CONSTRUCTION MANAGEMENT AGREEMENT

THIS **CONSTRUCTION MANAGEMENT AGREEMENT** ("Agreement") is made and effective as of January 1, 2013, by and between **BEEBE DRAW FARMS AUTHORITY**, an authority and separate legal entity duly created pursuant to Section 29-1-203, Colorado Revised Statutes ("C.R.S.") (the "**Authority**") and **TAMARACK CONSULTING, LLC.**, a Colorado limited partnership (the "**Construction Manager**") (individually, "**Party**," and collectively, the "**Parties**").

RECITALS

WHEREAS, pursuant to that certain Authority Establishment Agreement dated April 12, 2011 between Beebe Draw Farms Metropolitan District No. 1 and Beebe Draw Farms Metropolitan District No. 2 (collectively, the "**Districts**") (the "**Establishment Agreement**"), the Authority shall own, operate, maintain, finance and construct certain public improvements for the benefit of the Districts (the "**District Improvements**"); and

WHEREAS, pursuant to the Establishment Agreement, the Authority is permitted to enter into contracts and agreements affecting the affairs of the Authority; and

WHEREAS, the Construction Manager has experience and expertise in managing the design review, bidding and construction phases of such projects; and

WHEREAS, the Authority desires to engage the Construction Manager as an independent contractor to provide management services for the work associated with the construction of the District Improvements, which is more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference ("**Work**").

COVENANTS AND AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Services.** The Authority hereby engages the Construction Manager to supervise and coordinate with engineers, other consultants, potential builders, contractors and Weld County (the "County"), such activities and work necessary to provide finished infrastructure improvements for the Work in compliance with the Authority's and the County's requirements. The Construction Manager shall perform all services herein identified diligently, in a good, workmanlike and timely manner, and in accordance with high quality, sound management practices. Services shall include but not be limited to the following:

A. Prior to bidding and construction, diligently review all construction documents for buildability, completeness and cost-effectiveness. Advise the Authority of the results of said review.

B. In accordance with applicable state law, conduct competitive bid processes for all contracts necessary and appropriate for proper and timely execution of the Work.

(1) Prepare and distribute to potential responders a request for qualification to establish a list of qualified bidders for each scope of work.

(2) Prepare and distribute to pre-qualified bidders bid packages, which shall include any of the following as are appropriate for the Work subject to the bidding process:

(a) preliminary construction plans;

(b) instructions to bidders;

(c) notice of award form;

(d) contract agreements, as necessary;

(e) special conditions;

(f) payment and performance bond forms;

(g) other forms to include: notice to proceed, pay application form, field order form, change order form, lien release form and final payment;

(h) work schedule;

(i) addenda to bid packages as applicable; and

(j) other information as applicable, which in the judgment of the District and/or the Construction Manager is essential to obtaining fair and responsible bids.

(3) Compile and analyze all bids.

(4) Recommend for the Authority's approval the successful bidder for each scope of work (the "**Approved Contractor**"), which includes without limitation all contractors, subcontractors, materialmen, laborers, suppliers and other parties necessary to accomplish the services described herein.

(5) Notify and meet with each Approved Contractor to negotiate final pricing; review schedules; receive current insurance certificates; and conduct other necessary and appropriate activities.

C. Provide diligent oversight, coordination and construction management for all construction and other related activities. Such activities include having personnel on site full time while work is being performed, and to conduct weekly construction progress meetings.

D. Exercise appropriate efforts to cause the Approved Contractors and the Authority to achieve adherence to the Authority approved Work schedule. This includes:

(1) Scheduling and conducting meetings as necessary to maintain the construction schedule and coordinate the work.

(2) Periodically reviewing and, where necessary, revising the construction schedule to incorporate the Approved Contractors' activities and actual progress.

E. Oversee acquisition of all necessary permits and licenses required of the Authority and assist the Approved Contractors in obtaining necessary inspections and approvals from authorities having jurisdiction over the Work. Manage compliance with applicable provisions of the laws, rules and regulations of all governing jurisdictions. These include, but are not limited to: assuring that all work performed by contractors complies with the Service Plan and rules and regulations of the Authority, as the same may be amended from time to time; obtaining all necessary permits and approvals from the County; and monitoring design conformance with applicable County codes and regulations. In addition to assuring the Improvements are constructed in compliance with applicable requirements of the Authority, County and other governmental entities with jurisdiction, the Construction Manager shall assure completed Improvements are operated and maintained in compliance with such requirements and for preparing such documentation as is required prior to dedication of Improvements to the County.

