

## **AGREEMENT**

### **FIRE TRAINING SIMULATOR**

**THIS AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City” or “Customer”) and **MW Golden Constructors**, a Colorado corporation, with an address of 1700 N. Park Street, Grand Canyon Suite, Castle Rock, CO 80129 (“Contractor”).

#### **RECITALS:**

1. The City desires to obtain a Fire Training Simulation Building and associated equipment, and Contractor desires to provide that equipment to the City.
2. Payment for the equipment shall be financed through a separate lease-purchase agreement (the “LPA”) between the City and SANTANDER LEASING, LLC (“Financer”).

#### **AGREEMENT:**

For and in consideration of the agreements contained, and subject to the terms and conditions stated, in this Agreement, the parties agree as follows:

1. **FORM OF AGREEMENT**. This Agreement shall consist of the terms and conditions stated in the following numbered Articles, together with those exhibits or attachments that are referenced and incorporated in such Articles. In the event that any conflict between the terms and conditions contained in this document and those contained in any exhibits or attachments shall occur, the terms and conditions of these numbered Articles shall be controlling.

2. **COORDINATION AND LIAISON**: Contractor agrees that during the term of this Agreement it shall fully coordinate the performance of this Agreement with the City, including the Executive Director of Public Works (“Manager”) or as otherwise directed by the City. Contractor understands that the Manager or designee is the City's representative or Project Manager under this Agreement through whom Contractor obligations performed under this Agreement shall be coordinated.

3. **EQUIPMENT AND WARRANTIES TO BE PROVIDED**.

A. Contractor shall provide to the City the equipment and warranties listed and described on **Exhibit A** attached hereto (hereinafter referred to as the “Equipment” and “Warranties”). Additionally, the Contractor warrants and represents that it will provide the Equipment and Warranties in compliance with the companion City contract (“Design Build Contract” City contract control # 201418009) for the installation of the Fire Training Simulator.

B. It is understood and agreed that the Equipment and Warranties associated with this Agreement that are being provided to the City hereunder are also routinely provided to nongovernmental customers on the same terms and conditions that were offered to the City and are agreed to by the City in this Agreement.

4. **SPECIAL PURCHASING TERMS AND CONDITIONS**: In addition to all other terms and conditions stated in this Agreement, Contractor shall comply with the following special purchasing terms and conditions:

A. Pricing is F.O.B. Denver, CO, delivered to the City facilities as set out on Exhibit A.

B. Contractor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered as a result of this Agreement which occur prior to delivery to the City; and such loss, injury or destruction shall not release Contractor from any obligation hereunder. Thereafter, risk of loss shall pass to the City and Financer as further described in the LPA.

C. Contractor agrees to furnish, upon the written request of the City, any additional information needed to substantiate or clarify the design and/or performance characteristics of the Equipment.

D. Contractor Invoices must include the following:

- (1) City contract control number.
- (2) Items listed individually.
- (3) Invoice number and date.
- (4) Requesting department name and "ship to" address.
- (5) Payment terms.

5. **TERM.** The term of this Agreement shall commence upon October 1, 2014, and expire on September 1, 2015.

6. **COMPENSATION.**

A. It is understood and agreed that the City has elected to lease/purchase/finance the Equipment and Warranties through the LPA. The City and Financer have also entered into an escrow agreement that together with the LPA provide for payment to the Contractor of the maximum purchase amount stated herein subject to the procedure set out in the LPA. The Contractor's performance under this Agreement is expressly conditioned upon funding of the escrow agreement and proper payment as set out herein.

B. The total compensation payable to Contractor for acquiring and delivering the Equipment together with the Warranties shall not exceed the amount of **ONE MILLION ONE HUNDRED FORTY-TWO THOUSAND SIXTEEN DOLLARS AND ZERO CENTS** (\$1,142,016.00) (the "Maximum Purchase Amount"), payable directly to the Contractor by Financer. Title to the Equipment shall vest with Financer upon payment of the Maximum Purchase Amount to Contractor. Beneficial use of the Equipment and Warranties shall remain with the City.

