

EASEMENT WITH TERMS AND CONDITIONS

Fossil Creek Reservoir Natural Area

Grantor A: City of Fort Collins, Colorado, a municipal corporation

Grantor A Signing Authority and Title: Jenni Arndt, Mayor

Grantor A Mailing Address: P.O. Box 580, Fort Collins, Colorado 80522

Grantor A Phone Number/Email: _____

Grantor B: Board of County Commissioners of Larimer County, Colorado, a governmental subdivision of the State of Colorado

Grantor B Signing Authority and Title: _____

Grantor B Mailing Address: 200 West Oak Street, Fort Collins, CO 80521

Grantor B Phone Number/Email: _____

Grantor A and Grantor B are collectively known as "Grantor"

Grantee: South Fort Collins Sanitation District

Grantee Signing Authority and Title: _____

Grantee Mailing Address: 2560 E County Rd 32, Fort Collins, CO 80528

Grantee Phone Number/Email: _____

Easement Appurtenant to Grantee's Property? ☒ **Y** ☐ **N:** If yes, see **Exhibit C**.

Effective Date: _____

Easement Improvements: Stormwater outfall channel and flared end of culvert, as shown in the Plans (also referred to herein as the "Improvements")

Consideration: \$3,086.00 easement fee and \$3,985.00 mitigation fee = Total of \$7,071.00

Special Restoration Requirements? ☒ **Y** ☐ **N:** If yes, see **Exhibit D**.

Exhibits [check all that apply]:

☒ Exhibit A – Grantor's Property (number of pages): Three (3)

☒ Exhibit B – Easement Area (number of pages): Two (2)

☒ Exhibit C – Grantee's Property (number of pages): Two (2)

☒ Exhibit D – Special Restoration Requirements (number of pages): One (1)

☒ Exhibit D-1– General Resource Protection Standards (number of pages): Nine (9)

☒ Exhibit E– Plans (number of pages):

All checked exhibits are attached and incorporated into this Deed by reference.

This **EASEMENT WITH TERMS AND CONDITIONS** (the "Deed") is made and entered into on the Effective Date by and between Grantor and Grantee.

1. Grantor's Property. Grantor is the owner of that certain parcel of real property located in Larimer County, Colorado, which is legally described on **Exhibit A** (the "Grantor's Property").

2. Grant of Easement – Consideration. For and in consideration of the covenants and agreements herein set forth, the sum of the Consideration and other good and valuable consideration, the receipt and adequacy of which Grantor acknowledges, Grantor grants, sells, and conveys to Grantee, its successors and assigns, a perpetual, non-exclusive easement (the “Easement”) on, over, under, and across the Grantor’s Property as described more fully on **Exhibit B**, (the “Easement Area”), for the benefit of Grantee’s Property described more fully on **Exhibit C**, if applicable, subject to the conditions and restrictions set forth below. The Easement includes the right of ingress and egress to the Easement Area, and the right to install, maintain, and use gates in all fences that cross the Easement Area now or in the future.

3. Purpose and Use of Easement. Grantee may use the Easement to install, access, operate, maintain, repair, reconstruct, relocate, improve, enlarge, replace, inspect, and remove, at any time and from time to time, the Easement Improvements, and for the temporary storage and staging of materials and equipment. Grantor further grants to Grantee:

- The right of ingress to and egress from the Easement Area over and across Grantor’s Property by means of any roads and lanes thereon, or as otherwise agreed in writing by Grantor;
- The right to mark the location of the Easement Area by suitable markers set in the ground; and
- The right to install temporary fencing and gates for security and safety purposes during construction activities.

After initial installation of the Improvements, if Grantee wishes to relocate or replace the Improvements with any other number or type of similar improvements, either in the original location or at any alternate location or locations within the Easement Area, such improvements must be generally consistent with the intended purposes of the Easement, and Grantee must give Grantor advance notice of any change in the type, number or location of improvements and cannot proceed until Grantor has provided its written consent, which shall not be unreasonably withheld or delayed.

The parties agree that the Easement Improvements are accurately described in the Plans which have been approved and accepted by each of the parties. The Plans, being the complete plan set for the Easement Improvements, are the Exhibit E to this Conveyance, but, for purposes of recordation and execution.

4. Grantor’s Rights in Easement Area.

- A. Grantor reserves the right to use the Easement Area for purposes that will not interfere with Grantee’s full enjoyment of the rights granted herein, including but not limited to Grantor’s right to operate or allow others to operate utility improvements within the Easement Areas.
- B. Grantor may plant or maintain permanent trees, shrubs or other plant material in the Easement Area provided that no such plantings may be planted directly over the Grantee’s Improvements. Grantor may install or utilize signs or paths over the

Easement Area, and may pave, surface in some other manner, or otherwise improve the Easement Area as Grantor desires. Additionally, Grantor may install permanent buildings or structures over the Easement Area; however, Grantor agrees to remove such structures at its expense if reasonably required for Grantee's access to the Easement Area, and to assume all risk, repair, and maintenance if any damage occurs to these permanent buildings and/or structures as a result of Grantee's reasonable use of or activities over or within the Easement Area.

5. Grantee's Obligations Regarding Easement Areas.

- A. All activities by the Grantee on the Easement Area, including access across Grantor's Property, must be carried out in a manner and on a schedule reasonably expected to minimize disturbance to the natural features of said property, any improvements thereon, and the Grantor's intended purposes therefor. Access shall be limited to the reasonable means necessary to provide access to the Easement Area, and Grantee shall, to the extent reasonably practicable, use existing streets, roads, or other similar facilities, including any Grantee owned property interests adjoining the Easement Area, to avoid any unnecessary disruption of Grantor's use and possession of the Grantor's Property. Access does not permit Grantee to use, occupy, or traverse any portion of the Grantor's Property not included within the Easement Area by means of any heavy machinery, equipment, or vehicles, provided that Grantee may seek to acquire a temporary construction easement from Grantor to allow the same.
- B. Grantee must maintain its Improvements in an entirely secure, safe and sanitary condition, and repair the Improvements as necessary to ensure the Improvements do not cause injury or damage to persons or property.
- C. Grantee shall notify Grantor a minimum of one business day prior to performing any construction, maintenance, repair, or other work on or within the Easement Area and shall in advance of any non-emergency work submit a construction plan and schedule to Grantor for approval, which approval shall not be unreasonably delayed or withheld. Grantee may seek to acquire a Temporary Construction Easement from Grantor if working on Grantor's Property outside of the Easement Area. Notwithstanding these notification requirements, in cases of emergency repair, Grantee shall notify Grantor of the emergency and provide related construction plans and schedules as soon as reasonably practicable.
- D. In the event damage occurs from Grantee's use of or activities over or within the Easement Area or on Grantor's Property, including but not limited to the installation, maintenance, or operation of the Improvements within the Easement Area, Grantee agrees to make such repairs or take such other action as may be necessary to restore the Easement Area and Grantor's Property to a condition comparable to their condition prior to Grantee's activities in the Easement Area, including but not limited to the reseeding and replanting of any disturbed areas in a manner reasonably satisfactory to the Grantor, and the provision of ongoing

