's Compensation Insurance in accordance with Colorado and Federal laws which adequately protects all labor employed by Contractor during the term of this Agreement.

b. Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Fifty Thousand and No/100 U.S. Dollars ($350,000.00); and

   For an injury to two or more persons in any single occurrence, the sum of Nine Hundred Ninety Thousand and No/100 U.S. Dollars ($990,000.00).

c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $350,000 for any injury to one person in any single occurrence and in an amount no less than $990,000 for any injury to two or more persons in any single occurrence.

6. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison



BL

County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Contractor is obligated to pay federal and state income tax on any moneys paid it related to the services.

7. INDEMNIFICATION.

Contractor agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Contractor or its employees, subcontractors or agents in connection with the Agreement.

This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

8. DISCRIMINATION.

The Contractor agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

9. IMMIGRATION COMPLIANCE CERTIFICATION.

a. Contractor certifies that Contractor does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

b. Contractor certifies that contractor has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

c. Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

d. Contractor agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.

e. Contractor agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

10. ADA COMPLIANCE.

The Contractor assures Gunnison County that at all times during the performance of the Agreement no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

11. MISCELLANEOUS.

a. SEVERABIILTY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

b. AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

c. NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

12. DELEGATION AND ASSIGNMENT.

This is a personal services contact with Contractor and, therefore, Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

13. TERMINATION.

Either party shall have the right to terminate this agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Contractor shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms outlined in Exhibit "B".



B

14. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

| | |
|---|---|
| Gunnison County: | County Manager<br>Gunnison County<br>200 E. Virginia<br>Gunnison, CO 81230 |
| With a copy to: | Board of County Commissioners<br>of the County of Gunnison, Colorado<br>200 E. Virginia<br>Gunnison, CO 81230 |
| Contractor: | Lacy Construction Company, Ltd<br>P.O. Box 836<br>Crested Butte, CO 81224 |

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

15. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to the Agreement shall be in the state District Court governing Gunnison, Colorado.

16. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

17. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Matthew Birnie, County Manager

ATTEST:

_____
Deputy Clerk

CONTRACTOR

By: _____

# Crushing Bid Solicitation

April 16, 2015

## SCOPE OF WORK

**The per ton price for crushed aggregate from each pit shall be based on these guidelines:**

Mobilization of crushing equipment to and from the pit, including any traffic control and permits needed for large/oversize loads;

Crushing the amount of gravel shown on the bid form to the bid specification defined on the bid form.

The amount of total aggregate in each pit specified will be no less than a minimum of 5,000 ton in the Taramarcaz, Murdie Flats and Watson Flats pits but may be more based on price per ton;

Material must be stockpiled by size and piles may not overlap;

Gunnison County will remove all overburden prior to crushing;

Contractor will be required to blend material to meet required specification;

Contractor will be required to obtain all necessary Federal, State and local permits for crushing;

Contractor will be required to comply with all Federal, State and County regulations;

Contractor will be required to keep all operations within designated pit development areas.

Gunnison County holds permits for each gravel pit. The Contractor will be responsible for obtaining any and all other permits needed (State, Federal) for their operations.

## CONTRACTOR'S BID PROPOSAL

## BID FORM

**DATE:** 5/11/15

**TO:** Gunnison County Public Works Department
195 Basin Park Drive
Gunnison, Colorado 81230

Pursuant to your "Invitation to Bid" for mobilization, crushing and stockpiling specified aggregate materials the undersigned submits the following bid. Per ton price to include all costs including but not limited to, the cost of mobilization, crushing and stock piling. **Please treat each pit as its own project as Gunnison County reserves the right to award the bid to include or exclude any pit as they deem beneficial to the County.**