C. The total compensation payable by the City to Contractor under this Agreement for the Equipment and Warranties shall not exceed Zero Dollars (\$0.00) (the "Maximum Contract Amount").

D. The total obligation of the City hereunder shall be limited to funds appropriated for the purposes of this Agreement by the Council of the City and County of Denver, paid into the Treasury of the City and encumbered for the purpose of this Agreement.

7. **TIME IS OF THE ESSENCE**: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement by Contractor, time is of the essence.

8. **STATUS OF CONTRACTOR**: It is understood and agreed by and between the parties that the status of Contractor shall be that of an independent contractor and it is not intended, nor shall it be construed, that Contractor or any employee or subconsultant is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

9. **TERMINATION OF AGREEMENT**: The City may terminate this Agreement at any time on thirty (30) days' notice if Contractor is in breach or default of the Agreement or if the underlying project or activity is canceled. The City may also by written Notice of Default to Contractor terminate the whole or part of this Agreement in the event Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with Contractor's business. Contractor may terminate this Agreement upon ten (10) days prior written notice if (a) the City breaches this Agreement and the breach remains uncured for thirty (30) days after receipt of written notice of the breach, or (b) Financer fails to honor its obligations under the LPA.

10. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of term, covenant, or condition or any default which may then exist on the part of Contractor, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

11. **EXAMINATION OF RECORDS**: Contractor agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Contractor, involving transactions related to this Agreement.

12. **TAXES, PERMITS AND LICENSES**: Contractor agrees to pay promptly all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to take out and keep current all required licenses or permits, whether municipal, state or federal, required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. Contractor further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by Contractor of all required licenses and permits and all taxes. Contractor further agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed which will in any way impair the rights of the City under this Agreement.

13. **VENUE, GOVERNING LAW**: Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable

law, together with the Charter, Revised Municipal Code, regulations and Executive Orders of the City and County of Denver, as the same may be amended from time to time, is hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

14. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Contractor, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Contractor from City facilities or participating in City operations.

15. **ASSIGNMENT AND SUBCONTRACTING:**

A. Provided that the City shall have accepted the Equipment, the City shall not have the right to and shall not assert against any assignee of Financer or other registered owner of the Equipment any claim, counterclaim or other right the City may have against the Contractor.

B. None of the City's right, title and interest in any portion of the Equipment may be assigned or encumbered by the City for any reason; except that the City may sublease all or part of such Equipment if (a) such sublease is to an agency or department of, or a political subdivision of, the State or (b) the City obtains the prior written consent of Financer and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Financer that such subleasing will not adversely affect the exclusion of the interest components of the rental payments made to Financer under the lease-purchase transaction referenced herein from gross income for federal income purposes. Any such sublease of all or part of any Equipment shall be subject to the lease-purchase transaction with Financer and the rights of Financer in, to and under such transaction with respect to the Equipment.

C. The City is otherwise not obligated or liable under this Agreement to any party other than the Contractor named herein. Contractor understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which consent or approval may be withheld in the absolute discretion of the City; and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and Contractor herein named shall remain fully responsible to the City according to the terms of this Agreement.

16. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

17. **INSURANCE:**

A. **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in

force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for eight (8) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor certifies that the certificate of insurance (preferably an ACORD certificate of insurance) attached as Exhibit B, complies with all insurance requirements of this Agreement. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**C. Additional Insureds:** For Commercial General Liability, and Auto Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**D. Waiver of Subrogation:** For all coverages, Contractor's insurer shall waive subrogation rights against the City.

