

**AMENDED AND RESTATED OPERATING AND FINANCIAL PLAN
AGREEMENT BETWEEN DOUGLAS COUNTY AND THE CHATFIELD RESERVOIR
MITIGATION COMPANY, INC. RELATED TO MAINTENANCE OF COUNTY ROAD
67 AND ITS ADJACENT AREAS**

This Amended and Restated Operating and Financial Plan Agreement (the “Agreement”) is made and entered into on May 10, 2022 (the “Effective Date”) by and between the Board of County Commissioners of the County of Douglas, State of Colorado (the “County”) and the Chatfield Reservoir Mitigation Company, Inc. (the “Company”), collectively referred to as “the Parties.”

RECITALS

A. The members of the Company currently include various special districts and units of state and local government.

B. The “Sediment Project Area” which is the subject of this Agreement is located in Douglas County beginning approximately at the intersection of South Platte River Road (County Road 97) and County Road 67 (“CR 67”), and a point approximately 4.7 miles upstream along CR 67. The location of the Sediment Project Area is as shown on the map attached as **Exhibit 1** hereto.

C. The Sugar Creek Sediment Mitigation Project (the “Sediment Project”) was completed by the Company in the Sediment Project Area pursuant to a separate agreement between the Company and the U.S. Forest Service.

D. The Sediment Project involved paving a portion of CR 67 with asphalt, the installation of sediment trap inlet basins, and rock retaining walls to reduce sediment impacts to Sugar Creek among other construction actions.

E. The Parties previously entered into that certain Operating and Financial Plan Agreement, dated April 11, 2017 (the “Initial Maintenance Agreement”) to address certain aspects of the Company’s implementation of the Sediment Project, including reimbursement of the County by the Company for future maintenance cost resulting directly from the changes to CR 67.

F. Now that the Company has completed construction of the Sediment Project the Parties desire to enter into this Agreement to set forth the ongoing maintenance, repair, and replacement responsibilities and costs for the Sediment Project components and amend and restate Initial Maintenance Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to the following:

I. AUTHORIZED REPRESENTATIVES

Each Party shall designate an “Authorized Representative” for the purpose of performing, administering, and coordinating the work called for in this Agreement. The Douglas County Director of Public Works - Operations is designated as the Authorized Representative of the County. The General Manager of the Chatfield Reservoir Mitigation Company is designated as the Authorized Representative of the Company for the purposes of this Agreement. The Authorized Representative of either Party may be changed pursuant to notice provided as required by this Agreement.

II. SCOPE OF WORK AND PAYMENT

- A. Location. The Reimbursed County Work (defined below) shall be performed in the Sediment Project Area.
- B. County Maintenance Responsibilities. This Agreement covers only matters relating to the inspection, maintenance, repair and replacement of the Sediment Project improvements that are in addition to the normal maintenance which the County routinely had been providing to the applicable portions of CR 67 and its adjacent areas and shall be referred to as the “Reimbursed County Work.” Inspection, maintenance, repair, and replacement of areas not associated with the Sediment Project and historically maintained by the County will remain the responsibility and expense of the County.

The Reimbursed County Work shall consist of the following:

- (1) Perform all work required to maintain proper function and stability of the roadway surface in excess of current levels of County maintenance, including any increased frequency of maintenance grading of the road; asphalt pavement repair; and treatment for cold weather maintenance of the road segment that is paved as part of the Sediment Project;
- (2) Apply annually (or as needed) road stabilization and dust suppressant on the unpaved road segment that is addressed under the Sediment Project; and
- (3) Resurface the paved portion of CR 67 road (estimated to occur every 5 to 7 years).
- (4) Periodic removal and disposal of sediment from sediment traps;
- (5) Maintenance, repair, and replacement of all sediment trap structures constructed or installed as part of the Sediment Project;
- (6) Maintenance, repair, and replacement of culvert riprap protection and engineered culver rundowns, and energy dissipators;
- (7) Maintenance, repair, and replacement of stilling basins;
- (8) Cleaning roadway cross culverts if they become plugged; and
- (9) Maintenance, repair, and replacement of retaining walls.

The County may perform maintenance activities, at its own cost, beyond the Reimbursed County Work to maintain the proper function and stability of the roadway. Examples include, but are not limited to: (a) the repair of roadway fill slopes that have eroded and undermined (or have the potential to undermine) the road, and (b) the repair of roadway

cut slopes that may erode and fill the roadside ditch and/or reduce the width of the roadway.