F. In conjunction with the Authority, provide administrative, management and related services as required to supervise the work of the Approved Contractors and their on-site personnel, including expediting and coordinating the ordering and delivery of necessary materials.

G. Coordinate and manage timely tests and inspections by third-party consultants where necessary or otherwise appropriate for the proper execution of the Work, including coordination of dry utility installation, surveying and testing. Attend walk-throughs and site inspections with any authorities having jurisdiction over the Work to obtain acceptance of the improvements. The Construction Manager and consultant team will recommend to the Authority when improvements are completed and fit to be accepted by the Authority or by other entities, it being understood that the approval/acceptance by the authorities having jurisdiction shall be a prerequisite to approval/acceptance by the Authority.

H. Recommend to the Authority all necessary and appropriate action to adhere to the Authority's overall budget for the Work (the "**Work Budget**"). Recommend to the Authority all necessary and appropriate action to cause the Approved Contractors to adhere to the Work Budget subject to change orders as provided in subparagraphs 1.H.(1) and (2) below.

(1) In the event any change orders are requested, carefully scrutinize same and submit such change orders to the Authority with related recommendations concerning such change orders. Change orders shall not become effective without the Authority's written approval. No change order shall be effective if it causes the aggregate amount payable for the Work to exceed the amount appropriated in the original contract unless the Authority provides written assurance that lawful appropriations to cover the costs as a result of the change order have been made and the appropriations are available prior to performance of the Work provided for in the change order.

(2) Each change order under each contract shall be numbered in sequence, beginning with "Change Order No. 1" for the first change order.

(3) The Authority shall not make payment for any amount over and above the contract amount unless approved in writing in advance. Any work performed without the Authority's advance written agreement to pay for same shall be at the Construction Manager's and Approved Contractors' risk with the responsibility therefor to be handled between Construction Manager and Approved Contractors; the Authority will not be obligated to make payment for same in whole or in part.

I. Administer completion of punchlist items, and later warranty items required by the Authority, the County and appropriate agencies for final acceptance of public improvements. Examples of specific work items include monitoring schedules for final acceptances at end of warranty periods, communicating and coordinating with Approved Contractor to schedule final acceptance of punchlist work, and monitoring work to assure proper and timely completion.

J. Certify all invoices from Approved Contractors before submitting such invoices to the Authority for payment on form acceptable to the Authority ("**Payment Application**"). Certify all other applications for payment. The certification of a Payment Application shall be a representation that the Construction Manager has (1) made appropriate on-site inspections to check the quality and quantity of work, (2) reviewed construction means, methods, techniques, and sequences for the Approved Contractors' work or procedures, (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the Authority to substantiate the Approved Contractors' right to payment and (4) procured appropriate lien releases from parties receiving payment.

K. Where appropriate and necessary, assist in reviewing, evaluating and documenting claims.

L. The Construction Manager and the Authority shall each maintain a complete financial record, including copies of all invoices, draw requests, lien releases and other items relating to sums advanced by the Authority.

M. Transmit to the consultants or the Authority any requests for interpretation of the Work drawings or contract documents.

N. Cause the Approved Contractors to maintain for the Authority one record copy of all contracts, drawings, specifications, addenda, change orders and other modifications, as applicable, and, at the Work's conclusion, turn over to the Authority all construction documents, test and inspection reports, drawings and as-built documents concerning the Work. Provide to the authorities having jurisdiction such documents as they require.

O. The Construction Manager shall assure satisfactory results from each of the Approved Contractors and shall exercise best efforts to derive optimum performance from each of the Approved Contractors. The Construction Manager shall recommend courses of action to the Authority when requirements of a construction contract are not being fulfilled.

P. The Construction Manager shall monitor the progress of the work and the budget.

Q. The Construction Manager shall give prompt written notice to the Authority if it becomes aware of any fault or defect in any work or nonconformance with a construction contract.

R. Information or services under the Construction Manager's control shall be furnished by the Construction Manager to the Authority with reasonable promptness to avoid delay in the orderly progress of the Authority's duties hereunder.

