

Construction Manager (CM) Preconstruction Agreement

Cover & Signature Page

State Agency: Statewide Bridge and Tunnel Enterprise & Department of Transportation	PO #: _____ Routing #: _____ CMS #: _____
Construction Manager: _____ _____ _____	The Effective Date: Controller Signature Date Noted Herein
Construction Budget & Preconstruction Management Fee \$ _____ and \$ _____	Agreement Termination Date: 5 years from the Effective Date
Project and Agreement Purpose: _____ construction management for the preconstruction phase of the project.	
Agreement Documents included with this Agreement, Order of Precedence: <ul style="list-style-type: none"> • Exhibit A, Preconstruction Roles and Responsibilities; • Exhibit B, Construction Manager's (CM's) Certificate of Liability Insurance; • Exhibit C, Management Price Percentage (MPP) Certification; • Exhibit D, Construction Manager's Management Price Percentage (MPP) Breakdown; • Exhibit E, Sample Agreement Amendment; • Exhibit F, Disadvantaged Business Enterprise (DBE) Requirements for CDOT CM Contracts for CM Project Delivery; and • Exhibit G, United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination Assurance. The following documents are incorporated by reference and made a part of the terms and conditions of this Agreement: <ul style="list-style-type: none"> • The Department's 2023 Standard Specifications for Road and Bridge Construction ("Standard Specifications) and • Request for Proposal dated _____, and CM's Proposal including, but not limited to, the technical proposal and the CM's Cost Model Approach, _____ (collectively, the "Proposal"). <p>The following documents shall be incorporated by reference and made a part of the terms and conditions of this Agreement upon issuance by the State:</p> <ul style="list-style-type: none"> • Exhibit H, CM Performance Evaluation Report; <p>The provisions of this Agreement shall govern the relationship of the State and the CM. In the event of conflicts or inconsistencies between this Agreement, its exhibits, and attachments, including, but not limited to those provided by the CM, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Any federal laws, rules, or regulations applicable to the Agreement; 2. Colorado Special Provisions; 3. Standard Specifications; 	

4. The provisions of the main body of this Agreement;
5. Any fully executed Amendment;
6. Any fully executed Change Order;
7. Any other fully executed, written Modification; and
8. The conditions, attachments and exhibits of this Agreement in descending order.

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

<p>For CDOT:</p> <p>_____</p> <p>CDOT Project Manager</p> <p>Address _____</p> <p>_____</p> <p>Phone _____</p> <p>Email _____</p>	<p>For the Construction Manager:</p> <p>_____</p> <p>_____</p> <p>Title: Project Manager</p> <p>Address: _____</p> <p>_____</p> <p>Phone: _____</p> <p>Email: _____</p>
<p>For CDOT: Engineering Contract Services:</p> <p>Jan Walker</p> <p>Contracting Officer</p> <p>2829 West Howard Place</p> <p>Denver, Colorado 80204</p> <p>Ph. (303) 757-9296</p> <p>Email: jan.walker@state.co.us</p>	<p>For the Design Consultant:</p> <p>_____</p> <p>_____</p> <p>Title: _____</p> <p>Address: _____</p> <p>_____</p> <p>Phone: _____</p> <p>Email: _____</p>

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature and all required approval, clearance, coordination, and action required by its procedures, by-laws, and/or applicable law have been accomplished from and with appropriate agencies.

<p style="text-align: center;">CONSTRUCTION MANAGER</p> <p>Vendor #: _____</p> <p>_____</p> <p>Signed By: _____ Title: _____</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Transportation For the Executive Director Shoshana M. Lew</p> <p>_____</p> <p>Signed By: Keith Stefanik, P.E. Chief Engineer</p> <p>Date: _____</p>
<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Statewide Bridge and Tunnel Enterprise</p> <p>_____</p> <p>For the Executive Director Colorado Department of Transportation for Statewide Bridge and Tunnel Enterprise</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW Phil Weiser, Attorney General</p> <p>_____</p> <p>Signed By: Kathy Young, Esq. First Assistant Attorney General</p> <p>Date: _____</p>
<p style="text-align: center;">STATE OF COLORADO STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p style="text-align: center;">Signed By: _____</p> <p style="text-align: center;">Office of State Controller, Controller Delegate</p> <p style="text-align: center;">Date: _____</p>	

CONSTRUCTION MANAGER PRECONSTRUCTION AGREEMENT

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STATE OF COLORADO DEPARTMENT OF TRANSPORTATION CONSTRUCTION MANAGER PRECONSTRUCTION SERVICES

1. THE WORK

- A. The Construction Manager (CM) and Colorado Department of Transportation (CDOT or the State) have negotiated the terms of this Agreement pursuant to Section 24-93-104, C.R.S. as amended.
- B. The CM acknowledges the statutory authority and responsibility of CDOT within the State of Colorado.
- C. CDOT and the CM for the consideration hereinafter set forth, agree that the above Cover Page(s) and Signature Page are incorporated in this Agreement for all purposes.
- D. CDOT intends to participate in the preconstruction phase of the Project. This Agreement is for CM Services only during the Preconstruction Phase with an option to negotiate a CAP or CAPs for the construction phase of the Project. Successful negotiation of a CAP or CAPs shall result in a separate general Construction Contract to be awarded to the CM to complete the construction of that portion of the Project.
- E. Parties acknowledge that the CM was selected after a determination that the CM's Proposal was the most advantageous to CDOT pursuant to CDOT's Request for Proposals and addendum(s) issued on the dates shown on the Cover Sheet of this Agreement.
- F. In the performance of the Work under this Agreement, the CM acknowledges that time is critical for Project delivery and that portions of the Work could have their design completed as separate Bid Packages and under construction before other portions of the Work are fully designed. This accelerated approach to construction utilizing the services of a Design Consultant and CM requires maximum cooperation between all parties. It is expressly understood that CDOT shall directly retain the services of the Design Consultant. It is also recognized that the Work to be performed by the CM and the inter-relationships and coordinative aspects thereof are in the developmental state and not fully defined. In furtherance thereof, if there appears to be a duplication, overlap or conflict of the responsibilities of or duties between the Design Consultant and CM or an absence of designation, the question shall be submitted to CDOT for determination. The CM shall abide by the decision of CDOT provided it does not require the performance of Work beyond what was reasonably contemplated and accepted by the CM as its responsibility.
- G. In the performance of the Work, the CM agrees that its key personnel in its response to the Composition and Commitment of the CM's Project Management Team in the CM's Proposal (collectively, the "Key Personnel"), constitutes an agreement by the CM to make such Key Personnel available to complete the Work on the Contract at whatever level the Project requires. Modifications to the CM's Key Personnel and other personnel listed in the Proposal, are discouraged and shall not be approved without justification. In order to secure CDOT's approval after award of any change to the CM's Key Personnel, a written request shall be forwarded to CDOT for consideration as soon as possible after the event.