It is recognized that the frequency of the County maintenance activities will vary as needed in order to maintain proper function and stability of the improvements associated with the Sediment Project. Based on the County's substantial experience and expertise in roadway maintenance, the County shall determine (a) the timing of the application of road stabilization and dust suppressant on the unpaved road; (b) the frequency and timing of the asphalt resurfacing for the paved roadway; (c) the frequency and timing of cleaning the sediment traps and roadside ditch, which will be monitored after storm events, as deemed necessary, and cleaned as needed to maintain roadway integrity; (d) what tasks it performs with in-house staff and what tasks it has outside contractors perform; (e) what outside contractors it hires to perform tasks under this Agreement; (f) the price it pays such outside contractors; and (g) the terms and conditions of the contract under which it hires such outside contractors.

C. Coordination with U.S. Forest Service. Since the U.S. Forest Service owns the majority of the adjacent land associated with the applicable reach of CR 67, the Company and the County will coordinate its activities with the U.S. Forest Service, as needed, to accomplish the maintenance activities under this Agreement in a manner satisfactory to the U.S. Forest Service. This coordination will include the securing of all permits, studies, designs, plans, Right-of-Way (ROW) agreements, and approvals for any work related to U.S. Forest Service land and/or ROWs, if any additional such agreements or approvals are necessary. Each party will inform the other party of any concerns or other matters arising with the U.S. Forest Service related to the Sediment Project or maintenance, repair and replacement thereof.

III. FUNDING

A. Establishing Costs of Reimbursed County Maintenance Work.

If the County chooses to perform the Reimbursed County Work in-house, such reimbursement shall be at the County's actual costs for materials and the County's established rates for labor and equipment, plus 5 percent for general overhead. Generally accepted accounting and invoicing procedure will be used by the County. If the County chooses to use an outside contractor to perform all or a portion of the Reimbursed County Work, the Company shall reimburse the County the amount that the County pays the outside contractor.

B. Annual Budget; Provision of Funds.

Beginning calendar year 2022, the Company and the County will establish an annual budget setting forth the anticipated cost of the Reimbursed County Maintenance Work for the following year (the "Annual Estimated Cost"). In setting the Annual Estimated Amount the parties will consider actual expenses and inflation.

Within 60 days before the end of each calendar year, the County shall deliver to the Company a statement setting forth a detailed description of the Reimbursed County

Work performed in the preceding year with documentation supporting the actual costs of the Reimbursed County Work (the “Actual Costs”). The County shall invoice the Company for Actual Costs (each, an “Annual Invoice”). The Company shall pay the invoices in full to the County within 90 days from receipt of the County’s invoice. Each Annual Invoice shall include a detailed description of the work performed and documentation supporting that work. If Actual Costs exceed the Annual Estimated Costs, the Company will work with its members to procure the additional funding necessary to cover the full amount of the Actual Costs.

If the Company fails to pay the County the full amount of Actual Costs for Reimbursed County Work, the County shall have the right to halt all future Reimbursed County Work until the Company has paid it for all invoiced Reimbursed County Work.

C. Escrow Funds.

The parties no longer desire to set aside funds in an escrow account as required under the Initial Maintenance Agreement. Upon execution of this Agreement, the parties shall cause any funds that were escrowed under the Initial Maintenance Agreement to be released to the Company. All funds released from the escrow account to the Company shall be retained by the Company in a reserve account for purposes of payment of the Actual Costs related to periodic repair and replacement work under this Agreement as set forth above.

D. Generally.

Any and all financial obligations of the County set forth in this Agreement are subject to annual appropriation by the County pursuant to C.R.S. Section 29-1-110, as amended.

IV. TERM

The term of this Agreement shall be for five years commencing at 12:01 a.m. on the Effective Date. This Agreement, at the option of both Parties, may be renewed for successive 5-year terms, if written agreement to that effect is signed by both Parties on or before expiration of the current term. This Agreement and/or any extension of its original term shall be contingent upon annual funding being appropriated, budgeted, and otherwise made available for such purposes by both the County and the Company.

V. INDEMNIFICATION

The County cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate, or assume the defense of the Company or any other person or entity whatsoever for any purpose whatsoever. The Company does not agree to defend, indemnify, or hold harmless the County, its commissioners, officials, officers, directors, agents, or employees from claims, demands, suits, actions, or proceedings of any kind or nature whatsoever, in any way resulting from or arising from this Agreement; however, the Company shall include the County as an additional insured under all general liability insurance policies pertaining to the Sediment Project.