**E. Subcontractors and Subconsultants:** All sub-consultants, subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein. Contractor shall require all of its subcontractors of any tier to provide insurance coverage in types and amounts required by the Contractor, but in amounts of at least \$1,000,000 Commercial General Liability, Business Auto insurance of \$1,000,000 combined single limit, statutory Workers' Compensation coverage, and if required based on the scope of work, professional liability in the amounts as required of the Contractor. Contractor agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the City.

**F. Workers' Compensation/Employer's Liability Insurance:** The Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease, and \$500,000 aggregate for all claims. The Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date the Contractor executes this Agreement.

**G. Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**H. Business Automobile Liability:** Contractor shall maintain Business Automobile Liability, or its equivalent, with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

**I. Professional Liability:** Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

**J. Builders Risk or Installation Floater:** Contractor shall maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. The City and County of Denver, Contractor, and sub-contractors shall be Additional Named Insureds under the policy. Policy shall remain in force until acceptance of the project by the City.

**K. Additional Provisions:**

(a) For Commercial General Liability and Excess Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are in excess of policy limits;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

- (b) For claims-made coverage:
  - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- (c) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**L. City's Insurance.** The City is self-insured pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., and shall not be required to obtain any liability, fire, casualty or other insurance as a result of this Agreement. Neither shall any contrary statement contained in any attachment or exhibit hereto be construed to shift the risk of loss or liability to the City.

**18. DEFENSE AND INDEMNIFICATION:**

**A.** Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

**B.** Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

**C.** Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

19. **CONFLICT OF INTEREST:** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Contractor further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter Sections 1.2.9 and 1.2.12.

20. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement, including but not limited to subcontractors and suppliers. It is otherwise the express intention of the City and Contractor that any person or entity other than the City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

21. **TRADE SECRETS AND CONFIDENTIAL INFORMATION:**

A. Contractor shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm or corporation in any manner whatsoever any information concerning any matters related to this Agreement which are not subject to public disclosure, including without limitation the trade secrets of businesses or entities doing business with the City and other privileged or confidential information.

B. In the event that this Agreement or any exhibit or attachment is the subject of an open records request by a third party under Colorado law, the City will notify Contractor of such request. If Contractor believes that any material furnished to the City under this Agreement is not subject to disclosure, it shall take whatever action it deems necessary or appropriate to obtain a court order from the Denver District Court to preclude such disclosure by the City.

22. **DISPUTES:** All disputes of whatsoever nature between the City and Contractor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code §56-106(b) et. seq. For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in Article 2 hereof.

23. **TAXES, CHARGES AND PENALTIES:** The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code.

24. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

25. **SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement, except for the provisions of the Agreement requiring prior

appropriation of funds and limiting the total amount payable by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

26. **SURVIVAL OF CERTAIN AGREEMENT PROVISIONS:** The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, Contractor's obligations for the provision of insurance, for indemnity to the City and for preserving confidentiality of trade secrets and other information shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

27. **AGREEMENT AS COMPLETE INTEGRATION - AMENDMENTS:** This Agreement, together with the LPA, are intended as the complete integration of all understandings between the parties as to the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect or bind the City. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

28. **LEGAL AUTHORITY:**

A. Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of Contractor, do hereby warrant and guarantee that he/she or they have been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into this Agreement. The City shall not be obligated to pay Contractor for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Article.

29. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

**30. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

**A.** This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

**B.** The Contractor certifies that:

- (1)** At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2)** It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**C.** The Contractor also agrees and represents that:

- (1)** It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2)** It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3)** It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.
- (4)** It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5)** If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- (6)** It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and

Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

**D.** The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

31. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

32. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

If to the Contractor:	MW Golden Constructors Attn: Jason Golden P.O. Box 338, Castle Rock, CO 80104-0338
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If to the City:	Brandon Gainey Public Works City and County of Denver 201 W. Colfax, Dept. 506 Denver, CO 80202
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With a copy to:	Robert Wheeler Assistant City Attorney Municipal Operations 201 W. Colfax Ave. Dept. 1207 Denver, CO 80202
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Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