S. Notwithstanding anything to the contrary set forth herein, Construction Manager's review of shop drawings and other technical submittals shall include but not be limited to cost analysis, compliance with design specifications for the Work, safety coordination and scheduling and coordination with the Contract Documents for the Work. Construction Manager will conduct its review in an expeditious manner.

2. **Authority Responsibilities.** The following shall be the Authority responsibilities:

A. The Authority shall provide full information regarding requirements for the Work, including a program which shall set forth the Authority's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

B. The Construction Manager shall submit the Work Budget to the Authority for approval, which shall include the construction cost, the Authority's other costs and reasonable contingencies related to all of these costs. The Construction Manager shall provide

the Authority with any necessary updates to the Work Budget together with appropriate supporting documentation for approval by the Authority.

C. If requested by the Construction Manager, the Authority shall furnish evidence that financial arrangements have been made to fulfill the Authority's obligations under this Agreement.

D. The Authority shall designate a representative authorized to act on the Authority's behalf with respect to the Work. The Authority, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

E. With the Construction Manager's advice and input, the Authority shall furnish, through separate contracts with appropriate individuals and/or firms, as required, civil engineering, materials testing, surveying and construction staking, structural engineering, mechanical engineering, chemical engineering, air and water pollution testing, testing for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law, the construction contract, the nature of the work and the judgment of the Authority. Construction Manager shall be responsible for timely and appropriate coordination and management of the parties and activities outlined in the previous sentence, and shall provide ample notice to the Authority to the extent that the Authority will need to furnish such parties and activities.

F. Prompt written notice shall be given by the Authority to the Construction Manager if the Authority becomes aware of any fault or defect in any work or nonconformance with a construction contract, to the extent same comes to the Authority's attention, although it shall not be the Authority's responsibility to detect such faults, defects or nonconformance.

G. The Authority reserves the right to perform construction and operations related to the Work with the Authority's own forces, and to award contracts in connection therewith which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall accommodate and coordinate with the Authority's forces accordingly, and shall notify the Authority if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement.

H. Information or services under the Authority's knowledge and control shall be furnished by the Authority with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work.

3. **Changes.**

A. The Authority, without invalidating this Agreement, may make changes in the Construction Manager's Services specified herein. The Construction Manager shall promptly notify the Authority in writing of changes that increase costs or duration of construction activities for the Work.

4. **Termination.**

A. The Authority may terminate this Agreement for convenience, in whole or in part, by written notice of termination given to the Construction Manager at least thirty (30) days prior to the effective date of such termination. The Construction Manager may terminate this Agreement for convenience, in whole or in part, by written notice of termination given to the Authority at least sixty (60) days prior to the effective date of such termination. Any termination notice provided pursuant to this section shall specify the extent of termination and the effective date of the same.

B. Either Party may terminate this Agreement for cause upon written notice to the other Party. The Party being terminated ("**Defaulting Party**") must cure the default within five (5) days from receipt of such notice; provided, however, that if the Defaulting Party cannot reasonably cure the default within such five (5) day period, the Agreement shall not be terminated if the Defaulting Party commences cure within said five (5) days and diligently pursues the same to completion, with completion occurring in all instances within thirty (30) days. In addition, the Authority shall be entitled to pursue any remedies available at law or in equity. Immediately upon termination, the Construction Manager shall forward to the Authority copies of all work in process, drawings, bid forms and other pertinent information.

5. **Construction Manager Personnel.** The Construction Manager shall employ sufficient, qualified personnel, all subject to the Authority's approval, to perform its duties hereunder in a timely fashion in accordance with the established time deadlines. The Construction Manager shall not make changes to approved personnel without the Authority's concurrence, which shall not be unreasonably withheld.

6. **Invoices.** On a monthly basis, the Construction Manager shall approve invoices from the Approved Contractors for work performed during the prior month and provide to the Authority copies of such invoices and any other documentation the Authority may request or require to support such invoices. Subject to the Authority's review and approval, the Authority shall pay each Approved Contractor the full amount of all invoices due, less retainage in accordance with the contract.

7. **Compensation.** As compensation for Work performed by the Construction Manager as set forth herein, the Authority shall pay the Construction Manager **five percent (5%)** of the Actual Cost of the Work. "Actual Cost" shall mean the cost of: labor, services, materials and supplies used in constructing the Work; design, engineering, geotechnical and environmental testing services related to the Work; and obtaining governmental and regulatory permits, licenses and approvals or fees. Such Actual Costs shall be calculated on the basis of invoices approved and paid by the Authority.