VI. NOTICES

Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and all other notices shall be made as follows:

Douglas County Contact:

Director of Public Works
Attn: Janet Herman, P.E.
100 Third Street
Castle Rock, CO 80104
Telephone: 303-660-7490
FAX: 303-814-3319
Email: jherman@douglas.co.us

Chatfield Reservoir Mitigation Company, Inc. Contact:

Ms. Charly Hoehn, General Manager
Chatfield Reservoir Mitigation Company, Inc.
8156 S. Wadsworth Blvd., Unit E-458
Littleton, CO 80128
Telephone: 970-343-2079
Email: charlyhoehn.crmc@gmail.com
With copy to:

Kylie Crandall, Esq. Holland & Hart LLP
1800 Broadway, Suite 300
Boulder, CO 80302
Telephone: 303-473-4819
E-mail: kjcrandall@hollandhart.com

Said notices shall be delivered personally during normal business hours to the appropriate office above, or by prepaid first-class U.S. mail, via facsimile, via email, or other method authorized in writing by the Authorized Representative. Mailed notices shall be deemed effective upon receipt or five business days after the date of mailing, whichever is earlier. A party, through its Authorized Representative, may from time to time designate in writing to the other party substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

VII. TERMINATION

Either Party shall have the right to terminate this Agreement, with or without cause, by giving written notice to the other Party of such termination and specifying the effective date thereof, which notice shall be given at least thirty days before the effective date of such termination. In such event, the County shall be entitled to receive reimbursement, including the 5% allowance for overhead, in accordance with this Agreement for any work performed prior to the date of notice of termination to the extent such work is not covered by the Initial Annual Payment made by the Company for the year in which the Agreement was terminated. If the

Initial Annual Payment is more than the cost of the work performed prior to the date of notice the amount of overpayment by the Company shall be refunded to the Company within 90 days after the date of termination of this Agreement. Notwithstanding the above, the Company shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Company. In the event of termination of this Agreement by either party, the Company shall be entitled to perform the work that was the responsibility of the County under this Agreement, at its own direction and cost, provided that the Company applies for and is granted all applicable County and federal permits and complies with the terms and conditions of such permits.

VIII. UNFORESEEN EVENTS

Nothing herein contained shall be construed to obligate the County or the Company to address damage to CR 67 or its adjacent areas caused by unforeseen events (such as, by example and not limitation, flooding, fire, or heavy rain) of a magnitude not repairable by routine maintenance procedures. The maintenance work required under this Agreement does not contemplate major repairs to storm or fire damaged areas.

IX. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT

The Parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the County.

X. ASSIGNMENT

The Parties' rights and obligations hereunder may be assigned only with the prior written consent of the non-assigning Party.

XI. HEADINGS

The headings contained herein are for information purposes only and shall not be deemed to limit or restrict the rights and obligations created hereunder.

XII. BINDING EFFECT

This Agreement and the rights and obligations created hereunder shall be binding upon and inure to the benefit of the Parties and their successors in interest.

XIII. GOVERNING LAW; VENUE

This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, and State of Colorado. The Parties expressly waive the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

XIV. NO JOINT VENTURE CREATED

This Agreement shall not be construed to create a joint venture or partnership between the Parties hereto, nor shall either be the principal or agent of the other.

The County is not, and shall not be, a party to, or member of, the Chatfield Storage Reallocation Project or any reallocation contract between the U.S. Army Corps of Engineers and the State of Colorado. The County's duties are limited to those contained within this Agreement.

XV. NO THIRD PARTY BENEFICIARIES

The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the County and the Company, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.

XVI. ENTIRE AGREEMENT/COUNTERPARTS

The Parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any commissioner, official, officer, director, agent, or employee of the respective parties unless included herein or in the USFS Agreement are null and void and of no effect. No alterations, amendments, changes, or modifications to this Agreement shall be valid unless they are contained in writing and executed by all the parties with the same formality as this Agreement. This Agreement may be executed in counterparts, each signed by one of the Parties, in which case all such counterparts shall constitute one and the same instrument. An executed facsimile or e-mailed copy of this Agreement shall be deemed an original and binding upon the Parties.