33. **COMPLIANCE WITH ALL LAWS:** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

34. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

35. **ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

36. **CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

37. **BONDING REQUIREMENTS** In accordance with the provisions of General Contract Conditions, Title 15, of the Design Build Contract PERFORMANCE AND PAYMENT BONDS, the minimum bonding requirements for this Contract are set forth in the form **CITY AND COUNTY OF DENVER PERFORMANCE AND PAYMENT BOND** contained in the Special Conditions Section of the Contract Documents of the Design Build Contract and are applicable to this Agreement. A copy of the Bond is attached hereto as Exhibit C

- Exhibit A- Equipment
- Exhibit B Certificate of Insurance
- Exhibit C Payment and Performance Bond

## **EXHIBIT A**

### **EQUIPMENT PURCHASED**

Specifications of equipment, and warranties to be provided by Contractor are set out on the attached pages, which together with this cover sheet constitute **Exhibit A**.

City and County of Denver DFD Fire Training Simulator Project  
Vendor: MW Golden Constructors #94212

Description of Work for Vendor Agreement	Scheduled Value
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**Milestone NO. 1: Permit Drawings Delivered**

	Metal Building Drawings - Delivered	\$ 37,066
	Gas Simulator Interface Drawings - Delivered	\$ 60,300
	Structural Engineering Drawings - Delivered	\$ 2,000
	Mechanical Engineering Drawings - Delivered	\$ 2,000
	Electrical Engineering Drawings - Delivered	\$ 700
	Preconstruction Services <sup>3</sup>	\$ 4,856
	Milestone NO. 1 Subtotal	\$ 106,922
6.77%	Design Build Fee <sup>2</sup>	\$ 7,240
	<b>Milestone NO. 1 Total</b>	<b>\$ 114,162</b>
5.00%	<b>Milestone NO. 1 Payment: Total Less 5% for Retainage</b>	<b>\$ 108,454</b>
	Retainage Withheld	\$ 5,708

**Milestone NO. 2: Metal Building Delivery**

	Structural Steel	\$ 318,700
	Stairs, Railings, Ladders	\$ 57,510
	Doors	\$ 17,180
	Shutters	\$ 5,433
	Calcium Silicate Insulation Panels	\$ 101,633
	Standpipe	\$ 2,965
	Digital Thermostat and Controls for Monitoring Bldg Temperature	\$ 2,553
	Rappelling Anchors	\$ 981
	Freight	\$ 15,000
	General Conditions <sup>1</sup>	\$ 7,038.00
	Milestone NO. 2 Subtotal	\$ 528,993
6.77%	Design Build Fee <sup>2</sup>	\$ 35,822
	<b>Milestone NO. 2 Total</b>	<b>\$ 564,815</b>
5.00%	<b>Milestone NO. 2 Payment: Total Less 5% for Retainage</b>	<b>\$ 536,574</b>
	Retainage Withheld	\$ 28,241

**Milestone NO. 3**

	Propane Gas Simulator	\$ 124,500
6.77%	Design Build Fee <sup>2</sup>	\$ 8,431
	<b>Milestone NO. 3 Total</b>	<b>\$ 132,931</b>
5.00%	<b>Milestone NO. 3 Payment: Total Less 5% for Retainage</b>	<b>\$ 126,284</b>
	Retainage Withheld	\$ 6,647

**Milestone NO. 4**

	Labor to Erect Tower Structure	\$ 77,730
	Labor to Install Interior Stair in Tower Structure	\$ 8,000
	General Conditions <sup>1</sup>	\$ 17,130.00
	Milestone NO. 4 Subtotal	\$ 102,860
6.77%	Design Build Fee <sup>2</sup>	\$ 6,965
	<b>Milestone NO. 4 Total</b>	<b>\$ 109,825</b>
5.00%	<b>Milestone NO. 4 Payment: Total Less 5% for Retainage</b>	<b>\$ 104,334</b>
	Retainage Withheld	\$ 5,491