The request shall include:

- a) the nature of the desired change,
- b) the reason for the desired change, and

- c) a statement of how the desired change shall meet or exceed the required qualifications, and responsibilities for the position/responsibility.
No such modification or substitution of Key Personnel shall be made without prior approval by CDOT.
- H. The CM agrees to cooperate fully with CDOT during the Preconstruction Services and LLTP, if any, aspects of the Work to keep within the Construction Budget.
- I. The CM understands the relationship of trust and confidence established between it and CDOT and accepts those responsibilities as described in this Agreement. The CM shall work with CDOT to furnish its best skill and judgment and to use all possible efforts to cooperate with the Design Consultant in furthering the interests of CDOT.
- J. The CM agrees to furnish efficient business administration, project management, and superintendence and to use its best efforts to complete the work in an expeditious and economical manner consistent with the interests of CDOT.
- K. The CM, CDOT, and the Design Consultant (collectively, the "Project Team") shall work together through the Planning Phase and to the completion of the Preconstruction phase of the Project. The CM shall provide leadership to the Project Team on all matters relating to construction.
- L. The Contract Documents shall not be deemed to create any contractual relationship between the Design Consultant and the CM or any contractors, Subcontractors of any tier or suppliers on the Project; nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against CDOT, the Design Consultant or CM which does not otherwise exist without regard to the Contract Documents.
- M. The Work of the CM shall consist of its Work in connection with the Preconstruction Phase. The Preconstruction Phase of the CM's Work shall be parallel and coincidental with the Field Inspection Review ("FIR"), Final Office Review ("FOR"), and final Preconstruction Phase of the Design Consultant's services for each Bid Package. As the Bid Packages are prepared and prices are established for the Work to be performed within each respective Bid Package, the Parties contemplate that:
- i. CDOT shall not make a commitment to any alternative considered during the environmental review in accordance with the National Environmental Protection Act of 1969,(42 U.S.C. 4321 et seq.) (NEPA) process, and applicable portions of the implementing regulations at 40 CFR parts 1500-1508, and part 771. CDOT shall evaluate and fairly consider the comparative merits of all alternatives identified and contemplated during the NEPA process, including the no-build alternative.
 - ii. The procurement of any LLTP by the CM shall be negotiated as an individual CAP, and if negotiations are successful the LLTP package shall be considered approved by CDOT. The LLTP shall be procured through a separate contract.
 - iii. The Work to be performed by the CM during the Construction Phase shall be approved and paid for by CDOT through a general Construction Contract separate from this Agreement and shall include Bonds, Certificates of Insurance, LLTP(s) and Construction CAP proposals, and all other contract documents required for the general Construction Contracts.
- N. The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one document shall be as binding as if required by all. Work not covered in the Contract Documents, but reasonably inferable

therefrom as necessary to produce the intended result shall be required unless it is not consistent therewith.

- O. Words and abbreviations which have well known technical, or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- P. Federal Requirements. Notwithstanding anything to the contrary contained herein, in the event of any conflict between any Federal Requirement and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.
- Q. Effective Date. This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

2. DEFINITIONS

- A. "Agreement" or "Contract" is this written standard construction manager services agreement entered into by CDOT and the CM for the performance of the Work and payment, therefore.
- B. "Amendment" means a written change to this Agreement signed by the CM, the State Controller, and CDOT, or its authorized agent, issued after the Effective Date of this Agreement, authorizing a change in the Work, the method or manner of performance, an adjustment in the Construction Budget, Contract Sum, the CM Preconstruction Fee, or the Term, which can only be changed by Amendment. An Amendment may be executed using a form attached to this Agreement as Exhibit E and approved by the CM and CDOT.
- C. "Bid Package" means a substantially completed Plans, Specifications, and Estimate package from which a CAP proposal could be prepared for LLTP, or any Construction Phase and which Bid Package may be advertised through the CDOT invitation to bid procurement process.
- D. "CDOT" means the Colorado Department of Transportation and the Statewide Bridge and Tunnel Enterprise, which are collectively the Principal Representative.
- E. "CM Services" or "CM Preconstruction Services" means the services performed by CM as specified in Section 3, Construction Manager's Services.
- F. "Construction Contract" means the contract between CDOT and the General Contractor to perform construction activities for any approved Construction CAP.
- G. "Constructability Report" means a written report that reviews each Bid Package at agreed upon Milestones for constructability and feasibility, which includes, but is not limited to, a brief cost and risk analysis with regards to constructability.
- H. "Construction CAP" or "CAP" means the maximum amount for which all Work required for each Construction Phase, excepting LLTP(s) (see definition below "LLTP CAP"), shall be accomplished (including the Management Price Percentage) and it shall be computed by the CM in accordance with the provisions of Section 9.E, Construction Agreed Price. For any Construction CAP to be accepted by CDOT, the Owner's Estimate and the CM's Construction CAP must be within a percentage acceptable to CDOT, which shall be demonstrated by CDOT's issuance of a "CAP Acceptance Letter" to CM.
- I. "Construction Phase" means the phase of Work performed by the CM in the construction of the Work from award of Construction Contracts for any Bid Package until the final acceptance of such Bid Package by CDOT. Construction Phase excludes all Design

Services.