8. **Indemnification**. The Construction Manager hereby agrees to indemnify, defend and hold the Authority and its affiliated entities or other persons or entities designated by the Authority, and their respective directors, trustees, officers, members, managers, agents and employees (collectively, the "**Indemnitees**"), harmless from any and all liability for damage, including but not limited to the reimbursement of attorneys' fees and costs, arising out of death or bodily injury to persons or damage to property, in such amount that is represented by the

degree or percentage of negligence or fault attributable to the Construction Manager and/or its agents, representatives, subcontractors, or suppliers.

9. **Insurance Requirements**. The Construction Manager shall procure, at its sole cost and expense, the insurance coverages set forth below, which insurance shall be placed with insurance companies rated at least "A:XIII" by A.M. Best Company. The Construction Manager shall give notice to the Authority at least thirty (30) days prior to the cancellation or nonrenewal of such policies. The Construction Manager shall give notice to the Authority within five (5) business days, or as soon as practicable, of any modification of any such policies. Construction Manager's cost of maintaining the insurances required hereunder shall not be considered a reimbursable expense of the Construction Manager. The Construction Manager shall, upon request, promptly furnish the Authority with copies of policies obtained pursuant to this Section 4.2. Prior to commencing the Services, the Construction Manager shall furnish the Authority with certificates evidencing such insurance and provided further, however, with respect to the Workers' Compensation Insurance required below, the Construction Manager must furnish to the Authority, prior to the commencement of any Services, duly executed and validated forms as prescribed by the state authority having jurisdiction evidencing that such insurance is in full force and effect.

A. Liability Insurance Coverage.

(1) Workers' Compensation Insurance. A Workers' Compensation Insurance Policy in form and substance reasonably acceptable to the Authority and in an amount not less than the statutory benefits, including Employer's Liability Insurance with limits of liability of not less than (i) $500,000 for bodily injury by accident, each accident, (ii) $500,000 for bodily injury by disease, each employee, and (iii) $500,000 aggregate liability for disease. The Workers' Compensation Insurance Policy, or an endorsement to such policy, must include a waiver of subrogation in favor of the Authority.

(2) Commercial General Liability Insurance. A Commercial General Liability Insurance Policy written on an occurrence basis, in form and substance reasonably acceptable to the Authority, which policy shall include, without limitation, the Authority as an additional insured, a waiver of subrogation endorsement in favor of the Authority, cross liability and severability of interest endorsements, endorsements providing that the coverage afforded by the insurance policy or policies is primary and non-contributing with any other insurance maintained by or available to the Authority, and appropriate language providing the following coverages: Premises and Operations Liability; Personal Injury Liability; Broad Form Property Damage Liability; Contractual Liability supporting the Construction Manager's indemnification agreements in favor of the Authority; Completed Operations and Products Liability; and Independent Contractor's Protective Liability. The

Commercial General Liability Insurance Policy must be written with a combined single limit of liability of not less than $1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than $2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than $2,000,000 for Completed Operations and Products Liability.

(3) Automobile Liability Insurance. An Automobile Liability Insurance Policy written on a per accident basis, in form and substance reasonably acceptable to the Authority. The Automobile Liability Insurance Policy must provide coverage for all owned, hired, rented and nonowned automobiles, and must include uninsured motorist coverages. The Automobile Liability Insurance Policy must be written with a combined single limit of liability of not less than $1,000,000 for each accident for bodily injury and/or property damage.

(4) Excess Liability Insurance. An Excess Liability Insurance Policy written in excess of the coverages provided by the insurance policies described in the preceding Subsections 4.2(a)(i) - (iii), in form and substance reasonably acceptable to the Authority, which policy will include the Authority as additional insured. The Excess Liability Insurance Policy must be written with a combined single limit of not less than $1,000,000 for each occurrence of bodily injury/or property damage and annual aggregate.

(5) Professional Liability Insurance Coverage. The Construction Manager shall obtain and, continuously thereafter for eight (8) years from the date of substantial completion of the design, maintain in full force and effect a claims made policy covering errors, omissions and negligent acts in the performance of its Services hereunder, in an amount of $1,000,000 per claim and annual aggregate. The Construction Manager shall be solely responsible for the payment of all deductibles. Construction Manager's deductibles or Construction Manager's self-insured retentions shall be approved by the Authority.