City and County of Denver DFD Fire Training Simulator Project  
Vendor: MW Golden Constructors #94212

**Milestone NO. 5**

	Labor to Erect Residential Structure	\$ 34,986
	Labor to Install Interior Stair in Residential Structure	\$ 10,992
	General Conditions <sup>1</sup>	\$ 14,275.00
	Milestone NO. 5 Subtotal	\$ 60,253
6.77%	Design Build Fee <sup>2</sup>	\$ 4,080
	<b>Milestone NO. 5 Total</b>	<b>\$ 64,333</b>
5.00%	<b>Milestone NO. 5 Payment: Less 5% for Retainage</b>	<b>\$ 61,116</b>
	Retainage Withheld	\$ 3,217

**Milestone NO. 6**

	Labor to Install Doors and Shutters	\$ 10,496
	Labor to Install Interior Partitions and Trim	\$ 21,783
	General Conditions <sup>1</sup>	\$ 2,855.00
	Milestone NO. 6 Subtotal	\$ 35,134
6.77%	Design Build Fee <sup>2</sup>	\$ 2,379
	<b>Milestone NO. 6 Total</b>	<b>\$ 37,513</b>
5.00%	<b>Milestone NO. 6 Payment: Total Less 5% for Retainage</b>	<b>\$ 35,638</b>
	Retainage Withheld	\$ 1,876

**Milestone NO. 7**

	Labor to Install Exterior Trim	\$ 14,523
	Labor to Install Exterior Stair	\$ 2,000
	Labor to Intall Rapelling Anchors and Standpipe	\$ 24,205
	General Conditions <sup>1</sup>	\$ 2,855.00
	Milestone NO. 7 Subtotal	\$ 43,583
6.77%	Design Build Fee <sup>2</sup>	\$ 2,951
	<b>Milestone NO. 7 Total</b>	<b>\$ 46,534</b>
5.00%	<b>Milestone NO. 7 Payment: Less 5% for Retainage</b>	<b>\$ 44,208</b>
	Retainage Withheld	\$ 2,327

**Milestone NO. 8**

	Labor to Install Calcium Silicate Insulation Panels	\$ 22,027
	General Conditions <sup>1</sup>	\$ 2,855.00
	Milestone NO. 8 Total	\$ 24,882
6.77%	Design Build Fee <sup>2</sup>	\$ 1,685
	<b>Milestone NO. 8 Total</b>	<b>\$ 26,567</b>
5.00%	<b>Milestone NO. 8 Payment: Total Less 5% for Retainage</b>	<b>\$ 25,239</b>
	Retainage Withheld	\$ 1,328

**Milestone NO. 9**

	Labor to Install Gas Simulators	\$ 20,100
	Owner Training <sup>5</sup> for use of Gas Simulator	\$ 20,100
	General Conditions <sup>1</sup>	\$ 2,260.00
	Milestone NO. 9 Subtotal	\$ 42,460
6.77%	Design Build Fee <sup>2</sup>	\$ 2,875
	<b>Milestone NO. 9 Total</b>	<b>\$ 45,335</b>
5.00%	<b>Milestone NO. 9 Payment: Total Less 5% for Retainage</b>	<b>\$ 43,068</b>
	Retainage Withheld	\$ 2,267

**Subtotal of Milestones NO. 1 - NO. 9**

**\$ 1,084,915**

City and County of Denver DFD Fire Training Simulator Project  
Vendor: MW Golden Constructors #94212

**Milestone NO. 10: Delivery of Final Lien Releases**

	Lien Releases <sup>4</sup> provided by subcontractors, Delivered by Vendor (Retainage Release)	\$ 57,101
	Final Acceptance of the Work	\$ -
	<b>Milestone NO. 10 Total</b>	<b>\$ 57,101</b>

**TOTAL FINANCED AMOUNT** \$ 1,142,016

**Definitions:**

<sup>1</sup>**General Conditions:** Costs incurred by the Vendor that are necessary to complete the project. General Conditions include the following: Onsite Project Superintendent, Mobilization Onsite, Project Office Trailer, Storage Trailers, Safety Equipment, Dumpster Rental, etc.