- J. "Contract Documents" means, collectively, the following documents:
 - i. The exhibits of the Agreement that are attached hereto, incorporated herein, and referenced on the Cover Page of this Agreement.
 - ii. Other documents that are incorporated by reference and made a part of the terms and conditions of this Agreement are referenced on the Cover Page of this Agreement; and contract amendment(s) (incorporating Bid Packages) and exhibits that shall be attached hereto and incorporated by reference herein when executed, after a successful CAP negotiation, are referenced on the Cover Page of this Agreement.
 - iii. The documents that are referenced on the Cover Page of this Agreement and made part of the terms and conditions of this Agreement upon issuance by CDOT shall be incorporated by reference to this Agreement.
- K. "Contract Goal" means the goal for DBE participation that the Department determines should appropriately be met by the selected CM, based on the type of work included in each project and the availability of DBEs capable of performing such work. The Contract Goal, if determined by CDOT as required, shall be the percentage stated in the Request for Proposal for CM Services or in the Contract documents.
- L. "Construction Budget" is the dollar amount available for the total cost for performance of all LLTP CAPs and Construction CAPs as designed or specified by the Design Consultant.
- M. "Contract Sum" shall be defined as provided in Section 9.F. CDOT's financial obligation is limited by this amount, and the CM shall perform no Work which shall result in a contract value which exceeds the Contract Sum. Any modification or amendment to the terms and conditions of this Agreement must be in writing, executed in accordance with the State Fiscal Rules, and be approved by the Controller or their designee.
- N. "Construction Manager" or "CM" means the individual, joint venture, partnership, or corporation which has been selected by CDOT by virtue of its in-house capabilities of budgeting, cost estimating, management and labor relations personnel, the required technical and professional services expertise to work with CDOT and the Design Consultant in order to help formulate the Project Budget, furnish the Design Consultant with the information on construction technology and market conditions to help assure that the Project design stays within the Project Budget, Construction Budget, and aggregate of LLTP CAPs and Construction CAPs (except for changes made pursuant to Section 10) and manage the procurement effort.
- O. "CM Preconstruction Fee" means the amount to be paid by CDOT to the CM for Work performed by CM through the Preconstruction Phase which is equal to the amount of the fees and costs for administrative costs, overhead and profit, including, but not limited to, all resources needed to perform the duties described in Exhibits A, C and D.
- P. "Cost Model" means the open and transparent model that the CM develops and uses through the Preconstruction Phase so that estimates and assumptions are communicated to CDOT, Design Consultant, and Independent Cost Estimator. CM must use a Cost Model reasonably consistent in approach with that provided for the CM's Price Proposal documents unless otherwise agreed to by CDOT. The accepted estimating model shall be applied to the entire Project during the CM preconstruction process to arrive at the OPCCs and Construction CAP. During Project execution, the CM shall use the accepted version of the CM's proposed approach to price and estimating model.
- Q. "Critical Path Method" or "CPM" means a mathematically based algorithm for scheduling

a set of project activities, which is a valuable tool for effective project management. It involves constructing a model of the project including a list of all activities required to complete the project (typically categorized within a work breakdown structure), the time (duration) that each activity shall take to completion, and the dependencies between the activities. Using these values, CPM calculates the longest path of planned activities to the end of the project, and the earliest and latest that each activity can start and finish without making the project longer. This process determines which activities are "critical" (i.e., on the longest path) and which have "total float" (i.e., can be delayed without making the project longer).

- R. "Date of Completion" is the date certified by CDOT when the Work, or designated portion thereof, is complete in accordance with the Contract Documents.
- S. "Day" means calendar day unless specifically designated otherwise.
- T. "DBE" means a business currently certified as a "Disadvantaged Business Enterprise" by the Colorado Unified Certification Program.
- U. "DBE Joint Venture" means association of two or more businesses formed to carry out a single business enterprise for profit for which purposes they combine their property, capital, efforts, skills, and knowledge. DBE Joint Ventures must be certified as a joint venture by CDOT. The DBE percentage of the joint venture shall be determined at the time of certification.
- V. "DBE Program" means CDOT's "Disadvantaged Business Enterprise Program" which has been developed in accordance with 49 CFR Part 26 and approved by the Federal Highway Administration.
- W. "DBE Provision" means CDOT's DBE provision detailed in Section 17.A., 17.B., and Exhibits F and G.
- X. "Design Consultant" means the legally approved professional Design Consultant, or group or association or professional corporation of such approved professional Design Consultants, engineers, and consultants, who have contracted with CDOT to accomplish Design Services necessary for the Project.
- Y. "Design Services" means architectural and engineering services provided by the Design Consultant and/or the CM.
- BB. "Direct Cost of the Work" means those items included in any Construction CAP which, pursuant to the Construction General Conditions, are directly related to construction and not otherwise defined under such Construction Phase.
- CC. "Dispute Resolution" means the process through which the Parties (CDOT and the CM) agree to resolve any issue related to this Agreement that may result in Disputes and Claims.
- DD. "Disputes and Claims" means all disputes and/or claims concerning Construction Budget, time, payment, and/or interpretation of this Agreement. Disputes and Claims include, but are not limited to, any disagreement resulting from a delay, a Change Order, any Modification, another written order, or an oral order from CDOT, including any direction, instruction, interpretation, or determination by CDOT, interpretations of the Agreement provisions, Drawings, Plans, or Specifications or the existence of alleged differing site conditions.
- EE. "DOR" means Design Office Review which is the plan review where the Plans and Specifications are at sixty percent (60%) completed.
- FF. "Drawings" means all Plans and Specifications approved by CDOT which have been prepared by the Design Consultant showing the work for the Project to be performed.