maintenance of any seeded or planted areas, correction of any subsidence, and restoration of any other improvements or conditions impacted by Grantee's activities, until such time as any such repair and restoration is fully established and stabilized. If applicable, Grantee shall comply with the special restoration requirements on **Exhibit D**.

6. Maintenance of the Easement Area.

- A. Grantor will maintain the surface of the Easement Area (except for the Easement Improvements) in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements; however, Grantor is not responsible for any conditions directly caused by Grantee's use and occupancy of the Easement Area.
- B. Grantor will not deposit, or permit, or allow to be deposited, earth, rubbish, debris, or any other substance or material, whether combustible or noncombustible, on the Easement Area.

7. As-Built Drawings. Grantee will provide Grantor with as-built drawings accurately depicting the location and nature of the Improvements constructed within the Easement Area no later than thirty (30) days following completion of the Improvements, and no later than thirty (30) days following a change in the type, number or location of the Improvements, as described in Section 3.

8. Representations of Grantor. Grantor makes no representations or warranties as to lawful ownership of Grantor's Property.

9. Recordation. Grantee will record this Deed in the records of the Larimer County Clerk and Recorder and furnish evidence of such recording to Grantor. This Deed will not be valid until it is recorded. If this Deed has not been recorded with the Larimer County Clerk and Recorder within ninety (90) days of the Effective Date, then this Deed will be null and void and have no force and effect whatsoever, and the parties will be relieved of any remaining obligations hereunder as of the date of such termination.

10. Abandonment. Should Grantee fail to construct the Improvements within five (5) years from the date of this Deed, or should Grantee permanently discontinue maintaining and using the Improvements within the Easement Area for a period of five (5) years, this shall constitute an abandonment of the Easement, the Improvements and Grantee's rights under this Deed, and the Easement shall automatically terminate, and Grantee shall, at its own sole cost and expense, remove all Improvements from the Easement Area, provided that Grantee shall consult with Grantor in advance of any such removal, and Grantor shall be entitled to require Grantee to leave some or all such Improvements in place. If Grantee removes the Improvements from the Easement Area, Grantee shall carry out such removal consistent with the requirements set forth in Section 5 and restore the Easement Area, at its sole cost and expense, to a condition comparable to its condition just prior to Grantee's removal activities. Grantee shall then execute and record a termination or quitclaim to Grantor of the Easement.

11. Indemnity and Insurance.

- A. Grantee agrees to release and, unless Grantee is a governmental entity, indemnify Grantor, its officers, agents, employees, representatives, successors and assigns from and against all claims that may accrue to Grantee for personal injury, death or property damage resulting from or arising out of Grantee's use of the Easement Area or other activities on Grantor's Property. To the extent permitted by law, and without waiving any of the provision so the Colorado Governmental Immunity Act, Grantee assumes responsibility, as between Grantor and Grantee, for any liability to third parties arising out of Grantee's use of the Easement Area or other activities on Grantor's Property, including but not limited to the construction, installation, operation, repair, and maintenance of improvements within the Easement Area, and for any actions or omissions by Grantee in violation of this Deed.

- B. Grantee shall procure, pay for, and keep in full force and effect during the term of this Deed a comprehensive policy of general liability insurance covering the Improvements and insuring Grantee in an amount not less than One Million dollars (\$1,000,000.00) covering bodily injury, including death to persons, personal injury, and property damage liability arising out of a single occurrence. Such coverage must include, without limitation, the insured's liability for property damage, bodily injuries, and death of persons in connection with Grantee's activities in the Easement Area or on Grantor's Property, the operation, maintenance, or use of the Improvements (including acts or omissions of Grantee or of its officers, employees, or agents), and protection against liability for non-owned and hired automobiles. Such coverage must also include coverage for such other risks as are customarily required by private institutional mortgage lenders with regard to property similar in construction, location, and use as the Improvements. All policies of insurance required hereunder must name Grantor as an additional insured and shall contain a provision that the policy or policies cannot be canceled or materially altered either by the insured or the insurance company until fifteen (15) days' prior written notice thereof is given to Grantor. Upon issuance or renewal of any such insurance policy, Grantee shall furnish a certificate of insurance to Grantor. In the event Grantee fails or neglects to maintain, or require its contractor to procure and maintain, as applicable, the insurance required by this paragraph, then Grantor shall have the right, upon giving Grantee reasonable notice of its election to do so, to take out and maintain such insurance at the expense of Grantee, and in such event the cost of such insurance shall be paid for by Grantee promptly upon receipt of an invoice covering such charges.

12. Notices. Any notice or other communication relating to this Deed must be in writing and shall be deemed given (i) when delivered personally, or (ii) on the first business day which is three (3) days following mailing by certified mail, electronic mail, return receipt requested and postage prepaid, or (iii) the next business day after sending by a nationally recognized overnight delivery service, and addressed to the party at its respective address on the first page of this Deed.

13. Default, Remedies and Litigation Expenses. If a party to this Deed is in default in performance of its respective obligations hereunder, the other party has the right to an action for specific performance or damages or both. Prior to proceeding with any such action, the party not in default must first send written notice to the defaulting party specifying the default and affording such party a reasonable period to cure the default. In the event a party defaults in any of its covenants or obligations and the party not in default commences and substantially prevails in any legal or equitable action against the defaulting party, the defaulting party expressly agrees to pay all reasonable expenses of the litigation, including a reasonable sum for attorneys' fees or similar costs of legal representation.