<sup>2</sup>**Design Build Fee:** A stipulated fixed amount quoted by Vendor applied to the total Cost of Work. The Design Build Fee has been applied as a percentage to each Milestone.

<sup>3</sup>**Pre-Construction Services:** A stipulated fixed amount quoted by Vendor to Plan, Coordinate, Estimate and Control the Project Prior to Construction.

<sup>4</sup>**Lien Release:** A document from a subcontractor to the Construction Project stating they have received payment and waive any future lien rights to the property.

<sup>5</sup>**Owner Training:** In-person training provided by equipment manufacturer for proper operation and maintenance of equipment

## **EXHIBIT B**

EXHIBIT I

ACORD Certification of Insurance

**ACORD**<sup>TM</sup>**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

7/28/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Willis of Colorado, Inc.</b> <b>2000 South Colorado Boulevard</b> <b>Tower II, Suite 900</b> <b>Denver, CO 80222</b>	<b>CONTACT NAME:</b> Yolanda Salaiz <b>PHONE (A/C, No, Ext):</b> 303-765-1542 <b>FAX (A/C, No):</b> 720-524-0130 <b>E-MAIL ADDRESS:</b> yolanda.salaiz@willis.com																					
<b>INSURED</b> <b>MW Golden Constructors</b> <b>1700 North Park St., Suite A</b> <b>P.O. Box 338</b> <b>Castle Rock, CO 80104</b>	<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr> </thead> <tbody> <tr> <td colspan="2"><b>INSURER A : Employers Mutual Companies</b></td><td><b>21415</b></td></tr> <tr> <td colspan="2"><b>INSURER B : Pinnacol Assurance</b></td><td><b>41190</b></td></tr> <tr> <td colspan="2"><b>INSURER C : OneBeacon American Insurance Co</b></td><td><b>20621</b></td></tr> <tr> <td colspan="2"><b>INSURER D : Underwriters at Lloyds</b></td><td><b>15792</b></td></tr> <tr> <td colspan="2"><b>INSURER E :</b></td><td></td></tr> <tr> <td colspan="2"><b>INSURER F :</b></td><td></td></tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	<b>INSURER A : Employers Mutual Companies</b>		<b>21415</b>	<b>INSURER B : Pinnacol Assurance</b>		<b>41190</b>	<b>INSURER C : OneBeacon American Insurance Co</b>		<b>20621</b>	<b>INSURER D : Underwriters at Lloyds</b>		<b>15792</b>	<b>INSURER E :</b>			<b>INSURER F :</b>		
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<b>INSURER F :</b>																						

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>PD Ded:1000</b> <input type="checkbox"/> <b>CG7174.3 (10-13)</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	<b>X</b>	<b>X</b>	<b>5X01276</b>	<b>04/01/2014</b>	<b>04/01/2015</b>	EACH OCCURRENCE <b>\$1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) <b>\$100,000</b> MED EXP (Any one person) <b>\$5,000</b> PERSONAL & ADV INJURY <b>\$1,000,000</b> GENERAL AGGREGATE <b>\$2,000,000</b> PRODUCTS - COMP/OP AGG <b>\$2,000,000</b> \$
<b>A</b>	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	<b>X</b>	<b>X</b>	<b>5X01276</b>	<b>04/01/2014</b>	<b>04/01/2015</b>	COMBINED SINGLE LIMIT (Ea accident) <b>\$1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
<b>A</b>	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION <b>\$10000</b>			<b>5X01276</b>	<b>04/01/2014</b>	<b>04/01/2015</b>	EACH OCCURRENCE <b>\$5,000,000</b> AGGREGATE <b>\$5,000,000</b> \$
<b>B</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y / <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		<b>X</b>	<b>4028014</b>	<b>04/01/2014</b>	<b>04/01/2015</b>	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT <b>\$1,000,000</b> E.L. DISEASE - EA EMPLOYEE <b>\$1,000,000</b> E.L. DISEASE - POLICY LIMIT <b>\$1,000,000</b>
<b>C</b>	<b>Builder's Risk</b>			<b>790005666005</b>	<b>04/01/2014</b>	<b>04/01/2015</b>	<b>\$6.5 Mill / \$1,000 Ded</b>
<b>C</b>	<b>Leased/Rented Eqt</b>			<b>790005666005</b>	<b>04/01/2014</b>	<b>04/01/2015</b>	<b>\$100,000 / \$1,000 Ded</b>
<b>D</b>	<b>Prof Liability</b>			<b>S609100110</b>	<b>09/07/2013</b>	<b>09/07/2014</b>	<b>\$1mil ea cl/\$2mil agg</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**Project Description: Denver Fire Department Training Simulator**