- GG. “ESB” means any business certified by CDOT to participate in the ESB Program that has not otherwise lost such certification due to graduation or revocation.
- HH. “ESB Program” means CDOT’s “Emerging Small Business Program” which has been developed in accordance with 2 CCR 604-1 and approved by the State of Colorado Transportation Commission and is intended to provide assistance and increase opportunities for ESBs.
- II. “Final Acceptance” or “Finally Complete” mean the stage in the progress of the Work for any LLTP Phase or Preconstruction Phase, after Substantial Completion, when all remaining items of Work for such phase have been completed, all requirements of the Contract Documents related to such phase are satisfied and the CDOT Acceptance Letter for such phase can be issued. Portions of the phase may be separately and partially deemed Finally Complete at the discretion of CDOT when that portion of the phase reaches such stage of completion and a partial CDOT Acceptance Letter for such phase can be issued.
- JJ. “FIR” means the field inspection review which is the plan review where the Plans and Specifications are at thirty percent (30%) completed.
- KK. “FOR” means the final office review which is the plan review where the Plans and Specifications are at ninety percent (90%) completed.
- LL. “Health and Safety Plan” means a site-specific safety and health plan to protect workers, staff, and visitors that protects their health and safety.
- MM. “Independent Cost Estimate” means an estimate that is conducted with the Project design and construction information independent of CDOT, Design Consultant and the CM.
- NN. “Independent Cost Estimator” or “ICE” means the designee of the CDOT tasked to perform the Independent Cost Estimate.
- OO. “Innovation Tracking and Performance Report” means a report that tracks all innovations offered by CM, CDOT, and Design Consultant team members. It also tracks the performance of these innovations during any Construction Phase or LLTP of the Project.
- PP. “Instruments of Service” means all documents produced by the Design Consultant, including plans, Specifications, Drawings, opinions, reports, and calculations, which have historically been treated as intellectual property belonging to the Design Consultant that created it.
- QQ. “LLTP” means long lead-time procurements which must be ordered and/or procured in advance of the Construction Phase for which it shall be used.
- RR. “LLTP CAP” means the maximum amount for which any LLTP shall be procured, and the price of the materials shall be computed by the CM in accordance with the provisions of Section 9.E, Construction Agreed Price. The Management Price Percentage is applied to all LLTP CAP proposals. For any LLTP CAP to be accepted by CDOT, the Owner’s Estimate and the CM’s CAP must be within a percentage acceptable to CDOT, which shall be demonstrated by CDOT’s issuance of a “CAP Acceptance Letter” to CM.
- SS. “Key Personnel” means the listed personnel in the Project Management Team/Capability in “CM’s Proposal” which is part of the Proposal that constitutes an agreement by the CM to make the personnel available to complete the Work at whatever level the Project requires pursuant to Exhibit A.
- TT. “Management Price Percentage” means the fee percentage to be applied to all LLTP CAP and Construction CAP proposals equal to the amount of profit, overhead, and construction general conditions as listed in Exhibit C of the Proposal.

- UU. “Material Sourcing Plan” means the plan that details how the CM shall handle bids from material vendors for any LLTP CAP or Construction CAP proposals. This plan is part of the open Cost Model required as part of any Bid Package development.
- VV. “Milestone” means a point in the Preconstruction Phase where Plans, Specifications, and estimates are at an agreed completion point. Milestone examples include FIR, DOR, FOR, and LLTP CAP or Construction CAP proposals.
- WW. “Modification” includes (1) a written Amendment to this Agreement signed by both parties, (2) a Change Order, or (3) a written interpretation issued by CDOT pursuant to Section 4.C, Interpretations.
- XX. “Notice” shall mean any communication in writing from either contracting Party to the other by such means of delivery that receipt cannot be properly denied.
- YY. “Notice of Termination” means the delivered Notice that informs the CM that the Work is terminated for the convenience of CDOT or for default pursuant to Section 16.
- ZZ. “Opinion of Probable Construction Cost” or “OPCC” is the cost to complete the Work for a LLTP or a Construction Phase. This cost includes all labor, materials, equipment, bond premiums, and actual costs of procurement or construction that the CM shall use for the duration of such LLTP or Construction Phase to complete the Work. Each Opinion of Probable Construction Cost shall be produced in an open book process throughout the Preconstruction Phase of the Project so that CDOT, the Design Consultant, and the Independent Cost Estimator can make accurate assumptions, calculate prices, and determine the amount of risk in the Project.
- AAA. “Pay Estimate” means an invoice that details the costs related to a CDOT approved Long Lead Time Procurement (LLTP) item.
- BBB. “Plans” includes the detailed plans and standard plans in any Exhibit D, in which calculated dimensions shall govern over scaled dimensions.
- CCC. “Principal Representative” means Colorado Department of Transportation (CDOT) or its designee and shall be specifically identified in the Contract Documents.
- DDD. “Preconstruction Phase” means the phase of Work in which CM Preconstruction Services and Design Services are performed.
- EEE. “Procurement Review Report” means the report detailing any LLTP CAP plans, warranties, liquidated damages, procurement strategies, schedules, and details required for LLTPs.
- FFF. “Product Data” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, cost models, risk registers, communications, and other information furnished by the CM to illustrate a material, product, or system for some portion of the Work.
- GGG. “Project” is the total design and construction of the project as identified in Section 1 of the “CDOT’s Request for Proposal” which is part of the Proposal, of which the Work performed under the Contract Documents is a part of and may include construction by CDOT or by separate contractors.
- HHH. “Project Management Software” means the contract-control/project- management software approved by CDOT.
- III. “Project Manager” means a qualified individual authorized by the CM to be responsible for coordinating time, equipment, money, tasks, and people for all or specified portions of the Project.
- JJJ. “Project Schedule” means a schedule that is prepared by the CM that shall be used for coordination, for evaluation of progress, for evaluation of changes to the Agreement, and to