### BID SCHEDULE – TARAMARCAZ PIT

| Item | Contract Item Description | Unit | Quantity | Unit Price | Amount |
|---|---|---|---|---|---|
| 1A | Target Value Ranges for Surface Course Gradation and Plasticity index as follows:<br>1" 100(1)<br>¾" 97-100(1)<br>No. 4 41-71(7)<br>No. 40 12-28(5)<br>No. 200 9-16(4)<br>Plasticity Index 8(4) | ton | 5,000 | 5.50 | 27,500.00 |
| 2 | CDOT Class 5 Aggregate Base Course for Gunnison County | ton | 2,000 | 5.50 | 11,000.00 |

TARAMARCAZ PIT BID AMOUNT: 38,500.00

**BID SCHEDULE – MURDIE FLATS PIT**

| Item | Contract Item Description | Unit | Quantity | Unit Price | Amount |
|---|---|---|---|---|---|
| 1A | Target Value Ranges for Surface Course Gradation and Plasticity index as follows:<br>1" $100_{(1)}$<br>¾" $97\text{-}100_{(1)}$<br>No. 4 $41\text{-}71_{(7)}$<br>No. 40 $12\text{-}28_{(5)}$<br>No. 200 $9\text{-}16_{(4)}$<br>Plasticity Index $8_{(4)}$ | ton | 5,000 | 5.50 | 27,500 |
| 2 | CDOT Class 5 Aggregate Base Course for Gunnison County | ton | 2,000 | 5.50 | 11,000.00 |

MURDIE FLATS PIT BID AMOUNT: 38,500.00

**BID SCHEDULE – WATSON FLATS PIT**
**(THIS PIT MUST BE ACCESSED FROM THE WEST SIDE OF KEBLER PASS AT HIGHWAY 133)**

| Item | Contract Item Description | Unit | Quantity | Unit Price | Amount |
|---|---|---|---|---|---|
| 1A | Target Value Ranges for Surface Course Gradation and Plasticity index as follows:<br>1" $100_{(1)}$<br>¾" $97\text{-}100_{(1)}$<br>No. 4 $41\text{-}71_{(7)}$<br>No. 40 $12\text{-}28_{(5)}$<br>No. 200 $9\text{-}16_{(4)}$<br>Plasticity Index $8_{(4)}$ | Ton | 5,000 | 6.50 | 32,500.00 |
| 2 | CDOT Class 5 Aggregate Base Course for Gunnison County | ton | 2,000 | 6.50 | 13,000.00 |

WATSON FLATS PIT BID AMOUNT: 45,500



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SUMMARY:

TARAMARCAZ PIT BID AMOUNT: 38,500.00

MURDIE FLATS PIT BID AMOUNT: 38,500.00

WATSON FLATS PIT BID AMOUNT: 45500.00

**TOTAL BID AMOUNT:** 122,500.00

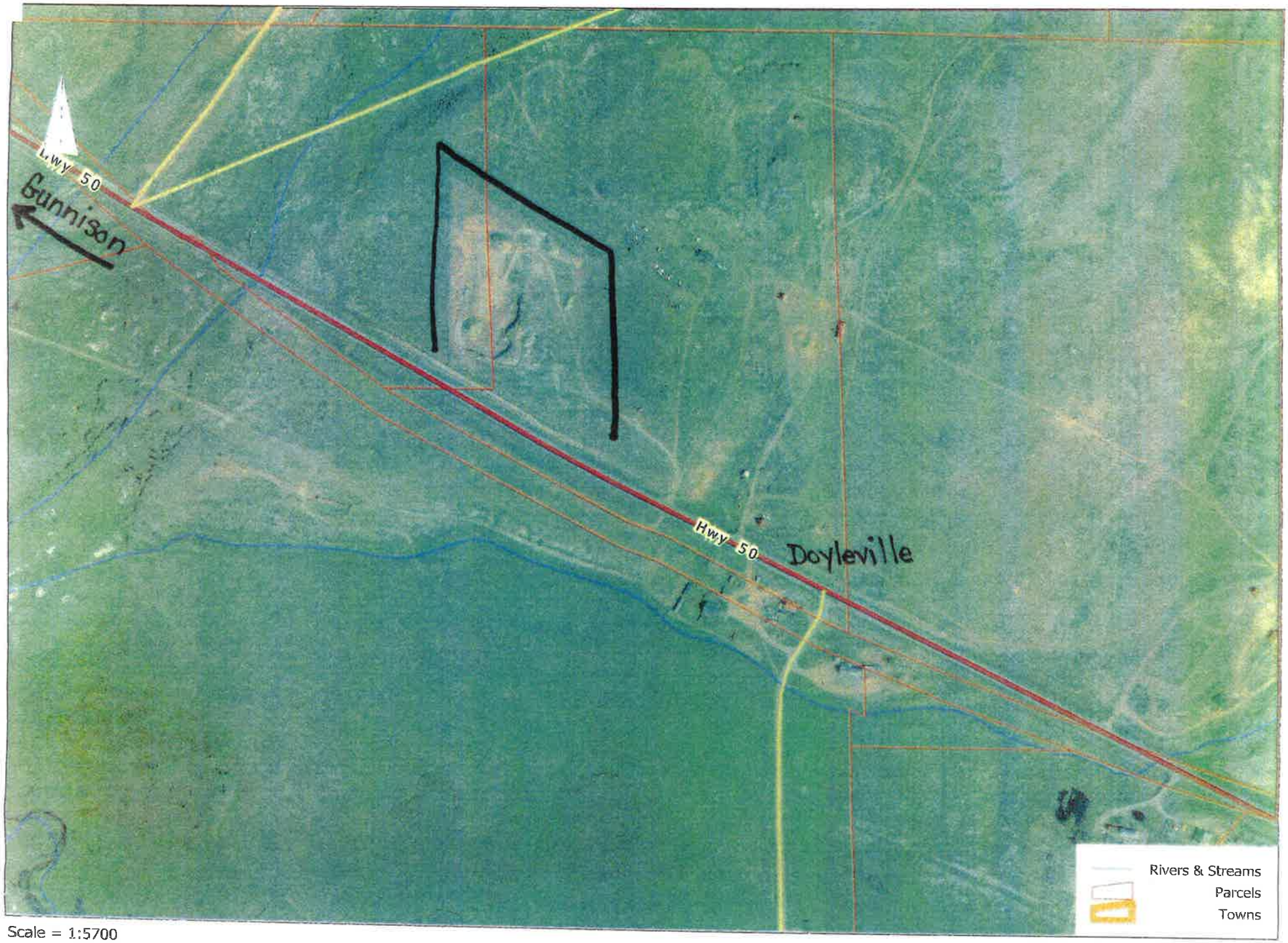
**DATE CONTRACTOR CAN BEGIN CRUSHING:** Aug 3, 2015

