



**ITB-15-34
ADDENDUM #2
RE-BID TABOR STREET RECONSTRUCTION**

Date: December 17, 2015
Bid Number: ITB-15-34
Bid Due Date: **TUESDAY, DECEMBER 22, 2015 BY 1:00 PM OUR CLOCK**

The following information is provided to all prospective bidders and is hereby made a part of the above bid documents. Bidders must acknowledge this Addendum 2 with their bid. It is a total of 10 pages.

CLARIFICATION, ADDITIONAL INFORMATION, AND CHANGES:

1. Please see attached **CONTRACTOR'S RIGHT OF ENTRY AGREEMENT** that has been prepared by RTD for this project. This document is being provided as information. Please acknowledge receipt and acceptance of the terms in your bid response.
2. The plans can be downloaded from the following ftp site:

<ftp://ftp.ci.wheatridge.co.us/outbox/>

username: cowrftp
password: cowrftp2012

file name: ITB-15-34 Rebid Tabor Street Reconstruction

Visit our City website for prebid sign in sheet, addendum, plan holders list and project updates:
www.ci.wheatridge.co.us

POINT OF CONTACT: Jennifer Nellis, Purchasing Agent, jnellis@ci.wheatridge.co.us, fax 303-234-5924, or phone 303-235-2811. Do not contact the user department, consultant, or any other staff.

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

This Contractor's Right of Entry Agreement ("Agreement" or "Contractor's RoE") is made (date) _____ by and between The Regional Transportation District, a political subdivision of the State of Colorado ("RTD" or "Licensor"), 1600 Blake Street, Denver, Colorado 80202 and _____ [contractor name and address].

RTD and the City of Wheat Ridge, a Colorado home rule municipal corporation with a mailing address of 7500 W. 26th Ave, Wheat Ridge, Colorado 80033 ("City") are parties to the Gold Line (GL) Base Project Funds from DRCOG Intergovernmental Agreement herewith ("the IGA") for the construction of the Wheat Ridge Tabor Street Improvements Project connecting to the south end of the PUC approved RTD Tabor Street Widening improvements across RTD Gold Line Corridor property whereby RTD grants access to enter upon the certain RTD Gold Line Corridor property shown in Exhibit A to this Agreement herewith ("RTD Right-of-Way") for the purpose of constructing the Wheat Ridge Tabor Street Improvements Project including street widening improvements, sidewalk additions and the storm sewer connection within RTD Right-of-Way. Said work will be completed south of BNSF Railway tracks which is south of the RTD Gold Line Tracks and Overhead Catenary System ("OCS").

The City has employed Contractor and requested RTD to permit Contractor to perform construction of Wheat Ridge Tabor Street Improvements Project including the storm sewer connection within RTD Right-of-Way in accordance to Section 4b of the IGA and RTD is agreeable thereto, subject to the following terms and conditions.

In consideration of the permission of RTD for Contractor to enter upon the RTD Gold Line Corridor property ("RTD Right-of-Way"), Contractor hereby agrees as follows:

SECTION 1

RIGHT TO ENTER RTD GOLD LINE CORRIDOR PROPERTY ("RTD RIGHT-OF-WAY")

Permission to enter upon the RTD Gold Line Corridor property ("RTD Right-of-Way") is granted solely for purposes of Contractor performing said construction work defined above and under an approved Denver Transit Partners (DTP) Track Allocation Permit (if necessary) shown in Exhibit B to this agreement for the Wheat Ridge Tabor Street Improvements Project. Contractor shall coordinate with RTD and DTP to determine if a track allocation permit is required for this project and comply with all terms of the DTP Track Allocation permit applicable to its work on the RTD Right-of-Way. Contractor shall coordinate the schedule of work and traffic control with DTP through the RTD Gold Line Construction Manager. Contractor shall evaluate proximity of work to the BNSF Railway tracks in an effort to coordinate with the BNSF Railway and have the appropriate railroad training. Contractor specifically acknowledges and agrees that RTD has the full right and authority to enforce, and to cause Contractor to come into compliance with, the terms of this Agreement.

SECTION 2

LIABILITY

Contractor shall, and shall contractually require its contractors to, indemnify, defend and hold harmless Licensor and its officers, directors, employees, agents and contractors against and from all claims (including without limitation actions, demands, expenses, costs, attorneys' fees, court costs and judgments) arising out of or caused by Contractor's and/or its contractors' use of the RTD Right-of-Way hereunder, including, but not limited to, Environmental Damages.

It is the intention of the parties hereto that the indemnity from Contractor to Licensor provided for in this section indemnifies RTD, its officers, directors, and employees for their own negligence, whether that negligence is active or passive, or is the sole or a concurring cause of the injury, death or damage; provided that said indemnity shall not protect RTD from liability for death, injury or damage arising solely out of the willful misconduct, gross negligence and/or criminal actions of RTD, its officers, directors or employees. In the event of any claims made or suits filed, each party shall give the other prompt written notice thereof, and Licensor shall have the option to defend or reasonably settle the same as to claims or suits made against it, without effect as to Contractor's obligations hereunder. The provisions of this paragraph shall survive the termination, in whole or in part, of the license granted under this Agreement.