14. Assignment. Intentionally omitted.

15. Additional Terms and Conditions. Whenever used herein, the singular number includes the plural, the plural the singular, and the use of any gender is applicable to all genders. All the covenants herein contained are binding upon and inure to the benefit of the parties hereto, their personal representatives, successors, and assigns. This Deed is to be construed and enforced according to the laws of Colorado, and venue in any proceeding related to this Deed shall be in Larimer County, Colorado. If any term of this Deed is determined by any court to be unenforceable, the other terms of this Deed shall nonetheless remain in full force and effect; provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the parties shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Deed as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

16. Authority. Each person executing this Deed represents and warrants that he or she is duly authorized to execute this Deed in his or her individual or representative capacity as indicated.

IN WITNESS WHEREOF, Grantee has hereunder set its hand and seal the day and year written below; and Grantor has caused this Deed to be executed by its Mayor, attested to by its City Clerk, and its corporate seal to be hereunto affixed, all pursuant to Ordinance No. _____ 2025, passed on final reading by the City Council of the City of Fort Collins on the _____ day of _____, 2025.

[Signatures on following pages]

GRANTOR:

THE CITY OF FORT COLLINS, COLORADO
a municipal corporation

Date

Jeni Arndt, Mayor

ATTEST:

City Clerk

(Printed name)

APPROVED AS TO FORM:

Assistant City Attorney

(Printed name)

STATE OF COLORADO)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this____day of_____,
_____, by_____, as Mayor of the City of Fort Collins. Witness my hand
and official seal.

My Commission expires:

Notary Public

ACCEPTED BY GRANTEE:
South Fort Collins Sanitation District

Date

Grantee Signing Authority and Title

EXHIBIT A

Legal Description of the Grantor's Property

Page 1 of 3

Tract 1

A parcel of land being part of the South Half (S1/2) of Section Seventeen (17), and part of the North Half (N1/2) of Section Twenty (20), all in Township Six North (T.6N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

BEGINNING at the Northwest Corner of said Section 20 and assuming the North line of the Northwest Quarter (NW1/4) of said Section 20 as bearing North 89°28'41" East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2677.37 feet, with all other bearings contained herein relative thereto:

THENCE North 89°28'41" East along said North line a distance of 1270.87 feet to the **TRUE POINT OF BEGINNING**:

THENCE continuing North 89°28'41" East along said North line a distance of 905.31 feet to the Southwest Corner of that parcel of land as described in that document as recorded May 29, 1920 in Book 405 on Page 396 of the records of the Larimer County Clerk and Recorded (LCCR);

Thence along the Northerly line of the aforesaid parcel of land by the following Four (4) courses and distances:

THENCE North 10°12'42" East a distance of 920.40 feet;

THENCE North 51°41'42" East a distance of 407.80 feet;

THENCE South 72°41'18" East a distance of 690.80 feet;

THENCE South 19°43'18" East a distance of 752.13 feet;

THENCE South 65°22'59" West a distance of 1279.43 feet;

THENCE South 89°36'46" West a distance of 1136.71 feet;

THENCE North 00°23'14" West a distance of 287.37 feet to the **TRUE POINT OF BEGINNING**.

EXHIBIT A

Legal Description of the Grantor's Property continued

Page 2 of 3

Tract 2

A parcel of land being part of the Southeast Quarter (SE1/4) of Section Seventeen (17), and part of the North Half (N1/2) of Section Twenty (20), all in Township Six North (T.6N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

BEGINNING at the Northwest Corner of said Section 20 and assuming the North line of the Northwest Quarter (NW1/4) of said Section 20 as bearing North 89°28'41" East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2677.37 feet, with all other bearings contained herein relative thereto:

THENCE North 89°28'41" East along said North line a distance of 1270.87 feet;
THENCE South 00°23'14" East a distance of 287.37 feet to the **TRUE POINT OF BEGINNING**:

THENCE North 89°36'46" East a distance of 1136.71 feet;
THENCE North 65°22'59" East a distance of 1279.43 feet to the Northerly line of that parcel of land as described in that document as recorded May 29, 1920 in Book 405 on Page 396 of the records of the Larimer County Clerk and Recorder (LCCR);
THENCE South 19°43'18" East along said Northerly line a distance of 245.97 feet to the South line of the SE1/4 of said Section 17 and being the Southeast Corner of the aforesaid parcel of land. From said point the Northeast Corner of said Section 20 bears North 89°28'41" East a distance of 1699.00 feet;
THENCE North 89°28'41" East along said South line a distance of 91.73 feet;
THENCE South 14°18'46" West a distance of 571.04 feet;
THENCE South 73°06'32" West a distance of 1183.47 feet;
THENCE South 89°36'46" West a distance of 1196.98 feet;
THENCE North 00°23'14" West a distance of 595.36 feet to the **TRUE POINT OF BEGINNING**.

(CONT)

EXHIBIT A

Legal Description of the Grantor's Property continued

Page 3 of 3

Tract 3

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER (SE1/4) OF SECTION 17, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE 6TH P.M. IN LARIMER COUNTY, COLORADO, AND DESCRIBED MORE SPECIFICALLY AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF THE SE 1/4 OF SAID SECTION 17 AS BEARING SOUTH 89°31'09"W AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO:

COMMENCING AT THE SE CORNER OF SAID SECTION 17, THENCE ALONG THE SAID SOUTH LINE S 89°31'09"W, 851.20 FEET TO THE TRUE POINT OF BEGINNING:

THENCE, CONTINUING ALONG SAID SOUTH LINE SOUTH 89°31'09"W 847.80 FEET TO A POINT WHICH IS 30 FEET ABOVE HIGH WATER LINE OF DUCK LAKE DESCRIBED ON A PLAT PREPARED BY JAMES STEWART FOR FOSSIL CREEK RESERVOIR, DATED JANUARY, 1975; THENCE ALONG SAID 30 FEET ABOVE HIGH WATER LINE NORTH 07°03'W, 525.59 FEET; THENCE, NORTH 24°32' WEST, 408.52 FEET; THENCE LEAVING SAID 30 FOOT ABOVE HIGH WATER LINE, NORTH 40°34' EAST, 33.29 FEET TO A POINT ALONG THE APPARENT SOUTHWESTERLY RIGHTS-OF-WAY OF A COUNTY ROAD, SAID POINT BEING ALONG THE EXISTING FENCE LINE; THENCE SOUTH 49°19'00" EAST, 1396.16 FEET ALONG SAID EXISTING FENCE LINE TO THE TRUE POINT OF BEGINNING.