Lacy Const Co Ltd
Company Name

Bill Lacy
Authorized Company Representative

5/11/15
Date

# TARAMARCAZ PIT

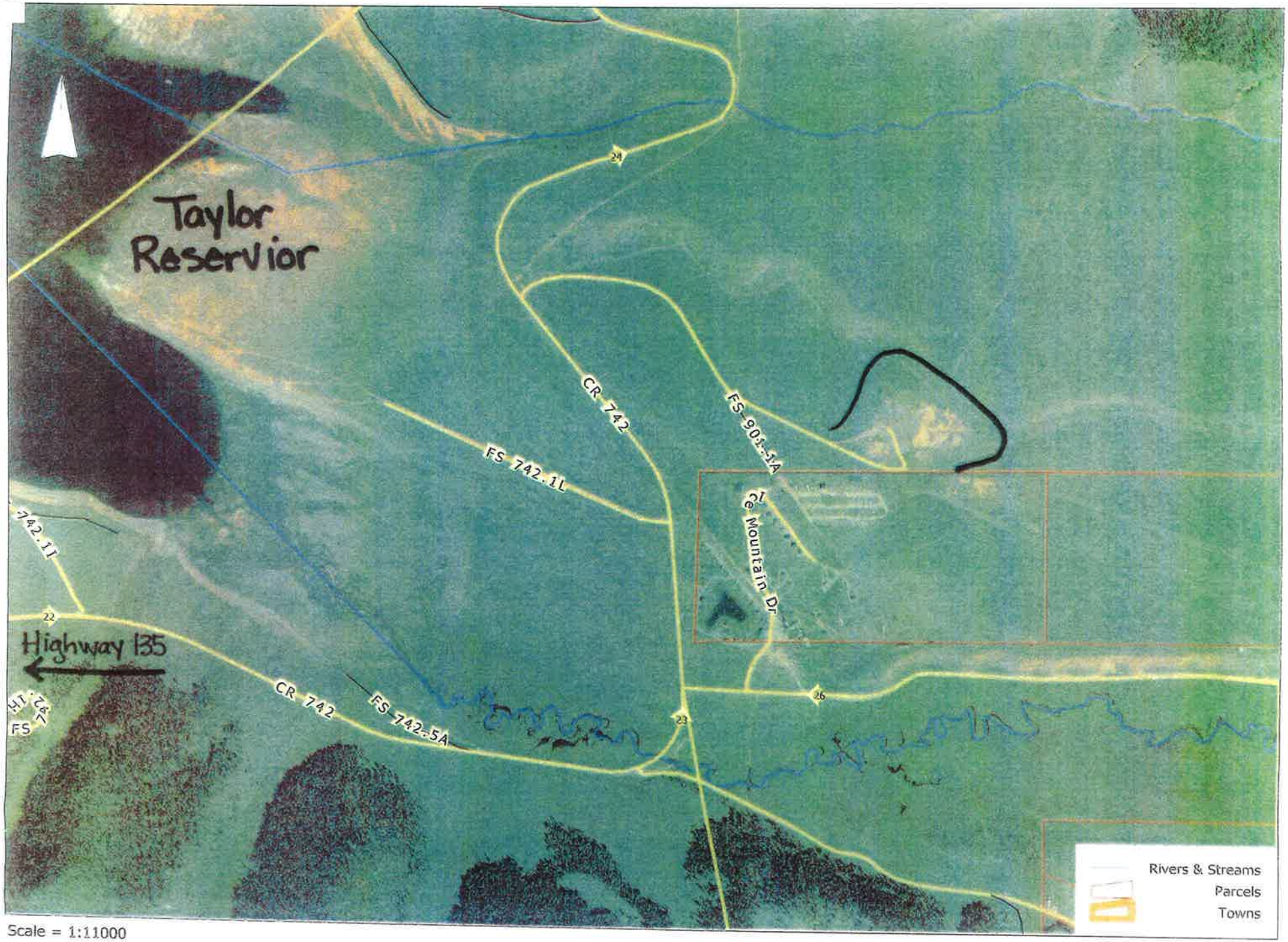



Scale = 1:5700

Wednesday, September 24, 2014

Exhibit C
2 of 3

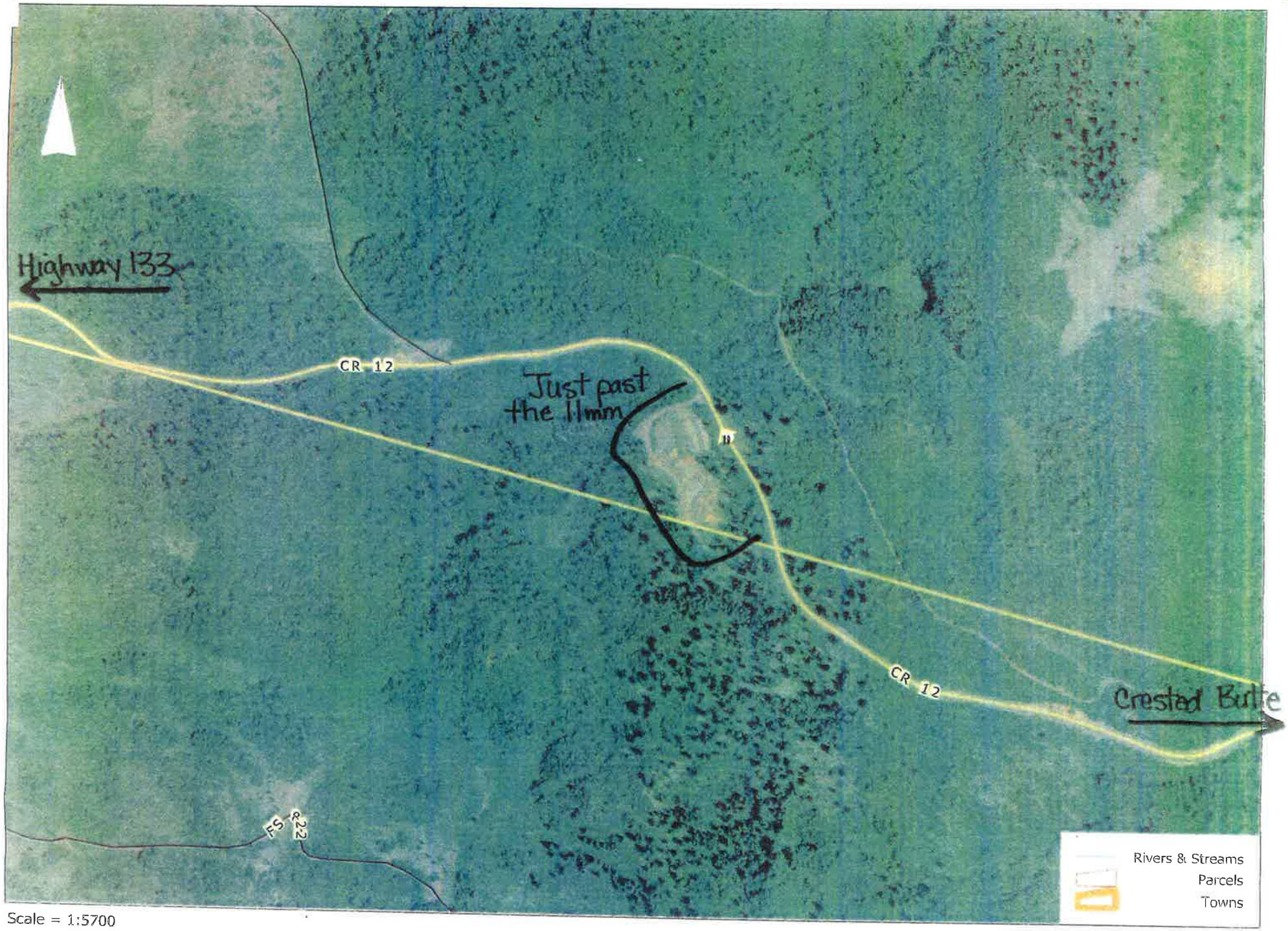
# MURDIE FLATS PIT




Scale = 1:11000

Wednesday, September 24, 2014

# WATSON FLATS PIT

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Wednesday, September 24, 2014

**AIA DOCUMENT A312™ - 2010**
**PERFORMANCE BOND**

Bond No.
929592482

*Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.*

CONTRACTOR
*(Name, legal status and address):*

Lacy Construction Company, Ltd.
PO Box 836
Crested Butte, CO 81224

SURETY *(Name and principal place of business):*

Continental Casualty Company
14100 San Pedro, #206
San Antonio, TX 78232-4361

OWNER
*(Name, legal status and address):*

Board of County Commissioners of the County of Gunnison, CO
200 East Virginia
Gunnison, CO 81230

CONSTRUCTION CONTRACT
Date:
Amount: Dollars () One Hundred Twenty-Two Thousand, Five Hundred and No/100--- ($122,500.00---)--
Description *(Name and location):* Gravel Crushing - Various Gunnison County Pits

BOND
Date *(Not earlier than Construction Contract Date):*
Amount: One Hundred Twenty-Two Thousand, Five Hundred and No/100--- ($122,500.00---)--
Modifications to this Bond: ☐ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*
Lacy Construction Company, Ltd.