- ensure the timely completion of the Work as called for in the Contract Documents.
- KKK. "Owner's Estimate" means the estimate reviewed and approved by CDOT to be compared to each OPCC or CAP. The Independent Cost Estimate can serve as the Owner's Estimate if approved by CDOT.
- LLL. "Quality Control Plan" means the plan describing the CM's plans to ensure quality and compliance in construction.
- MMM. "Risk Management Plan" means the agreed to plan which includes risk identification, assessment, and completion of a Risk Register detailing risks, mitigation, and the assigned responsibility for each risk.
- NNN. "Risk Register" means a listing of risks and opportunities, risk assessments, and an evaluation of mitigation and responsibility for those risks.
- OOO. "Samples" are physical examples which illustrate materials, equipment, or reasonable workmanship, and establish standards by which the Work shall be judged.
- PPP. "Schedule of Bid Items" is part of the Contract Documents for any LLTP CAP or Construction CAP proposals, which includes an itemized description of the Work by division and section of the Specifications. The format shall be an electrical EBS file submitted to CDOT by flash drive or electronic submittal.
- QQQ. "Shop Drawings" are drawings, diagrams, schedules, and other data specifically prepared for the Work by the CM or any Subcontractor of any tier, manufacturer, Supplier, or distributor, to illustrate some portion of the Work.
- RRR. "Specifications" means the detailed, exact statement of particulars, especially statements prescribing materials and methods; and quality of Work for any LLTP or Construction Phase, which are attached in any Exhibit D and include, but are not limited to, Project special provisions and standard special provisions.
- SSS. "Standard Specifications" means the provisions in the Standard Specifications for Road and Bridge Construction issued October 1, 2022.
- TTT. "State" means the State of Colorado.
- UUU. "Subcontracting Plan" means the plan developed by the CM which outlines the CM's expected approach to subcontracting, including promoting disadvantaged and small business participation, in the Construction Phase of the Project. The Subcontracting Plan shall detail the opportunities that the CM has identified for possible participation by ESBs and DBEs. The Subcontracting Plan shall be included in each Bid Package prepared by the CM and may be considered by CDOT when determining the goal for DBE participation to be applied to the Construction Phase.
- VVV. "Subcontractor" means a person, firm, or corporation supplying labor and materials, or only labor, for all or any portion of the Work, under separate contract or agreement with the CM.
- WWW. "Substantial Completion" or "Substantially Complete" mean the stage in the progress of the Work for any LLTP or Preconstruction Phase when the procurement or CM Services are sufficiently complete, in accordance with the Contract Documents as modified by any Amendment or Change Order, so that the Work, or at the discretion of CDOT, any designated portion thereof, is available for its intended use by CDOT and a Notice of Substantial Completion for such phase can be issued. Portions of the phase may, at the discretion of CDOT, be designated as Substantially Complete.
- XXX. "Supplier" means any manufacturer, fabricator, distributor, material person or vendor.
- YYY. "Term" means the term of the Agreement, which shall commence as set forth in Section 6.A, Commencement, and shall end on the final completion date of the Project pursuant to

Section 15.

ZZZ. "Termination Claim" means a claim that results from termination of this Agreement pursuant to section 108.10 of the Standard Specifications or Section 16, CDOT's Right to Terminate Contract, of this Agreement.

AAAA. "Termination Date" means the date this Agreement shall terminate, which is five years after the Effective Date of this Agreement, unless sooner terminated or further extended as specified elsewhere herein.

BBBB. "Value Engineering" means a study or activity that helps to design and provide deliverables that meet the customer needs at the lowest cost while assuming a standard of quality and reliability.

CCCC. "Work" means the CM Services, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the CM to fulfill the CM's obligations. The Work may constitute the whole or a part of the Project.

DDDD. "Worker and Public Safety Plan" means the report detailing how the CM shall provide a safe work site and provide safety for the traveling public.

EEEE. "Working Day" means any day, exclusive of Saturdays, Sundays, and State and federal recognized holidays, on which weather and other conditions not under the control of the CM shall permit construction operations to proceed with the normal working force engaged in performing those items controlling the completion of the Work.

3. CONSTRUCTION MANAGER'S SERVICES

The CM shall perform the following services under this Agreement described below:

A. COMPLETION WITHIN FISCAL AND TIME CONSTRAINTS

- i. The CM expressly recognizes that this Project is being undertaken on an accelerated basis and must be completed within the time and fiscal constraints as set forth throughout this Agreement and its Exhibits. The CM further represents to the CDOT that by executing this Agreement, it has been fully informed and has thoroughly reviewed: the goals of the Project; the work effort of the Design Consultant performed to date for the Project; all of this Agreement's Exhibits and Contract Documents, specifically including, but not limited to, Exhibit A, CM's Preconstruction Roles and Responsibilities Matrix; has been informed by CDOT's general time as well as fiscal constraints and contingencies applicable to the Construction Budget; and all of the CM Services to be provided by the CM pursuant to the Contract Documents. Based upon this review and analysis and recognizing that the contract for Design Services is between CDOT and the Design Consultant, the CM nonetheless represents to CDOT that it shall provide all the necessary services and perform all of the Work within the requirements of the Contract Documents.
- ii. To accomplish the objectives set forth in Section 3.A, Completion Within Fiscal and Time Constraints, the CM shall provide consultation throughout the Preconstruction Work Package, but not limited to, the furnishing of all necessary CM Services. In cooperation with the Design Consultant and CDOT, the CM shall:
 - a) Review all as-builts, current design, and site conditions.
 - b) Attend the Project Scoping Workshop.
 - c) Attend all Project, Milestone, Context Sensitive Solutions (CSS), Project action team, LLTP CAP or Construction CAP negotiation meetings with the Project team as agreed at the Project Scoping Workshop.