B. Failure to Obtain and Obligation to Maintain Insurance. If the Construction Manager fails to furnish and maintain insurance as required by this Section, the Authority may purchase such insurance on behalf of the Construction Manager and the Construction Manager shall reimburse the Authority for such costs. Except as otherwise expressly provided herein, all insurance policies required by the terms of this section shall be kept in full force and effect until the date of final payment to the Construction Manager for the Services specified in this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the foregoing insurance requirements are in no way intended to, and will not in any

manner, limit or qualify the liabilities and/or indemnities assumed by the Construction Manager under or pursuant to this Agreement.

C. **Effect of Approval or Acceptance of Insurance.** Authority acceptance and/or approval of any or all of the insurances required hereunder does not and shall not be construed to relieve Construction Manager from any obligations, responsibilities or liabilities under this Agreement.

10. **Contractors' Insurance.** The Construction Manager shall require that each Approved Contractor obtains and provides to the Authority evidence of insurance as required by the respective contract prior to commencing its portion of the Work. The Construction Manager shall require that the Authority and the Construction Manager are named as additional insureds on all construction contracts, as well as any contracts with consultants and shall provide certificates evidencing the same to the Authority. The additional insureds shall be provided for on a separate endorsement form.

11. **Bonds.** The Construction Manager shall require that each Approved Contractor, prior to commencing its portion of the work, obtains and delivers to the Authority bonds or other acceptable surety approved by the Board of Directors of the Authority in compliance with Colorado Revised Statutes, Title 38, Article 26, and in compliance with the respective contract.

12. **Authority of the Construction Manager.** The Construction Manager shall have no rights or authority, express or implied, to commit or otherwise obligate the Authority in any manner whatsoever, except as specifically provided herein. The Construction Manager shall have no right or interest in the Work arising out of this Agreement or the Construction Manager's performance of its services.

13. **Construction Manager Warranties and Representations.** Subject to the provisions herein, the Construction Manager warrants and represents that it has familiarized itself with the nature and extent of the Work, the applicable contracts, the site, the locality and all local conditions, laws and regulations that in any manner may affect the cost, progress, performance or furnishing of services as contemplated herein.

14. **Independent Contractor Status**. The Construction Manager is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Construction Manager or any of its employees, agents, subcontractors or suppliers as employees of the Authority. The Services to be performed by the Construction Manager shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Authority, except the payments to be made by the Authority to the Construction Manager for the Services performed as provided herein. The Authority shall not be responsible for the Construction Manager's means, methods, techniques, sequences or procedures of work or for safety precautions incident thereto. **The Construction Manager is not entitled to worker's compensation benefits and the Construction Manager is obligated to pay federal and state income taxes on moneys earned pursuant to this Agreement.**

15. **Licenses.** The Construction Manager shall, at its own expense, qualify to do business and obtain and maintain such licenses as may be required for its performance of

services under this Agreement. Further, the Construction Manager shall verify that the Approved Contractors have obtained and will maintain all licenses required for their Work, and the Construction Manager shall take appropriate action to cause such Approved Contractors to obtain such licenses in the event such licenses are not being obtained or maintained. The Authority acknowledges that Construction Manager is not lawfully qualified in Colorado, or elsewhere, as an architect, professional engineer or design professional authorized to render or offer to render design services, and will not perform such services.

16. **Survival; Further Instruments.**

A. All warranties, representations, covenants, obligations and agreements contained in this Agreement shall survive the completion of the Work, other transactions hereunder, and any and all performances hereunder. All warranties and representations shall be effective regardless of any investigation made or which could have been made. Each Party will, whenever and as often as requested to do so by the other Party, execute, acknowledge and deliver such further instruments and documents as may be necessary or proper, in the requesting Party's reasonable opinion, to carry out this Agreement's intent and purpose.

B. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Authority or Construction Manager.

17. **Binding Effect.** This Agreement shall be binding upon the Parties and their successors and may not be assigned.

18. **Governing Law.** This Agreement shall be governed by the laws of the State of Colorado.

19. **Paragraph Captions.** This Agreement's paragraph captions are inserted as a matter of convenience and in no way define, limit or describe the scope of the Agreement or the intent of any provision hereof.