Tract 4

All that portion of the SE1/4 and the SE1/4 SW1/4 of Section 17, Township 6 North, Range 68 West of the 6th P.M. lying south of the right-of-way of Larimer County Road #32.

EXHIBIT B

Legal Description and Depiction of the Easement Area

Page 1 of 2

A parcel of land, being a portion of property dedicated in Quitclaim Deed, Recorded June 24th 2004, as Reception No. 20040061354 of the Records of Larimer County, located in the Southeast Quarter (SE1/4) of Section Seventeen (17), Township Six North (T.6N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 17 and assuming the South line of said Section 17 as bearing South 89°28'41" West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 5354.74 feet with all other bearings contained herein relative thereto;

THENCE South 89°28'41" West along the South line of Section 17 a distance of 851.20 feet to the Southeast corner of property referred to as Tract A (Williams), recorded February 13th 2002, as Reception No. 2002016953 of the records of Larimer County and to the Southerly Right of Way of Larimer County Road 32 (Carpenter Road).

The following two courses and distances are along the Easterly and Northerly lines of said Tract A (Williams)

THENCE North 49°21'26" West along the Southerly Right of Way of Carpenter Road, a distance of 1398.16 feet, to the Northeast corner of Tract A (Williams) and to the **POINT OF BEGINNING**;

THENCE South 40°31'43" West a distance of 33.29 feet to the Northwest corner of Tract A (Williams);

THENCE South 55°57'25" West a distance of 82.95 feet to the Easterly line of property referred to as Duck Lake in deed recorded February 7th 2002, as Reception No. 2002014481 of the records of Larimer County;

THENCE North 19°43'17" West along the Easterly line of said Duck Lake, a distance of 30.96 feet;

THENCE North 55°57'25" East a distance of 71.23 feet;

THENCE North 40°31'34" East a distance of 29.06 feet to the South Right of Way of Carpenter Road as recorded in Road Book 5, Page 57;

THENCE South 49°47'16" East along the Southerly Right of Way of Carpenter Road a distance of 30.00 feet to the **POINT OF BEGINNING**.

Said described parcel of land contains 3,248 Square Feet or 0.075 Acres, more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

SURVEYORS STATEMENT

I, Paul B. Groves, a Colorado Licensed Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.



Paul B. Groves - on behalf of King Surveyors
Colorado Licensed Professional
Land Surveyor #38209

KING SURVEYORS
650 East Garden Drive
Windsor, Colorado 80550
(970) 686-5011

EXHIBIT B – continued

Legal Description and Depiction of the Easement Area

Page 2 of 2

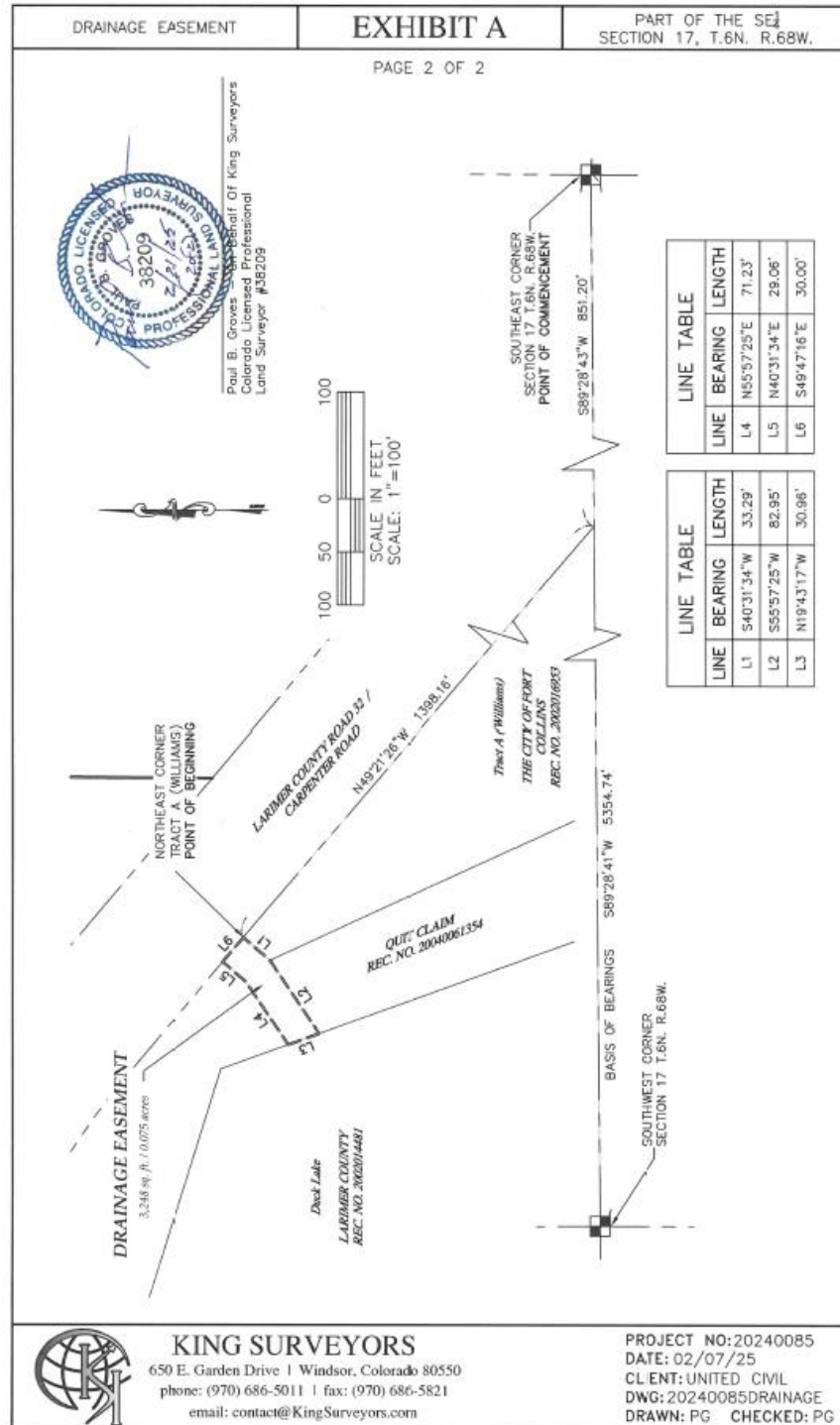


Exhibit C

Legal Description and Depiction of Grantee's Property

Page 1 of 2

A tract of land located in the S 1/2 of Section 17, Township 6 North, Range 68 West of the Sixth P. M., Larimer County, Colorado, being more particularly described as follows:

Considering the East line of the S 1/2 of said Section 17 as bearing N 00°21' E. and with all bearings contained herein relative thereto:

Commencing at the SE Corner of said Section 17; thence along the following courses per a plat prepared by James H. Stewart on the 11th day of December 1969, and also recorded in Book 397, page 546 of the Larimer County Records:

N 00°21' E. 1837.00 feet to a point on the south side of Fossil Creek Reservoir property boundary; thence, along said Fossil Creek Reservoir property boundary and the said James H. Stewart's plat on the following courses:

N. 88°57' W. 505.00 feet; thence,
N. 80°28' W. 465.00 feet; thence,
S. 81°25' W. 377.00 feet; thence,
N. 78°46' W. 434.00 feet, point also being the
True Point of Beginning; thence continuing,
S. 78°06' W. 390.00 feet; thence,
S. 79°40' W. 176.00 feet; thence,
S. 58°48' W. 435.00 feet; thence,
S. 61°18' W. 292.00 feet; thence,
S. 54°05' W. 347.00 feet; thence,
S. 11°04' E. 271.00 feet;
thence, leaving the south boundary of the Fossil Creek Reservoir property as recorded in the aforementioned James H. Stewart survey; thence along the following courses as recorded in Book 397, page 546;

N. 51°18' E. 79.00 feet; thence,
N. 50°54' E. 352.00 feet; thence,
S. 86°30' E. 721.00 feet; thence,
S. 49°32' E. 457.00 feet; thence,
N. 00°33'14" E. 1016.34 feet to the True Point of
Beginning.

The above described tract contains 16.993 acres.

Exhibit C continued

Legal Description and Depiction of Grantee's Property

Page 2 of 2



Exhibit D

Special Restoration/Mitigation and Monitoring Requirements

All Grantee's activities on the Easement Areas, and any access across the Grantor's Property, must be carried out in a manner and on a schedule reasonably expected to minimize disturbance to the natural features of the Grantor's Property and the Grantor's use thereof. If damage results from the maintenance, operation or presence of the Facilities, or Grantee's activities on the Easement Areas or elsewhere on the Grantor's Property, Grantee will make such repairs or take such other action as may be necessary to restore the Grantor's Property to a condition reasonably comparable to its prior condition, including without limitation the provision of ongoing maintenance of any seeded or planted areas, correction of any subsidence, and restoration of any other improvements or conditions impacted by Grantee's activities, until such time as any such repair and restoration is fully established and stabilized. Such restoration shall be completed in accordance with the Grantor's then-current specifications for comparable work on City of Fort Collins natural areas. For the purpose of the initial installation of the Facilities, Grantee agrees to rely on the Grantor's applicable Resource Protection Standards (RPS) to specify current standards for activities undertaken in City of Fort Collins Natural Areas, a copy of which is attached as **Exhibit "D-1"** and incorporated herein by reference. The parties acknowledge that sensitive vegetation, habitat or other natural conditions may require special effort by Grantee to protect, restore, or replace in the event they are disturbed by Grantee's activities.

Following final grading and initial seeding of the Easement Areas after initial reconstruction of the Facilities, Grantee must seek the issuance of a Certificate of Conditional Acceptance from the Grantor. Upon such issuance, the Grantor will assume responsibility for ongoing vegetation management, including weed control, mowing, and reseeding, as needed, in areas disturbed by said reconstruction and seeded in accordance with RPS and the provisions of this Agreement. The current one-time charge for the Grantor to assume and perform said vegetation management for initial installation of the Improvements is \$3,985.00 per acre of disturbance. The Grantor may from time to time, at its sole discretion, revise this estimated cost to reflect then current estimates for vegetation management costs, and such updated estimate will be the applicable charge for vegetation management in connection with future disturbance of the Easement Area, if any. In accordance with this requirement, Grantee will compensate the Grantor in the amount of \$3,985.00, due upon the Grantor's issuance of a Certificate of Conditional Acceptance for the final grading and initial seeding. This one-time vegetation management cost is in addition to the consideration stated above for the conveyance of the Easements.

Grantee will from time to time consult with the Grantor to ascertain applicable standards for identification of wildlife species and wildlife habitat on the Grantor's Property, and, except for emergencies shall conform its maintenance and other activities on the Easement Areas to the then current City of Fort Collins standards for identification and protection of the same. Grantee is responsible for obtaining from the Grantor's Natural Areas Department any permits required by the City Code for wildlife monitoring activities.

Exhibit D-1

General Resource Protection Standards

Updated March 2020

Introduction

This document lists the various resource protection standards that may be required as conditions of granting an easement, license to enter, or right-of-way (collectively referred to in this document as “easements”) on City Natural Areas and other conserved lands, in order to protect or restore natural resource values. These measures are consistent with the requirements in the City Land Use Code for Ecological Characterization Studies and for Resource Protection associated with development projects. The measures will be evaluated for each easement request and applied as needed, depending on the site location, characteristics of the site, and on the nature of the easement.

The applicable resource protection standards will be specifically included in the terms of the easement agreement. They must also be included as notes on the approved construction plans for the easement request. The easement holder (“Grantee”) must provide these standards to all contractors who will be doing work for the Grantee within the easement area. The City may also attach some or all of these requirements as an addendum to the Grantee’s Development Agreement, if applicable.

These resource protection standards are current as of March 2020. They may be updated from time to time by the Natural Areas Department based on new information about the resources of the City’s natural areas or on new information about best management practices. Applicants must contact the Natural Resources Department for a current list of standards.