Signature: Partner
Name and Title: ,

SURETY
Company: *(Corporate Seal)*
Continental Casualty Company

Signature: Sharon Cavanaugh
Attorney-in-Fact Name: , Attorney-in-Fact

*(Any additional signatures appear on the last page of this Performance Bond.)*

*(FOR INFORMATION ONLY — Name, address and telephone)*
AGENT or BROKER:

Marsh & McLennan Agency LLC
2500 City West Blvd., #2400
Houston, Texas 77042

OWNER'S REPRESENTATIVE *(Architect, Engineer or other party):*



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*The language in this document conforms to the language used in **AIA Document A312™- 2010.***

Form 15-02-0573 FED (rev. 7-10)

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

.1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

.2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

.3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to commitment by the Owner to pay the Balance of the Contract Price, the Surety Is obligated, without duplication, for

.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

.2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and

.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.



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*The language in this document conforms to the language used in **AIA Document A312™- 2010.***

8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators successors and assigns.

10 The surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 DEFINITIONS

14.1 **Balance of the Contract Price:** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 **Construction Contract:** The agreement between the Owner and the Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 **Contractor Default:** Failure of the Contractor, which has not been remedied nor waived, to perform or otherwise to comply with the term of the Construction Contract.

14.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.



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*The language in this document conforms to the language used in **AIA Document A312™- 2010.***

**16 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

| CONTRACTOR AS PRINCIPAL | | SURETY | |
|---|---|---|---|
| Company: | *(Corporate Seal)* | Company: | *(Corporate Seal)* |
| Signature: _____ | | Signature: _____ | |
| Name and Title: , | | Name and Title: , Attorney-in-Fact | |
| Address: | | Address: | |
| , | | , | |



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*The language in this document conforms to the language used in **AIA Document A312™- 2010.***

Form 15-02-0573 FED (rev. 7-10)

**AIA DOCUMENT A312™ - 2010**

**PAYMENT BOND**

*Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.*

Bond No.
929592482

CONTRACTOR
*(Name, legal status and address):*
Lacy Construction Company, Ltd.
PO Box 836
Crested Butte, CO 81224

SURETY *(Name, legal status and principal place of business):*
Continental Casualty Company
14100 San Pedro, #206
San Antonio, TX 78232-4361

OWNER
*(Name, legal status and address):*
Board of County Commissioners of the County of Gunnison, CO
200 East Virginia
Gunnison, CO 81230

CONSTRUCTION CONTRACT
Date:
Amount: Dollars () One Hundred Twenty-Two Thousand, Five Hundred and No/100---($122,500.00--)---
Description *(Name and location):* Gravel Crushing - Various Gunnison County Pits

BOND
Date *(Not earlier than Construction Contract Date)*:
Amount: One Hundred Twenty-Two Thousand, Five Hundred and No/100---($122,500.00--)---
Modifications to this Bond: ☐ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*
Lacy Construction Company, Ltd.

Signature: _____
Name and Title:

SURETY
Company: *(Corporate Seal)*
Continental Casualty Company

Signature: _____
Attorney-in-Fact Name: Sharon Cavanaugh Attorney-in-Fact

*(Any additional signatures appear on the last page of this Payment Bond)*

*(FOR INFORMATION ONLY — Name, address and telephone)*

AGENT or BROKER:
Marsh & McLennan Agency LLC
2500 City West Blvd., #2400
Houston, Texas 77042

OWNER'S REPRESENTATIVE *(Architect, Engineer or other party)*:



*Printed in cooperation with the American Institute of Architects (AIA)*
*The language in this document conforms to the language used in **AIA Document A312™- 2010.***

Form 15-02-0574 FED (rev. 7-10)

**1** The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

**2** If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

**3** If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

**4** When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

**5** The Surety's obligations to a Claimant under this Bond shall arise after the following:

**5.1** Claimants, who do not have a direct contract with the Contractor,

**.1** have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

**.2** have sent a Claim to the Surety (at the address described in Section 13).

**5.2** Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

**6** If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

**7** When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

**7.1** Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

**7.2** Pay or arrange for payment of any undisputed amounts.

**7.3** The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing the Claimant.



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**8** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**9** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**10** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