XVII. COUNTY REVIEW OF RECORDS

The County agrees that, upon request of the Company's Authorized Representative, at any time during the term of this Agreement, or three years thereafter, it will make full disclosure to the Company and make available for inspection and audit upon request by the Company's Authorized Representative, or any of her/his authorized representatives, all of its records associated with work performed under this Agreement for the purpose of making an audit, examination or excerpts. The County shall maintain such records until the expiration of three years following the end of the term of this Agreement.

XVIII. NONDISCRIMINATION

In connection with the performance of work under this Agreement, the County 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.

XIX. COMPLIANCE WITH ALL LAWS AND REGULATIONS

All of the work performed under this Agreement shall comply with all applicable statutes, rules, regulations, and codes of the United States and the State of Colorado and all policies, procedures, resolutions, and ordinances of the County relating to the subject matter of this Agreement.

XX. FORCE MAJEURE

No party shall be liable for failure to perform hereunder if such failure is the result of *force majeure*. Any time limit shall be extended for the period of any delay resulting from any *force majeure*, or this Agreement may be terminated if such delay makes performance of the Agreement impossible or impracticable. *Force majeure* shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty or action of government authorities.

XXI. COUNTY EXECUTION OF AGREEMENT

This Agreement is expressly subject to, and shall not be or become effective or binding on the County, until execution by all signatories of the County.

IN WITNESS WHEREOF, the County and the Company have caused their names to be subscribed hereto as of the Effective Date.

[Remainder of this page intentionally left blank. Signature pages follow.]

SIGNATURE PAGE FOR
OPERATING AND FINANCIAL PLAN AGREEMENT RELATED TO
MAINTENANCE OF COUNTY ROAD 67 AND ITS ADJACENT AREAS
BETWEEN DOUGLAS COUNTY
AND THE CHATFIELD RESERVOIR MITIGATION COMPANY, INC.

FOR THE COUNTY:

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS**

DocuSigned by:



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Abe Laydon, CHAIR

5/11/2022

Date

APPROVED AS TO CONTENT:

DocuSigned by:



23C95B80C5FAB4A...

Douglas J. Debord
COUNTY MANAGER

4/29/2022

Date

ATTEST

DocuSigned by:



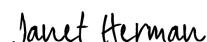
5/11/2022

Deputy Clerk

Kristin Randlett Date

DEPARTMENT OF PUBLIC WORKS

DocuSigned by:



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JANET HERMAN, P. E.
Director of Public Works

4/27/2022

Date

APPROVED AS TO FISCAL CONTENT:

DocuSigned by:



4/29/2022

ANDREW COPLAND

Date

Director of Finance

APPROVED AS TO LEGAL FORM:

DocuSigned by:



4/28/2022

Chris Pratt

Date

Senior Assistant County Attorney

SIGNATURE PAGE FOR
OPERATING AND FINANCIAL PLAN AGREEMENT RELATED TO
MAINTENANCE OF COUNTY ROAD 67 AND ITS ADJACENT AREAS
BETWEEN DOUGLAS COUNTY
AND THE CHATFIELD RESERVOIR MITIGATION COMPANY, INC.

FOR THE COMPANY:

CHATFIELD RESERVOIR MITIGATION
COMPANY, INC., a Colorado nonprofit corporation



President

4/27/2022

Date





Vice President

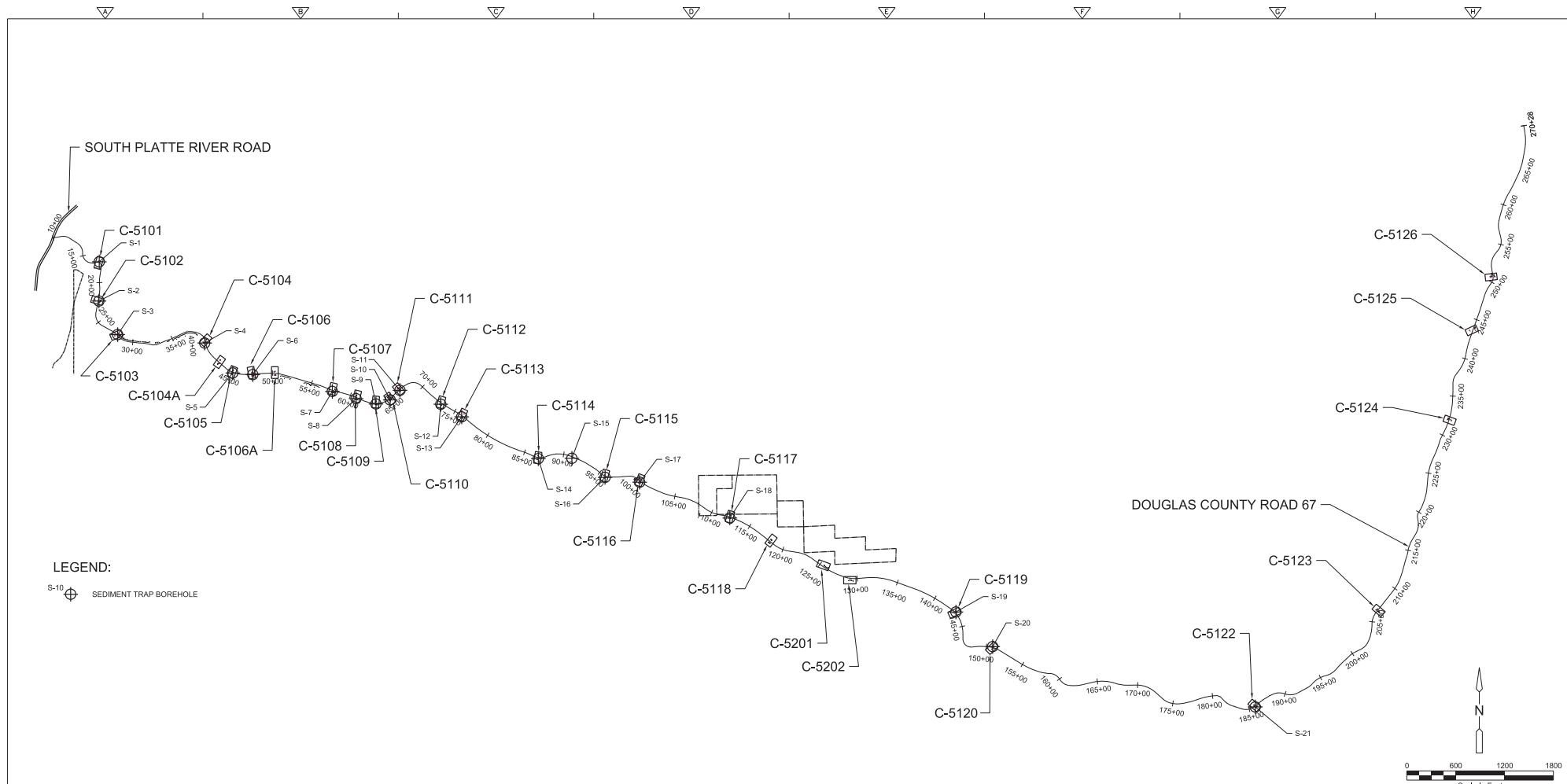
4/17/2022

Date



Kris Walters, CPC

EXHIBIT 1 - CR 67 Sediment Project Area Map



RECORD DRAWINGS

Revisions Drawn By J. PALMER Date 01/2019

THESE RECORD DRAWINGS HAVE BEEN PREPARED, IN PART, ON THE BASIS OF INFORMATION COMPILED BY OTHERS. THEY ARE NOT INTENDED TO REPRESENT IN DETAIL THE EXACT LOCATION, SIZE, OR CONSTRUCTION MANNER OF CONSTRUCTION. THE ENGINEER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS WHICH HAVE BEEN INCORPORATED INTO THE RECORD DRAWINGS.

DESIGNED BY: A CROCKFORD
DRAWN BY: M MONAHAN
SHEET CH'D BY: D CURRAN

CROSS CH'D BY: _____

APPROVED BY: M ROSSERDATE: JUNE 20189189 S JAMAICA ST
ENGLEWOOD, CO 80112

CHATFIELD RESERVOIR MITIGATION COMPANY
CHATFIELD STORAGE REALLOCATION PROJECT
EM-3 SUGAR CREEK ENVIRONMENTAL MITIGATION
DOUGLAS COUNTY 67 ROAD & CULVERT IMPROVEMENTS

GENERAL
KEYMAP
CULVERT PLAN AND PROFILE

PROJECT NO. 673826
FILE NAME: SC-G-0005.dgn

SHEET NO.

G-005

CONFORMED DOCUMENTS