SECTION 3 INSURANCE

- A. Contractor shall procure and maintain, and shall require that any contractors and subcontractors procure and maintain, the following types of insurance, at minimum, with an insurer or insurers and in a form satisfactory to RTD:
1. Comprehensive general and automobile liability insurance with contractual liability endorsement and products and completed operations hazards included, which shall provide coverage for limits of not less than \$5,000,000.00 bodily injury liability and property damage liability, combined single limits.
 2. Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor and its contractors, wherever they may be in the United States of America so long as they are engaged in the work covered by this Agreement. The policy or policies shall cover the entire liability of the Contractor and its contractors as determined by the Workers' Compensation laws of the state or states under which such liability arises, and shall contain, so far as it is lawful to obtain the same, a waiver of insurer's right of subrogation against RTD for payments made to or on behalf of employees of the Contractor's and contractors. Employer's Liability Insurance shall provide coverage for limits of not less than \$500,000.
 3. Prior to entry upon, above or adjacent to RTD Right-of-Way, Contractor agrees to furnish RTD with a certificate of insurance for itself and for each of its contractor(s)' policy(ies). Contractor shall provide 30 days' advance notice of cancellation of the policy by Registered or Certified mail.
 4. Each such comprehensive general and automobile liability certificate shall have the following endorsements attached thereto:
 - a) An endorsement naming RTD as additional insured;
 - b) An endorsement providing for contractual liability coverage for liability assumed by the Contractor under this Agreement;
 - c) An endorsement providing that all policy or endorsement limitation(s) relating specifically to operations on or near railroad property are eliminated;
 - d) A Broad Form Property Damage endorsement; and
 - e) An endorsement providing that in the event of reduction or exhaustion of the applicable aggregate limit or limits of liability under the primary policy or policies referred to in the certificate of insurance solely by reason of losses paid hereunder on account of occurrences during the policy period, the excess policy, if any, referred

to in the certificate shall (1) in the event of reduction, apply as excess of the reduced limit of liability thereunder; and (2) in the event of exhaustion, continue in force as though it were primary insurance.

- B. Liability of Contractor under this section shall not be limited to coverage provided under said insurance policies.
- C. Only those contractors and subcontractors of Contractor whose operations are covered by insurance will be authorized to work upon or about the RTD Right-of-Way.

SECTION 4 ENVIRONMENTAL OBLIGATIONS

- A. For purposes of this "Environmental Obligations" section, the terms "Activity" and "Activities" shall include any action or omission of Contractor, and/or the subsidiaries, affiliates, agents, contractors, employees, successors or assigns of Contractor.
- B. No Hazardous Material on Property. Except in strict compliance with all Environmental Requirements, Contractor shall not cause, permit or suffer any Hazardous Material (defined below) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the RTD Right-of-Way or any portion thereof by Contractor, its agents, employees, contractors, tenants or invitees, or any other person.
- C. No Violations of Environmental Requirements. Contractor, in performing the Activities shall not cause, permit or suffer the existence or the commission by Contractor, its agents, employees, contractors, or invitees, of a material violation of any Environmental Requirements upon, about or beneath the RTD Right-of-Way or any portion thereof.
- D. No Environmental or Other Liens. Contractor, in performing the Activities, shall not create or suffer to exist with respect to the RTD Right-of-Way, or permit any of its agents (including, but not limited to, contractors) to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9607(1) or any similar state statute.
- E. For purposes of this Agreement, "Hazardous Material(s)" means any and all substances, chemicals, wastes, or other materials now or from time to time hereafter:
 - 1. defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) (CERCLA), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) (RCRA), and/or the Colorado Hazardous Waste Act Sections 25-15-101 et seq., Colorado Revised Statutes and the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3;
 - 2. characterized as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes that are regulated, subject to permitting or warning requirements, or for which removal, remediation or disposal is required or regulated, under any and all Laws for the protection of the environment, human health and safety, including without limitation CERCLA, RCRA, the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251,

et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.) and/or the Colorado Hazardous Waste Act (§ 25 15-311 et seq., Colorado Revised Statutes); the Colorado Solid Waste Act (§ 30-20-100.5 et seq., C.R.S); the Colorado Water Quality Control Act (§ 25-8-101 et seq., Colorado Revised Statutes), Colorado Air Pollution Prevention and Control Act (§ 25-7-101 et seq., Colorado Revised Statutes), Title 8 Article 20.5, Colorado Revised Statutes and any federal, state or local regulations and associated guidance promulgated thereunder; or