The Grantee is responsible for completing, or requiring all its contractors and sub-contractors to complete, each of the following conditions that the City determines is applicable to the Grantee’s project:

Plans and Permits

Prior to starting any construction on the Project:

1. Submit final plans to the City and ensure that they have been approved and signed on behalf of the City. Confirm that all permanent and temporary easements have been approved by City Council and that the easement documents have been signed by both parties and recorded at the County Clerk’s Office. Plans must include: 1’-2’ contours; property lines with adjoining property ownership shown; all wetlands; streams; ditches; riparian areas; prairie dog colonies; raptor nests and raptor nests buffer zones; all existing and proposed man-made structures; all existing utilities; all needed easements for access, construction staging areas, and construction (limits of disturbance); construction plans and profiles; restoration plans; and general notes stating all construction and restoration requirements.
2. Obtain a City Excavation Permit.
3. Perform field investigations and surveys to determine the presence and location of sensitive plants or animal species and geological or archeological features.
4. Develop an erosion control plan. This plan must comply with the City’s *Storm Drainage Design Criteria and Construction Standards*. Ensure that the erosion control plan has been approved and signed by the City.

5. Contact the Corps of Engineers to obtain a 404 permit and/or clearance of the project. Submit two copies of the permit, or the letter of clearance from the Corps, to the City.
6. Conduct a Preble's meadow jumping mouse survey according to U.S. Fish and Wildlife Service guidelines. Submit two copies of the report and letter of clearance from the U.S. Fish and Wildlife Service to the City.
7. Conduct a Ute ladies' tresses orchid survey according to U.S. Fish and Wildlife Service guidelines. Submit two copies of the report and letter of clearance from the U.S. Fish and Wildlife Service to the City.

Construction Coordination and Project Acceptance

8. Arrange for the City's designated representative to attend the pre-construction meeting to meet the contractors, discuss the importance of the resource protection requirements, discuss and approve the construction schedule and establish lines of communication to be used during construction.
9. Maintain ongoing communication with the City's representative during construction to communicate progress, changes in schedule, problems, and periodic inspections.
10. Once the project has been completed, arrange for the City's representative to inspect the project site to verify that the project was completed, and the site restored according to the applicable plans and agreements. Once the City accepts the restoration work, the City will generally take over the vegetation maintenance, per the specific terms of the easement agreement.
11. Provide the City with Drawings of Record within sixty (60) days after the completion of the improvements.

Wildlife

12. Raptors: Survey the site to determine if any of the following species are present and check with the City for information on possible nesting, feeding or roosting sites.
 - a. All construction falling within raptor nest buffer zones will adhere to construction requirements for these zones.
 - b. If the site is used as a winter-feeding area by large birds of prey, construction cannot take place from October 15 through March 15 to avoid disturbing feeding eagles and large hawks, unless otherwise directed by the City.
 - c. If a bald eagle and/or ferruginous hawk winter night roost is located near the proposed easement, construction cannot take place from October 15 through March 15 to avoid disturbing night-roosting eagles and/or hawks.
 - d. If a Swainson's hawk nest is located near the proposed easement, construction cannot take place from April 1 through July 15 to avoid disrupting the nesting cycle of the hawk.
 - e. If a red-tailed hawk nest is located near the proposed easement, construction cannot take

place from March 1 through July 15 to avoid disrupting the nesting cycle of the hawk.

- f. If burrowing owls are nesting within 330 feet of the limits of development, construction cannot take place from April 1 through August 1 to avoid disrupting the nesting cycle of the owls.
- 13. If construction will be taking place in or through an area that contains or may contain prairie dogs, either relocate the prairie dogs or fumigate the burrows immediately prior to any grading. Relocation of Prairie dogs between February 1 and August 1 is not permitted. Burrowing owl survey required prior to fumigation. Proof of prairie dog eradication required prior to grading.
- 14. Perform the wildlife surveys described below, notify the City of the survey results and obtain approval of construction schedule prior to starting construction. These surveys may be done several months prior to construction, but if done more than 30 days prior to construction they must be performed again within 30 days prior to the start of construction to verify results.
 - a. The site may contain den sites for red foxes. Conduct surveys to determine if any foxes are denning within 100 feet of the limits of development. If foxes are found to be denning within 100 feet, then construction cannot take place during the normal denning and pup-rearing season (February 1 through October 1).
 - b. The site may contain den sites for coyotes. Conduct surveys to determine if any coyotes are denning within 300 feet of the limits of development. If coyotes are found to be denning within 300 feet, then construction cannot take place during the normal denning and pup-rearing season (February 1 through October 1).
 - c. The site may contain den sites for badgers. Conduct surveys to determine if any badgers are denning within 300 feet of the limits of development. If badgers are found to be denning within 300 feet, then construction cannot take place during the normal denning and young-rearing season (January 1 through August 1).

Plants

- 15. The site may contain plant species listed as rare in Colorado. If a rare plant is discovered prior to or during construction activities, notify the City. The City may, in its discretion, require the Grantee to remove all such plants within the limits of disturbance prior to construction, keep plants alive and replant after construction is completed, or the City may salvage existing plants and shrubs for transplanting to other sites.
- 16. The site may contain native shrubs and/or trees that may be within the limits of development. Any native shrubs/trees removed to allow construction or damaged during construction must be replaced or mitigated as approved by city staff and detailed in the mitigation plan.

Structures

- 17. Remove, store, protect and replace any man-made structures (e.g., kiosks, raptor perch poles, prairie dog barriers and fencing) within the limits of disturbance.
- 18. Repair any damage to concrete bike trails, fences, parking lots, or any other improvements caused

directly or indirectly by the construction. Repair/replace improvements immediately to current City standards, including matching the color of the concrete.

Field Demarcation

19. Install orange construction fencing to mark the easement limits (limits of disturbance) on the site. Do not begin any construction activities until the City's representative has approved the fence location.
20. Post temporary signs informing the public that this is the Grantee's project and indicating the purpose of the project and the Grantee's phone number. Signs must be posted at the locations designated by the City.

Erosion Control

21. Have erosion control measures in place and approved by a City representative prior to any construction.
22. Obtain erosion control and de-watering permits as necessary.