- d) Formulate and evaluate alternative designs, systems, and materials.
- e) Provide Quality Assurance of the Design Deliverables to ensure completeness, and adequacy of the Construction documents.
- f) Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives.
- g) The CM shall develop the OPCC on designs prepared by the Design Consultant at the completion of any agreed upon Milestone and shall include an analysis and commentary as to any discrepancies observed in any report referenced in this Section., Completion Within Fiscal and Time Constraints.
- h) Evaluate the alternatives on the basis of costs, construction schedules, availability of labor, equipment, and materials, and construction feasibility in the form of Constructability Reports.
- i) With the assistance of the Design Consultant, prepare written procurement reviews for materials that could be procured by CDOT or the CM ahead of any Construction Phase.
- j) With the assistance of the Design Consultant, prepare written reports at the end of any FIR, DOR, or any FOR summarizing the Value Engineering activities accomplished and any recommendations developed within each phase.
- k) If OPCCs and/or bids received for the Work contained in any Bid Package cause the anticipated cost of the Work to exceed the current OPCC, the Construction Budget, any LLTP(s) or Construction CAPs or Schedule of Bid Items, the CM shall at no additional cost to CDOT, provide additional Value Engineering services in conjunction with any and all appropriate items in the OPCC, the Construction Budget, any LLTP(s) or Construction CAP and/or the Schedule of Bid Items for the Work, unless the cause of the increase in the CM's Work is due to the requests made by CDOT.
- l) Lead informal or formal Value Engineering workshop(s), as determined by CDOT, at agreed upon Milestones to coordinate estimating tasks, bring multidiscipline cost/construction experts to evaluate alternative designs, systems, and materials. This Work includes the submittal and ongoing evaluation of Value Engineering Change Proposals, if required.
- m) Develop and submit a Contracting and Diversity Plan to contract with Subcontractors and meet the DBE goals, if applicable, of any Construction Phase.
- n) Prepare preliminary construction schedules and phasing alternatives.
- o) In collaboration with the Design Consultant and CDOT, develop a Risk Management Plan, perform risk assessments, and prepare a Risk Register.
- p) With the assistance of the Design Consultant and CDOT, develop an Innovation Tracking and Performance Report.
- q) Develop a Quality Control Plan, a Material Sourcing Plan, and a Worker and Public Safety Plan.
- r) Prepare and submit a Procurement Review Report for each LLTP CAP.
- iii. CDOT and the Design Consultant shall participate in the formulation and evaluation of alternatives in the Value Engineering activity.

B. BUDGETING

- i. The Budget for the preconstruction of this project has been set at \$ _____ . This budget is a not to exceed amount, and the CM agrees that all the tasks in the

- scope of work can be accomplished with this budget.
- ii. The CM shall assist the Design Consultant in evaluating CDOT's preliminary budget. Based on consultation with the Design Consultant and the CM, CDOT shall furnish a Construction Budget to the CM which shall set forth a dollar amount available for the Construction of the Project and included contingencies excluding LLTP(s), shared risk contingency pools, force account items, and the Management Price Percentage.
- C. COST ESTIMATING AND PROJECT MANAGEMENT SOFTWARE
- i. Cost estimating shall be conducted by three entities during the Preconstruction Phase of the Project. CDOT and CM shall maintain their own OPCCs through the Preconstruction Phase. CDOT shall provide an Independent Cost Estimator or ICE that shall develop an Independent Cost Estimate. The Independent Cost Estimate shall be prepared separately from all other estimates and not influenced by the CM, or CDOT or their estimate or the CM Estimate. At each agreed upon Milestone and after any LLTP CAP, or any Construction CAP proposals are submitted by the CM, CDOT's Engineer's Estimate, and the CM's OPCC shall be compared to the Independent Cost Estimate provided by the ICE. If the Owner's Estimate, or Independent Cost Estimate in lieu of the Owner's estimate, and CM's CAPs are not within a determined percentage set by CDOT, CDOT shall conduct a review to determine where the cost estimates differ and what assumptions or details were used to determine each difference. For any Construction CAP to be accepted by CDOT, the Owner's Estimate and the CM's CAP must be within a predetermined percentage established by CDOT. The acceptance of the CM's Construction CAP shall be demonstrated by CDOT's issuance of a "CAP Acceptance Letter" to the CM.
 - ii. The CM shall maintain an open and accurate Cost Model that shall include all details of the OPCC and any LLTP CAP or any Construction CAP proposal when submitted. These details shall allow CDOT opportunity to reconcile the costs represented in the Construction CAP Proposal. These details include, but are not limited to labor, materials, equipment, Subcontractor and Supplier quotes, assumptions, risk(s), allowable costs not included in the Management Price Percentage, and mobilization, as listed in the CM's Proposal.
 - iii. The Cost Model shall be used by all entities to develop Independent Cost Estimates and OPCCs at each agreed upon Milestone and when each LLTP CAP and Construction CAP proposal is submitted.
 - iv. Each LLTP CAP and Construction CAP proposal shall be submitted in a form acceptable to CDOT.
 - v. OPCC: When preparing any OPCC and in development of the Schedule of Bid Items, such documents shall include and account for separately without duplication:
 - a) The cost of all labor, materials, equipment, bond premiums, and actual costs of procurement or construction that the CM shall use for the duration of such LLTP or Construction Phase to complete the Work.
 - b) General Conditions and whether or not incorporated or to be incorporated in the Work.
 - c) The CM shall list direct and indirect costs for each item or in a separate list. CDOT shall review and approve the list of costs at each OPCC.
 - d) Each OPCC shall be produced in an open book process through the Preconstruction Phase of the Project so that CDOT, the Design Consultant, and the Independent Cost Estimator can make accurate assumptions, calculate prices,