3. otherwise posing a present or potential risk to human health, welfare or the environment, including, without limitation, asbestos, flammable, explosive, corrosive or radioactive materials, gasoline, oil, motor oil, waste oil, petroleum (including without limitation, crude oil or any component thereof), and petroleum-based products, paints and solvents; lead, cyanide, DDT and other pesticides, and polychlorinated biphenyls.
4. "Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation:
 - a) All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials, whether solid, liquid, or gaseous in nature; and
 - b) All requirements pertaining to the protection of the health and safety of employees or the public.
5. "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment related to Activities, of whatever kind of nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the RTD Right-of-Way or migrating or threatening to migrate to or from the RTD Right-of-Way, or the existence of a violation of Environmental Requirements pertaining to the RTD Right-of-Way and including without limitation:
 - a) Damages for personal injury, or injury to property or natural resources occurring upon or off of the RTD Right-of-Way, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties including but not limited to claims brought by or on behalf of employees of Contractor;
 - b) Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the

performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonable necessary to make full economic use of the RTD Right-of-Way otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder; and

- c) Liability to any third person or governmental agency to indemnify such person or agency for cost expended in connection with the items referenced in subparagraph (b) herein.

SECTION 5 SUB-CONTRACTORS

All of the limitations and obligations imposed upon the Contractor pursuant to this Agreement shall be to apply with equal force and effect to any of Contractor's sub-contractors (together "sub-contractors") performing any work on or about the RTD Right-of-Way. The Contractor shall be primarily liable and responsible to Licensor for all acts or omissions of any sub-contractor employed upon or about the RTD Right-of-Way pursuant hereto. Nothing herein contained shall be construed to preclude the Licensor from proceeding against the Contractor and any sub-contractor individually or collectively. Only those sub-contractors whose operations are covered by the insurance provisions hereof will be authorized to work upon the property of Licensor. In the event that any sub-contractor does not have its own insurance coverage as set forth in Section 3, hereof, Contractor shall cause such sub-contractor to be a named insured under Contractor's policies set forth in Section. No sub-contractor shall be permitted entry upon the RTD Right-of-Way until proof of sub-Contractor's coverage required by Section 3 and this section is submitted to Licensor, and approved by Licensor's Risk Manager.

SECTION 6 DIGGING OR BORING

Prior to performing any digging or boring activities on the RTD Right-of-Way, the Contractor shall determine if a telecommunications system or other utility is buried anywhere on or about the RTD Right-of-Way in the location where Contractor will perform such digging or boring activities. If there is such a telecommunications system or other utility, Contractor will inform the owner of such telecommunications system or other utility, and take such measures in concert with the owner(s) as are necessary so as not to damage such system or utility.

SECTION 7 SAMPLES/REMOVAL

As between Licensor and Contractor only, Contractor shall be solely responsible for the lawful removal, manifesting, transport, testing and disposal of any samples or other materials removed from the RTD Right-of-Way or generated as a result of Contractor's activities done pursuant to this Agreement, and shall duly and properly perform or cause to be performed any such activities that it undertakes or is required to undertake pursuant to law. Contractor releases Licensor from liability or legal obligation for, and covenants not to sue Licensor concerning, any and all materials removed from the RTD Right-of-Way or generated as a result of Contractor's sampling and/or testing activities pursuant hereto.

SECTION 8
MISCELLANEOUS

A. Term and Termination. This Agreement shall be effective upon the execution by all parties hereto. The permission granted herein shall expire 30 business days from the date of execution of this Agreement.

B. Assignment. The license granted herein may not be assigned by Contractor and Contractor shall not sublet the RTD Right-of-Way, or any part thereof, or any interest therein, without the prior written consent of Licensor. No Licensor-approved assignment or subletting shall release Contractor from any responsibility or liability hereunder. Any subletting or assignment in violation of this Agreement shall be null and void.

C. Amendment. This Agreement may not be amended except in writing by mutual agreement of Contractor and Licensor, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

D. Independent Contractors. It is expressly understood and agreed that Licensor and Contractor do not intend to be and shall not in any respect be deemed agents of each other, but shall be deemed to each be an independent contractor.

E. Liens. Contractor shall not permit any lien to be placed against the RTD Right-of-Way arising from performance of work hereunder, and shall promptly cause any such lien to be removed.

IN WITNESS WHEREOF, the parties have duly executed this Agreement, effective the day and date first above written.

LICENSOR
REGIONAL TRANSPORTATION DISTRICT

By: _____
Henry Stopplecamp
Acting Assistant General Manager, Capital
Programs
Date: _____

APPROVED AS TO LEGAL FORM
FOR THE
REGIONAL TRANSPORTATION DISTRICT

Dana Steele
Associate General Counsel
Date: _____

CONTRACTOR

By: _____
Name:
Title:
Date:

**EXHIBIT A – RTD RIGHT-OF-WAY
(pages to follow)**

**EXHIBIT B – RTD BUILDING AND GROUND ACCESS PERMIT (“BGAP”)
(pages to follow)**