Grading/Construction

23. Required documentation that equipment has been washed/disinfected prior to arriving on site to prevent the spread of noxious species.
24. For areas with native vegetation, strip topsoil in all areas of excavation to a depth of 8 inches and stockpile separately. Wetland and upland soils must be stockpiled separately from each other. Place the topsoil in an 8-inch layer on top of the subsoil in the corresponding zone immediately following the completion of construction.
25. For areas with non-native vegetation, strip the top 2 inches of topsoil from the entire construction easement area and remove the topsoil from the site to remove the non- native vegetation seed source. Then strip 8 inches of topsoil from the area to be excavated and stockpile separately. Wetland and upland soils must be stockpiled separately from each other. Place the topsoil in an 8-inch layer on top of the subsoil in the corresponding zone immediately following the completion of construction.
26. Maintain a safe work area and protect the safety and welfare of Grantee's employees, contractors or subcontractors, and the general public, including without limitation providing barricades and safety fences around excavations and drop-offs left open at the end of a workday. Safety precautions must be in compliance with all applicable laws, rules and regulations.
27. Compact backfill in trenches to 95% Standard Proctor Density. Test the compacted soils at 100' intervals horizontally and 2' intervals vertically within the area of excavation to ensure that this requirement has been met. Submit to the City all laboratory Proctor density results, and a copy of all field compaction tests. After compaction to final subgrade (8" below finished grade), the top 6 inches of subsoil must be ripped (no more than 20" between intervals), and the previously stripped and stockpiled topsoil materials spread evenly over the excavated areas. Soils in

backfilled, compacted, topsoil trenches must match the grade of the surrounding undisturbed areas.

28. Set all manhole covers, valve lids, vaults, etc. below or flush with the finished topsoil surface. If any improvements are approved for construction above the final grade, they must be painted with a color approved by the City.
29. Remove the upper sections of all existing manholes to be abandoned and fill the holes with soil. This soil must be compacted to 95% Standard Proctor Density to prevent settlement.
30. Remove the upper sections of all existing manholes to be retained, but that are not flush with the finished topsoil surface and rebuild to be flush with the topsoil surface.
31. Bring to grade (match surrounding topography) all settled and eroded areas along the existing pipeline, if any, to be abandoned during construction of the new pipeline. Repair any settlement that occurs over the existing pipeline or new pipelines after completion and acceptance of the project by the City. Any necessary repairs must be conducted in a manner and at a time directed by the City. Repaired areas must be restored as per restoration requirements outlined in this document or in the easement agreement.
32. Areas within the limits of disturbance that have been driven over, compacted or rutted by equipment must be scarified to a depth of 8" (not to exceed 10" between intervals), and regraded to original grade and contours.
33. Meet with the City's representative to discuss and get approval of the final grading and the seeding/mulching process prior to reseeded. Seed all disturbed and topsoiled areas with a seed mix of native species specified by the City. The seed must be drilled into the soil an appropriate depth for the species in the mix and existing conditions, using a range drill (not a Brillion). Immediately following seeding, roll the seeded areas with a sheep's foot roller to lightly compact and imprint the soil. This removes air voids, provides better seed-soil contact and provides indentions in the soil that will capture moisture. All seeded areas must then be hydro-mulched in accordance with the City's *Storm Drainage Design Criteria and Construction Standards*. Following final grading and initial seeding of the Construction Easement Area and acceptance by the City, the City will be responsible for ongoing restoration management, including weed control, mowing, and reseeded, as needed, in areas disturbed and seeded in accordance with this paragraph. The cost for the City to perform restoration management over the next five to ten years is calculated to be three thousand nine hundred eighty-five dollars (\$3,985.00) per acre of disturbance, or \$3,985 for disturbed areas less than 1-acre, based on grassland/shrubland cover types. Restoration management fees will be determined on a case-by-case basis for other cover types.

Any requirements listed above that are not completed in a timely manner may be corrected by the City at the Grantee's expense. The City will bill the Grantee for the cost of the correction plus management costs.

Standards and Guidelines for Restoration

Updated March 2020

PART 1 – GENERAL

1.1 DESCRIPTION

This section covers the requirements for the revegetation of utility easements on City Natural Areas and Open Lands. This includes but is not necessarily limited to upland and wetland soil stockpiling, preparation, and placement, soil amendments, seeding, mulching, sediment and erosion control fabrics, watering and initial care, and final inspection and acceptance by the City. This section addresses all areas disturbed during the work shown or indicated in the executed utility easement documents and approved project plans.

1.2 PROJECT MONITORING

The recipient of the utility easement (Grantee) shall notify the Natural Areas Department (NAD) at least three (3) working days prior to the commencement of any work. NAD will monitor the progress of the work throughout. NAD will also, at its discretion, collect samples during construction of seed, soil additives, water, or any other materials it deems necessary to ensure specifications are met.

1.3 SUBMITTALS

General - The Grantee shall be required to submit statements of guarantee and/or certifications from vendors who supply seed, mulches, tackifiers, and any soil amendments or other materials utilized on the project. These submittals are detailed in Part 2 – Materials.

Required Soils Testing – The Grantee shall, if requested by NAD, sample project soils and submit them for analysis to a qualified soil testing laboratory prior to the start of any seeding operations. As least one soil sample per project soil type must be collected. The location of soil samples shall be jointly determined by the Grantee and NAD. Soil Samples shall be analyzed for the following minimum parameters:

1. pH
2. % Organic Matter
3. Texture (actual % sand, silt, clay, not an estimate)
4. CEC (Contaminants of Emerging Concern)
5. Nitrate, Phosphorous, Potassium, Zinc, Iron, Copper, and Manganese (results in ppm)

The laboratory shall be informed of the species proposed to be planted and the general nature of the project. Based on this information, the laboratory shall provide written recommendations for soil amendments. This report shall be submitted to NAD, where it will be reviewed and approved or modified prior to any soil preparation or seeding.

1.4 GRANTEE’S SITE RESPONSIBILITIES

It shall be the responsibility of the Grantee to locate and protect all utilities, structures, roadways, parking areas, fences, survey markers, existing vegetation (e.g. trees), etc. on all work sites. Any damage caused by the Grantee or their subcontractors shall be immediately repaired or corrected by the Grantee at no expense to the City of Fort Collins.

1.5 CLEANING

All work sites shall be kept clean and free from all debris. At the conclusion of work, the Grantee shall remove and haul from the site all excess materials, debris, and equipment. Any damage (e.g. damaged fencing, damaged road surfaces, excessive tire furrows, mud tracked onto pavement, etc.) resulting from the Grantee's activities shall be repaired by the Grantee to the satisfaction of NAD at no expense to the City of Fort Collins.

1.6 INSPECTION; ACCEPTANCE

Initial inspection – The Grantee shall give the NAD three (3) working days written notice prior to the beginning of any revegetation work. The Grantee and NAD will inspect the site and verify that all utility work has been completed in accordance with specifications, including but not limited to backfill and compaction, final site grading, replacement of topsoil, removal of all construction materials, and site cleanup. When this has been verified, NAD will notify the Grantee in writing that revegetation work may begin.