- and determine the amount of risk in the Project.
- e) The CM's Management Price Percentage.
- f) Any LLTP and the cost of Work provided by the CM pursuant to this Agreement.
- g) For each OPCC required for the Work, the CM shall acquire multiple quotes from potential Subcontractors and Suppliers. This information shall be shared in the open Cost Model and the CM shall allow their potential Suppliers and Subcontractors to share their information, quotes, and product data with the ICE, CDOT, and the Design Consultant.
- vi. No OPCC shall include:
 - a) the compensation of the Design Consultant,
 - b) the Design Consultant's sub-consultants
 - c) any other sums due the Design Consultant,
 - d) the costs of land, right of way,
 - e) financing or any other costs which are the responsibility of CDOT.
- vii. The CM, in preparing its OPCC and providing each LLTP CAP and Construction CAP proposal, shall consult with the Design Consultant to determine what materials, equipment, labor, and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Work, and to include in the Contract Documents alternate items, as approved by CDOT in writing, for bid so as to permit the adjustment of the OPCC.
- viii. The CM shall prepare an OPCC as soon as major Project requirements have been identified and update it periodically. For each FIR and DOR, the CM shall prepare an OPCC and update periodically. During each FOR, the CM shall prepare a final OPCC in preparation for each LLTP CAP and Construction CAP proposal and update periodically. All OPCC shall make allowance for price escalation. During the final Preconstruction Phase, the CM shall continually monitor the cost estimates and develop an OPCC to help assure that the cost of the Work remains within the applicable portion of the Construction Budget and LLTP CAP or Construction CAP, as applicable.
- ix. Each OPCC shall be independently prepared but in coordination with CDOT and the ICE. Estimates shall be based on quantitative takeoffs whenever possible and shall be supported in sufficient depth and organization to be used in preparing budgets based on funding sources, sub-trades, combinations of sub-trades, building systems, Bid Packages, or combinations thereof. The specific cost coding structure, estimating guidelines, assumptions, and contents of the cost estimates shall be mutually resolved between the CM and CDOT prior to development of the first cost estimate to assure that estimates developed by all parties can be compared and reconciled. Lump sum estimates are not acceptable. Differences between the OPCC and the Independent Cost Estimate shall be compared and reconciled through CDOT.
- x. During the preparation of each OPCC the CM shall notify CDOT if it appears that the OPCC shall exceed the applicable portion of the Construction Budget, satisfactorily demonstrate the accuracy of its estimate in such detail as shall be reasonably required by CDOT and make reasonable recommendations for corrective action consistent with Construction Budget. The CM shall submit OPCCs to CDOT for review and acceptance. Concurrently, the CM shall provide copies to the Design Consultant for review and verification.
- xi. CDOT shall reasonably cooperate with the CM to keep the Work within the applicable

portions of the Construction Budget, including but not limited to, the giving of appropriate and reasonable consideration to all reasonable recommendations of the CM, approving redesign, providing constructability reviews and reports, deductive alternatives or reductions in Work, requesting additional Value Engineering, making Modifications to the Contract Documents or exercising such other rights or remedies as may be available elsewhere under this Agreement including termination for convenience. However, CDOT shall be under no duty to reduce the Work to accommodate for any construction contingency used to cover costs to correct errors, omissions, mistakes or rejected Work. The appropriate representatives of CDOT shall review documents submitted by the CM and shall render decisions pertaining thereto without unreasonable delay.

- xii. The Design Consultant, by the terms of its agreement with CDOT, is obligated to provide reasonable cooperation to the CM in the development of OPCCs and each LLTP CAP and Construction CAP proposal. Conversely, the CM, by the terms of this Agreement is obligated to provide reasonable cooperation to the Design Consultant in the development of OPCCs, each LLTP CAP and Construction CAP proposal. Additionally, both Design Consultant and CM are obligated to reconcile their respective cost estimates at the completion of each Bid Package including each LLTP CAP and Construction CAP proposal in a timely manner so as not to negatively impact the Project Schedule.

D. CM SERVICES

- i. During Preconstruction, the CM shall review conceptual design; advise on-site use and improvements, selection of materials, building systems, and equipment; and provide recommendations on construction feasibility, availability of materials and labor, local construction activity as it relates to schedules, and time requirements for installation and construction.
- ii. The CM shall perform those services included, but not limited to, those designated as “Required” in Exhibit A, Preconstruction Roles and Responsibilities Matrix. In addition, and not in limitation, the CM shall also perform the other CM Services designated in this Section.
- iii. The CM shall review the Drawings, Plans, and Specifications as they are prepared, recommending alternative solutions whenever design details affect construction feasibility, schedules, or cost; however, nothing contained in this paragraph shall be construed to require the CM to provide Design Services. Written reviews shall be submitted with redlined drawings, plans, and specifications after each Milestone.
- iv. The CM shall make recommendations to CDOT and the Design Consultant regarding the division of Work in the Drawings, Plans, and Specifications to facilitate the bidding and awarding of subcontracts, allowing for phased construction, and funding, if applicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, etc.
- v. The CM shall review Drawings, Plans, and Specifications with the Design Consultant to:
 - a) provide a quality assurance of the design deliverables, to mitigate errors in the design deliverables.
 - b) eliminate areas of conflict, overlapping trade jurisdictions, and overlapping in the Work to be performed by the various Subcontractors,