20. **Additional Documents or Action.** Each Party agrees that, at the other Party's reasonable request, to make such further assurances and to execute such further instruments in order that this Agreement may be fully performed in accordance with its intent and provisions.

21. **Mutual Negotiation.** Each Party agrees that the covenants and promises contained herein are good and sufficient consideration for its respective obligations. Each and every provision of this Agreement has been independently, separately and freely negotiated as if this Agreement were drafted by both Parties. The Parties, therefore, waive any statutory or common law presumption which would serve to construe this Agreement in favor of or against either Party.

22. **Supersedes.** This Agreement contains the Parties' entire agreement respecting the matters herein set forth and supersedes all prior written and/or verbal agreements between the Parties hereto respecting such matters.

23. **Force Majeure.** Time is of the essence of each provision of this Agreement. However, any performance delays or failures by any Party of its obligations shall be excused if such delays or failures result from acts of God, fires, floods, strikes, labor disputes, accidents, civil or military regulations or orders, labor or material shortages, or other causes, similar or dissimilar, beyond such Party's control.

24. **Attorneys' Fees/Remedies.** If any Party obtains a judgment against the other Party for breaching this Agreement, such judgment shall include reasonable attorneys' fees as fixed by the court. Except as herein expressly provided, no remedy conferred upon a Party in this Agreement is intended to be exclusive of any other remedy herein or by law or equity provided or permitted, but each shall be cumulative and shall be in addition to every other available remedy.

25. **Waiver of Breach.** Except as herein expressly provided, a waiver by a Party of any breach of this Agreement or of any warranty or representation hereunder by the other Party shall not be deemed to be a waiver of any other breach by such other Party (whether preceding or succeeding and whether or not of the same or similar nature). Furthermore, a Party's acceptance of payment or performance after any breach by the other Party does not waive any breach of this Agreement or of any representation or warranty hereunder by such other Party, whether or not the first Party knows of such breach at the time it accepts the payment or performance. Failure or delay by a Party shall not operate as a waiver of default of nor modify this Agreement, nor shall such failure or delay prevent the non-defaulting Party's exercise of any right while the defaulting Party continues to be in default.

26. **Not Insurer.** Notwithstanding anything set forth in this Agreement to the contrary, the Construction Manager shall not be an insurer or guarantor of the Approved Contractors' actions or work.

27. **Other Activities - Construction Manager.** During the term of this Agreement, the Construction Manager shall give all appropriate and/or necessary time, attention and attendance to complete the services described herein. The Authority recognizes, however, that the Construction Manager has other business interests and shall devote time and effort to these other business interests.

28. **Dispute Resolution.** Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Rules of the Judicial Arbiter Group currently in effect unless the parties mutually agree otherwise. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

29. **Taxes and Contributions.** The Construction Manager assumes exclusive responsibility and liability for withholding and paying all federal, state and local taxes and contributions applicable to the Construction Manager's earnings, salaries, or other contributions or benefits paid or made available to any persons the Construction Manager retains, employs or uses in connection with its services. The Construction Manager assumes exclusive responsibility for making all returns and reports required in connection with any and all such taxes,

contributions and benefits. Nothing in this Agreement makes the Construction Manager responsible for the Approved Contractors' withholding obligations.

30. **Compliance with Applicable Law**. The Construction Manager shall provide the Services set forth herein in full compliance with all applicable laws, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction over the activities of the Authority.

31. **No Right or Interest in Authority Assets**. The Construction Manager shall have no right or interest in any of the Authority's assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

32. **Certification of Compliance with Illegal Alien Statute**. By its execution hereof, the Construction Manager confirms and ratifies all of the certifications, statements, representations and warranties set forth in **Exhibit B** attached hereto and made a part hereof by this reference.

33. **Notices.** Any notice which a Party is required or may desire to give the other shall be in writing to the addresses provided below. Notice may be given by hand delivery, by telefax or by United States registered or certified mail, return receipt requested. Any notice given by United States mail shall be deemed to be given on the third (3rd) day after the notice is deposited in the United States mail as registered or certified matter, addressed as provided below, with postage thereon fully prepaid. Any such notice given by hand delivery shall be deemed to be given upon receipt by the Party to whom the notice is given. Any such notice given by email shall be deemed to be given on the date and at the time set forth on the electronic confirmation of such email's transmittal; provided, however, that any email transmitted after 5:00 p.m. shall be deemed to be given at 8:00 a.m. on the next business day after such email was transmitted.