Conditional Acceptance - When work has been completed on the project or on any portion or phase of the project designated in the documents and plans, the Grantee and NAD shall inspect the site together and determine whether or not the work is complete and has been done in accordance with easement documents and specifications. If mutual agreement cannot be reached on these issues, the determinations made by NAD shall be final. Deficiencies in the work, if any, shall be noted and a checklist of these deficiencies given to the Grantee by NAD. The Grantee shall immediately correct any deficiencies listed on the checklist. When all checklist items are completed to the satisfaction of NAD, NAD shall issue a Certificate of Conditional Acceptance.

Final Inspection & Final Approval

The Grantee shall pay the City of Fort Collins Natural Area Department a lump sum of \$3,985 per acre disturbed, or \$3,985 for disturbances less than 1-acre, prior to signing and recording the easement. Once the initial restoration is completed the Grantee is issued a conditional letter of acceptance as defined above, the City will assume maintenance responsibility for the revegetated area. This acceptance **DOES NOT** relieve the Grantee from the warranty of the work as defined below in the **Warranty** paragraph.

Warranty

The Grantee shall warrant all seeded areas against defective materials and workmanship for two growing seasons from the date of Conditional Acceptance. At any time during the warranty period, NAD may order any samples collected at the time of seeding to be tested for purity, weed content, species present, etc. The Grantee shall be responsible for the cost of these tests. The Grantee shall rework and reseed (in accordance with the provisions in the original project specifications) any areas that are dead, diseased, contain too many weedy species, or in the opinion of NAD are in an unhealthy condition as a result of defective materials or workmanship, at no cost to the City. Any and all reseeding or other remedial measures required shall be completed within ten days of notification by NAD.

PART 2. MATERIALS

2.1 GENERAL

All materials used shall be new and without flaws or defects of any type and shall be the best of their class and kind. All materials furnished shall be free of noxious weeds as defined in Article III, Section 20-41 of the Code of the City of Fort Collins, including but not limited to Russian Knapweed, Canada Thistle, Field Bindweed, Johnsongrass, Leafy Spurge, and Kochia. Any materials which have become wet, moldy, or otherwise damaged in transit or in storage will not be used.

All materials shall be furnished in original manufacturers shipping bags or containers and remain in these bags or containers until they are used. All materials shall be stored in a manner which will prevent contact with precipitation, surface water, or any other contaminating substance.

2.2 SEED

The seed mix will be specified by NAD. All seed shall be mixed by a wholesale seed supplier in the proportions determined by NAD in order to obtain the application rate specified by NAD. All seed shall conform to all current State and Federal regulations and will be subject to the testing provisions of the Association of Official Seed Analysis. All seed and seed mixes shall be furnished in bags or containers clearly labeled to show the name and address of the supplier, the common, scientific, and variety name(s) of the seed(s), the lot number, point of origin, net weight, percent of weed content, and the guaranteed percentage of purity and germination. **These labels shall be submitted to NAD for approval prior to seeding.** The Grantee shall furnish to NAD a signed statement certifying that the seed furnished is from a lot that has been tested by a recognized laboratory for seed testing within six months prior to the date of delivery.

2.3 FERTILIZER

Fertilizers are not permitted.

2.4 MULCH

General - The type of mulching material to be used shall be designated by NAD.

Hay or Straw Mulch - All hay or straw mulch shall be grass hay or straw. At least seventy-five (75%) percent of the mulch by weight shall be ten (10") inches or more in length. Mulch shall not contain any noxious weed, must, mold, cake, or decay. All mulch must be certified, copies of certification to be submitted to NAD for approval prior to transport to the construction site.

Native Grass Hay Mulch – At least seventy-five (75%) of the mulch by weight shall be ten (10") inches or more in length. Native grass hay mulch shall be certified, copies of the certification to be submitted to NAD for approval prior to transport to the construction site.

Hydraulic Mulch - Hydromulch material shall consist of at least ninety (90%) percent virgin wood cellulose fiber and be free of any substance or factor which might inhibit germination or growth of grass seed. The wood cellulose fibers shall have the property of becoming evenly dispersed and suspended when agitated in water. Hydraulic mulch shall be clean and shall not contain the seeds of noxious weeds or unspecified grasses. It shall be dyed a color to allow

visual metering of its application. When sprayed uniformly on the surface of the soil, the fibers shall form a blotter-like ground cover which readily absorbs water and allows infiltration to the underlying soil. Weight specifications for hydraulic mulch from suppliers and for all applications shall refer only to air dry weight of the fiber, a standard equivalent to ten (10%) percent moisture. The hydraulic mulch material shall be supplied in packages having a gross weight not in excess of one hundred (100 lbs.) pounds and shall be marked by the manufacturer to show the air-dry weight content.

The Grantee shall obtain and submit to the project manager certifications from suppliers of hydraulic mulch that laboratory and field testing of their product has been accomplished, and that it meets all the foregoing requirements pertaining to wood cellulose fiber mulch.

2.5 ORGANIC TACKIFIER/BINDER

Tackifier, if needed for hydro mulching operations, shall be approved by NAD prior to its use. Tackifier shall be an approved commercial grade product (such as "M-Binder" from Ecology Controls, P.O. Box 1275, Carpinteria, CA 93013) suitable for use with virgin wood cellulose fiber mulch. Any tackifier shall be a non-toxic, non-corrosive, all organic powder which forms a resilient, re-wettable membrane when combined with wood fiber mulches and water. Tackifier materials shall be furnished in original manufacturer's bags or containers clearly labeled to show the name and address of the supplier, and the material chemical contents. Labels and certificates shall be submitted to NAD.

2.6 EROSION CONTROL NETTING, BLANKETS, MATS, FABRICS

Erosion control blankets, mats, or other commercial products for stabilizing land disturbed areas may be required in certain areas. If so, the type, manufacturer, and installation method for these products will be specified by NAD.

2.7 WATER

All water used on projects under this Contract shall be free of any substances harmful to plant germination and growth, or to the environment in general. The Grantee shall be responsible for furnishing and applying water which meets these requirements. NAD may, at the Grantee's expense, submit samples of water used on any project for laboratory analysis (of a reasonable number and kind) to ensure the quality of the water.

EXHIBIT E

Plans

To be replaced with copy of plans