**Project Control Number: FAC2014-7058**

The City and County of Denver, its elected and appointed officials, employees and volunteers are named as additional insured with regards to the commercial general liability and the business auto liability policy

**CERTIFICATE HOLDER****CANCELLATION**

<b>City and County of Denver</b> <b>Dept of Public Works</b> <b>201 W. Colfax Avenue</b> <b>Denver, CO 80202</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> <i>Yolanda Salaiz</i>
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## **EXHIBIT C**

**CITY AND COUNTY OF DENVER  
DEPARTMENT OF PUBLIC WORKS**

**PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned MW GOLDEN CONSTRUCTORS, a corporation organized and existing under and by virtue of the laws of the STATE OF COLORADO, hereafter referred to as the "Contractor", and WESTERN SURETY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of SOUTH DAKOTA, and authorized to transact business in the State of Colorado, as Surety, are held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", and SANTANDER LEASING LLC, in the penal sum of ONE MILLION ONE HUNDRED FORTY TWO THOUSAND SIXTEEN DOLLARS AND NO CENTS (\$1,142,016.00) lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

**THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:**

WHEREAS, the above bounden Contractor has entered into a written contract with the aforesaid City for furnishing all labor and tools, supplies, equipment, superintendence, materials and everything necessary for and required to do, perform and complete CONTRACT NO. 201418018 VENDOR AGREEMENT DFD FIRE TRAINING SIMULATOR PROJECT, Denver, Colorado, and has bound itself to complete the project within the time or times specified or pay liquidated damages, all as designated, defined and described in the said Contract and Conditions thereof, and in accordance with the Plans and Technical Specifications therefore, a copy of said Contract being made a part hereof;

NOW, THEREFORE, if the said Contractor shall and will, in all particulars well and truly and faithfully observe, perform and abide by each and every Covenant, Condition and part of said Contract, and the Conditions, Technical Specifications, Plans, and other Contract Documents thereto attached, or by reference made a part thereof and any alterations in and additions thereto, according to the true intent and meaning in such case, then this obligation shall be and become null and void; otherwise, it shall remain in full force and effect;

PROVIDED FURTHER, that if the said Contractor shall satisfy all claims and demands incurred by the Contractor in the performance of said Contract, and shall fully indemnify and save harmless the City from all damages, claims, demands, expense and charge of every kind (including claims of patent infringement) arising from any act, omission, or neglect of said Contractor, its agents, or employees with relation to said work; and shall fully reimburse and repay to the City all costs, damages, and expenses which it may incur in making good any default based upon the failure of the Contractor to fulfill its obligation to furnish maintenance, repairs or replacements for the full guarantee period provided in the Contract Documents, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if said Contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing it or its subcontractors with labor and materials, rental machinery, tools or equipment used or performed in the prosecution of work provided for in the above Contract and that if the Contractor will indemnify and save harmless the City for the extent of any and all payments in connection with the carrying out of such Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, gasoline, lubricating oils, fuel oils, grease, coal, or any other supplies or materials used or consumed by said Contractor or its subcontractors in performance of the work contracted to be done, or fails to pay any person who supplies rental machinery, tools or equipment, all amounts due as the result of the use of such machinery, tools or equipment in the prosecution of the work, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law;