To Authority:

Beebe Draw Farms Authority
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228
Phone: (303) 987-0835
Email: ljohnson@sdmsi.com
Attn: Lisa Johnson

With copy to:

McGeady Sisneros, P.C.
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203
Phone: (303) 592-4380
Email: mmcgeady@mcgeadysisneros.com
Attn: MaryAnn M. McGeady

To Construction Manager: Tamarack Consulting, LLC
5366 W. 25th Avenue
Edgewater, Colorado 80214
Attn: Tim McCarthy
Phone: (303) 233-3265
Email: tim.mccarthy@tamarackconsultingllc.com

34. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO CONSTRUCTION MANAGEMENT AGREEMENT]

BEEBE DRAW FARMS AUTHORITY

_____
P. Joe Knopinski, President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by P. Joe Knopinski, as President of Beebe Draw Farms Authority.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

TAMARACK CONSULTING, LLC, a Colorado limited liability company

By: _____
Its. _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

EXHIBIT A

WORK

TAMARACK
CONSULTING, LLC

January 6, 2013

Beebe Draw Farms Authority
c/o Ms. Christine Hethcock
6025 S. Lima St.
Englewood, CO 80111

Ms. Hethcock,

Tamarack Consulting, LLC (Tamarack) is pleased to provide the following proposal for construction management and staking services for infrastructure development of Pelican Lake Ranch Lots 1-36. The improvements will be constructed directly by the Beebe Draw Farms Authority (Authority). Tamarack is already under contract with the Authority to perform design and pre-construction services for this project.

The project includes construction of water, storm water, road and other improvements and is located in Weld County. The water improvements will be conveyed to the Central Weld Country Water District which will own and maintain them.

As Construction Manager, Tamarack shall serve to protect the best interests of the Authority. Our team at Tamarack has experience managing successful construction projects similar to the infrastructure development of Pelican Lake Ranch Lots 1-36.

Please see Exhibit A for the Scope of Work and Exhibit B for Compensation.

Thank you for the opportunity to serve Beebe Draw Farms Authority!
Please feel free to call or email with any questions.
Sincerely,

Timothy A. McCarthy, P.E.
Tamarack Consulting, LLC
5366 W 25th Ave
Edgewater, CO 80214
303-233-3265

TAMARACK CONSULTING, LLC

January 6, 2013

EXHIBIT A

SCOPE OF WORK

Task 1 – Construction Management

This task involves the management and oversight of contractors to assure compliance with contracts, timelines, budgets and best management practices which typically includes the following:

1) Monitor construction activities in a time frame reflecting the work being done. This may range from daily to weekly site visits.
2) Document activity, conditions, progress and resolve issues to maintain schedules and budgets.
3) Provide written and photographic reports of activity including updated schedule and budget.
4) Recommend approval of draws, payments, change orders and field orders as defined by contract.
5) Track and respond to RFIs from the contractor.
6) Track the draws and payments to assure compliance with contracts, Service Plan requirements and reimbursement agreements.
7) Maintain records of lien waivers, guarantees and warranties.
8) Approve any work delays related to weather.
9) Monitor materials and onsite improvements to verify draws.
10) Notify owners regarding any issues or concerns that may arise to resolve in a timely manner.
11) Coordinate with Central Weld County Water District to ensure that they are aware of construction progress and have inspectors onsite at appropriate times.
12) Conduct walk through of improvements with contractor, the Authority and CWCWD and identify any punch list items for correction.
13) Conduct final walk through for completion of punch list items for final acceptance.
14) Assemble documentation of improvements that were completed including the following:
    a) As-built plans
    b) Final acceptance documents and initial City acceptance.
    c) Documentation of completed work and reports for district records.
    d) Copies of warranties and expiration dates.

Task 2 – Final Acceptance and Warranty Period

This task involves the items that occur after construction and initial acceptances of the work performed and typically includes the following:

1) Monitor and complete the turn over for final CWCWD acceptance.
2) Track end of warranty periods, review appropriate improvements and advise owner of deficiencies with options to resolve.