**11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**15** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.



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## 16 DEFINITIONS

**16.1 Claim.** A written statement by the Claimant including at a minimum:

- **.1** the name of the Claimant;
- **.2** the name of the person for whom the labor was done, or materials or equipment furnished;
- **.3** a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- **.4** a brief description of the labor, materials or equipment furnished;
- **.5** the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- **.6** the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- **.7** the total amount of previous payments received by the Claimant; and,
- **.8** the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**16.2 Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas power, light, heat, oil gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**16.3 Construction Contract:** The agreement between the Owner and the Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

**16.4 Owner Default:** Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.



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**18 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

**18.1** "Claim notices for
must be sent to the following address:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

| CONTRACTORS AS PRINCIPAL | | SURETY | |
|---|---|---|---|
| Company: | *(Corporate Seal)* | Company: | *(Corporate Seal)* |
| Signature: _____ | | Signature: _____ | |
| Name and Title: . | | Name and Title: . Attorney-in-Fact | |
| Address: | | Address: | |
| , | | , | |



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# POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

**Know All Men By These Presents,** That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

**Cheryl R Colson, Andrew J Janda, Sue Kohler, C W Adams, Leland L Rauch, Sharon Cavanaugh, Michael Cole, James Wayne Tomforde, Kurt A Risk, Individually**

of Houston, TX, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

**In Witness Whereof**, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 12th day of July, 2013.

Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

Paul T. Bruflat — Vice President

State of South Dakota, County of Minnehaha, ss:

On this 12th day of July, 2013, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.

J. MOHR
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

My Commission Expires June 23, 2015

J. Mohr — Notary Public

## CERTIFICATE

I, D. Bult, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this _____ day of _____, _____.

Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

D. Bult — Assistant Secretary

Form F6853-4/2012

Figure: 28 TAC §1.601(a)(3)

## 1 IMPORTANT NOTICE

To obtain information or make a complaint:

2 You may contact Continental Casualty Company, National Fire Insurance Company, American Casualty Company or Continental Insurance Company at 312-822-5000.

3 You may call Continental Casualty Company, National Fire Insurance Company, American Casualty Company or Continental Insurance Company's toll-free telephone number for information or to make a complaint at:

**1-877-672-6115**

4 You may also write to Continental Casualty Company, National Fire Insurance Company, American Casualty Company or Continental Insurance Company at:

CNA Surety
333 South Wabash
Chicago, IL 60604

5 You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

**1-800-252-3439**

6 You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: http://www.tdi.state.tx.us
E-Mail: ConsumerProtection@tdi.state.tx.us

7 **PREMIUM OR CLAIM DISPUTES:**
Should you have a dispute concerning your premium or about a claim you should contact Continental Casualty Company, National Fire Insurance Company, American Casualty Company or Continental Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8 **ATTACH THIS NOTICE TO YOUR POLICY:**
This notice is for information only and does not become a part or condition of the attached document.

Form F8277

## AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con Continental Casualty Company, National Fire Insurance Company, American Casualty Company or Continental Insurance Company al 312-822-5000.

Usted puede llamar al numero de telefono gratis de Continental Casualty Company, National Fire Insurance Company, American Casualty Company or Continental Insurance Company's para informacion o para someter una queja al:

**1-877-672-6115**

Usted tambien puede escribir a Continental Casualty Company, National Fire Insurance Company, American Casualty Company or Continental Insurance Company:

CNA Surety
333 South Wabash
Chicago, IL 60604

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: http://www.tdi.state.tx.us
E-Mail: ConsumerProtection@tdi.state.tx.us

**DISPUTAS SOBRE PRIMAS O RECLAMOS:**
Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el Continental Casualty Company, National Fire Insurance Company, American Casualty Company or Continental Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

**UNA ESTE AVISO A SU POLIZA:** Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.