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to contracts with others in connection with this project, or the work to be performed thereunder, or the Technical Specifications and Plans accompanying the same, shall in any way affect its obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or contracts, or to the work, or to the Technical Specifications and Plans.

IN WITNESS WHEREOF, said Contractor and said Surety have executed these presents as of this  
24th day of September, 20 14.

Attest:

Pamela Golden  
Secretary/Treasurer

MW Golden Constructors  
Contractor

By: M.W. Golden, FAIG, CPC  
President  
Western Surety Company  
Surety

By: Florieta Acosta  
Attorney-In-Fact - Florieta Acosta

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond).

APPROVED AS TO FORM:  
Attorney for the City and County of Denver

By: [Signature]  
Assistant City Attorney

APPROVED FOR THE CITY AND COUNTY OF  
DENVER

By: [Signature]  
MAYOR

By: [Signature]  
MANAGER OF PUBLIC WORKS

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**J R Trojan, Florietta Acosta, Mark Sweigart, Donald E Appleby, Dilynn Guern, Kevin W Mc Mahon, Susan J Lattarulo, Todd Bengford, Tiffany Mc Gonigle, Sarah Brown, Lindsey Knickerbocker, Individually**

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

### - In Unlimited Amounts -

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

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 29th day of October, 2012.



WESTERN SURETY COMPANY

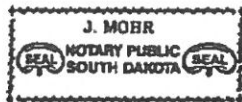
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 29th day of October, 2012, 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 the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2015



J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation 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 corporation this \_\_\_\_\_ day of \_\_\_\_\_, 2014.



WESTERN SURETY COMPANY

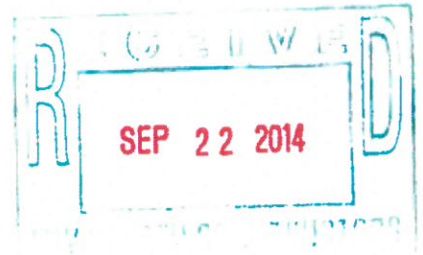
L. Nelson, Assistant Secretary

**Authorizing By-Law**

**ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY**

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.



FAX NUMBER: 720-913-3183  
TELEPHONE NUMBER: 720-913-3267

Assistant City Attorney  
City and County of Denver  
201 West Colfax Avenue, Dept. 1207  
Denver, Colorado 80202

RE: MW Golden Constructors  
Project Name: Contract No. 201418018, Vendor Agreement DFD Fire Training  
Simulator Project  
Amount: \$1,142,016.00  
Performance and Payment Bond No.: 929597835

The Performance and Payment Bonds covering the above captioned project were executed by this agency through Western Surety Company, on September 19, 2014.

We hereby authorize the City and County of Denver, Department of Public Works, to date all bonds and powers of attorney to coincide with the date of the contract.

If you should have any additional questions or concerns, please don't hesitate to give me a call.

Thank you.

Sincerely,

Florietta Acosta  
Account Manager

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at  
Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By\_\_\_\_\_

By\_\_\_\_\_

By\_\_\_\_\_



**Contract Control Number:** PWADM-201418018-00

**Contractor Name:** MW GOLDEN CONSTRUCTORS

**By:**  \_\_\_\_\_

**Name:** Jason Golden  
(please print)

**Title:** Vice President  
(please print)

**ATTEST: [if required]**

**By:**  \_\_\_\_\_

**Name:** M.W. Golden, FAIC, CPC  
(please print)

**Title:** President  
(please print)