Tamarack Consulting, LLC
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Edgewater, CO 80214
P 303.233.3265 C: 303.968.7677

Task 3 – Construction Staking and As-built Drawings

Tamarack shall perform the following services during and after construction:

1) Construction staking for contractors to construct improvements to final construction plan specifications. These construction improvements are limited to grading, road, water, and stormwater improvements for Lots 1-36 and Stoneleigh Road paving if that option is exercised by the Authority. Tamarack shall not be responsible for grade verification of improvements during construction.
2) As-built drawings of the constructed improvements will be prepared noting any deviations from the approved construction plans. The as-built drawings will include road, water and stormwater improvements.

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Edgewater, CO 80214
P 303.233.3265 C: 303.968.7677

TAMARACK
CONSULTING, LLC

January 6, 2013

EXHIBIT B

COMPENSATION

Task 1 – Construction Management
Services will be billed monthly based on the amount of the monthly construction draw. The construction management fee is 5.0% of the construction draw.

Task 2 – Final Acceptance and Warranty Period
Services will be billed monthly on a T&E basis per the current Charge Rates Schedule. Tamarack's 2014 Charge Rate Schedule is attached.

Task 3 – Construction Staking
Services will be billed monthly on a T&E basis per the current Charge Rates Schedule. Tamarack's 2014 Charge Rate Schedule is attached. The fee for this service is estimated to be $20,000-$24,000 for Lots 1-36 improvements and $4,000-$6,000 for the Stoneleigh Road paving option.

On Call Services

On-Call Services will be pre-approved by the District and billed on a T&E basis per the current Charge Rates Schedule. The 2014 Charge Rates Schedule is attached.

Direct Expenses

Direct Expenses will be billed at Cost Plus 15%.

Mileage

Mileage will be billed at $0.565 per Mile.

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TAMARACK CONSULTING, LLC

2014 CHARGE RATES SCHEDULE

January 1, 2014

	Hourly Rates
Principal	$140
Professional Engineer	$130
Professional Land Surveyor	
Computer Programmer	
1-Man Survey Crew (with equipment)	$120
2-Man Survey Crew (with equipment)	$165
Associate Engineer	$115
GIS/CAD Technician	$95
Administrative Assistant	$65
Printing & Reproduction*	
Small format: Letter, legal and ledger (11x17)	
Black/white	$0.10 / Page
Color	$0.45 / Page
**Prices are for in-house services; third-party printing and reproduction will be charged as a direct expense*	
Large format: 12x18 and larger	
Black/white	$1.25 / SF
Color	$6.00 / SF
**Prices are for in-house services; third-party printing and reproduction will be charged as a direct expense*	
Direct Expenses	Cost plus 15%
Mileage	$0.565 per mile

Rates are subject to annual revision and may be project specific.

Tamarack Consulting, LLC
5366 W. 25th Ave.
Edgewater, CO 80214
P 303.335.0043

EXHIBIT B
CERTIFICATION OF CONSTRUCTION MANAGER

1. Pursuant to the requirements of Section 8-17.5–102(1), C.R.S., the Construction Manager hereby certifies to the Authority that the Construction Manager does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that it will participate in the E-Verify Program or Department Program (as defined in Sections 8-17.5-101(3.3) and (3.7), C.R.S.) in order to confirm the employment eligibility of all employees of the Construction Manager who are newly hired to perform work under the Agreement.

2. In accordance with Section 8-17.5-102(2)(a), C.R.S., the Construction Manager shall not:

a. Knowingly employ or contract with an illegal alien to perform work under the Agreement; or

b. Enter into a contract with a subcontractor that fails to certify to the Construction Manager that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3. The Construction Manager represents and warrants it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

4. The Construction Manager is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is in effect.

5. If the Construction Manager obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, the Construction Manager shall:

a. Notify the subcontractor and the Authority within three days that the Construction Manager has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b. Terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Construction Manager shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6. The Construction Manager shall comply with any reasonable request by the Colorado Department of Labor and Employment ("**Department**") made in the course of an investigation that the Department is undertaking, pursuant to the law.

7. If the Construction Manager violates any provision of Section 8-17.5–102(1), C.R.S., the Authority may terminate the Agreement immediately and the Construction Manager shall be liable to the Authority for actual and consequential damages of the Authority resulting from such termination, and the Authority shall report such violation by the Construction Manager to the Colorado Secretary of State, as required by law.