- c) confirm that all Work has been included to mitigate omissions of the design deliverables and
- d) allow for phased construction.
- vi. CDOT through the Design Consultant and consistent with CDOT's contract with the Design Consultant, shall furnish the CM enough documents required to accomplish the scope of work described as CM Services.
- vii. As part of each Milestone review and OPCC, the CM shall develop a preliminary Project Schedule that is coordinated with the Design Consultant's design schedule, agreed upon Milestone dates from the Project Scoping Workshop, the Date of Completion specified in Section 6.A, Commencement, the scope of work described within the Contract Documents, and the work described within each of the Preconstruction documents. The CM shall utilize the most recent version of Microsoft Project or Primavera, to develop and manage the schedule. The schedule as agreed to shall utilize the Critical Path Method with reasonable detail to allow assessment of each LLTP schedule, equipment, or materials to be furnished by CDOT or CM as agreed, the adequacy of the construction duration/period, critical paths among the activities for the construction of the Work, peak labor pool requirements, and crunch points within the Project's logic/critical path. As part of each Milestone review and OPCC, this preliminary schedule shall be updated by the CM to reflect the work described in any of the preconstruction documents and shall be utilized by CDOT to assess each LLTP CAP and Construction CAP proposal. The Project Schedule shall be updated at other Milestone dates as agreed at the Project Scoping Workshop.
- viii. The CM shall attend all regular Project status meetings with CDOT and the Design Consultant and such additional meetings as CDOT may request. All regular meetings shall be scheduled by CDOT with the agreement of the CM and Design Consultant. All additional meetings shall be scheduled by CDOT.
- ix. The CM shall investigate and recommend materials and equipment that could be purchased by CDOT, or the CM as agreed; consider LLTP opportunities, and mass purchasing power in making such recommendations; recommend a schedule for such purchases after coordination with the Design Consultant in the schedule for preparation of Contract Documents; and expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates.
- x. CDOT and the Design Consultant shall prepare all Drawings, Plans, Specifications, and engineering estimates for the Bid Packages of any LLTP CAP and Construction CAP proposal.
- xi. The CM shall provide the requirements and assignment of responsibilities for safety precautions and programs as required for the execution of the Work, temporary project facilities, and for equipment, materials, and services for common use of Subcontractors and verify that all are included in the Contract Documents.
- xii. The CM shall participate in Project design review sessions at the close of each FIR, DOR, and FOR, and as construction documents are finalized for each Bid Package. The Project design review sessions shall be attended by the Design Consultant and representatives of CDOT. The purposes of the Project design review sessions are to:
 - a) assure consistency with the design intent;
 - b) ensure complete, coordinated, constructible and cost-effective designs for all disciplines (e.g., architectural, structural, mechanical, geotechnical, electrical

- and roadway);
 - c) assure that the design documents are code compliant;
 - d) endeavor to confirm that all Work has been included and described in sufficient detail to assure complete pricing of Work;
 - e) allow for phased construction; and
 - f) identify errors and omissions.
- xiii. The CM shall provide the Design Consultant written reviews and redlined hard copies of Drawings, Plans, and Specifications. The Design Consultant shall collect all design review comments from the various participants, provide reports to CDOT, and ensure that with the issuance of each progress set of design documents all comments have either been incorporated or resolved to the satisfaction of CDOT.
 - xiv. The CM shall provide, not later than the first of each month, a monthly report documenting the current status of the Project's schedule, OPCC updates, updates to the Contracting and Diversity Plan, requests for information, submittals, labor pool, safety, and other pertinent information. The report shall be separate from the monthly schedule update/report. The report shall include a narrative discussion of the progress achieved, activities anticipated for the next month, and issues that are affecting the rate of progress. Progress photographs for any LLTP and Construction Phases shall be attached/included. This monthly report shall be provided in Preconstruction Phase of the Project.
 - xv. If the CM or any of its Subcontractors of any tier participating in the Design reviews observes that any of the Contract Documents are at non-compliant with applicable laws, statutes, building codes, ordinances, rules, or regulations, in any respect, the CM shall promptly notify CDOT in writing, noting the applicable Drawing, Plan or Specification, and recommending an appropriate alternative for correcting the Contract Document.
 - xvi. All reviews by the CM shall include written responses and redlined documents that detail recommendations, changes, and questions.

E. ACCESS TO WORK

The Design Consultant and CDOT shall at all times have access to the Work wherever it is in preparation and progress. The CM shall provide safe and reasonable facilities for such access so that the Design Consultant and CDOT may exercise their rights and perform their functions under the Contract Documents.

F. DESIGN CONSULTANT'S AUTHORITY DURING CONSTRUCTION

The duties, responsibilities, and limitations of authority of the Design Consultant during construction shall be set forth by CDOT.

G. NO RESPONSIBILITY FOR DESIGN CONSULTANT

The CM shall not be responsible for the failure of the Design Consultant or its sub-consultants to properly discharge their duties and responsibilities as set forth in the agreement between CDOT and Design Consultant.

H. SCHEDULE, COORDINATION, AND COST CONTROL

In the performance of the Work under this Agreement, the CM acknowledges that time is of the essence of this Agreement. The CM shall begin the performance of CM Services upon receiving a Notice to Proceed to Commence CM Services. The CM shall schedule and coordinate the work of all of its Suppliers on the Project including their use of the site. The CM shall keep the Suppliers informed of the Project Schedule to enable the Suppliers to plan and perform the work properly. The CM shall carry the Work forward

expeditiously with adequate forces and shall achieve completion of the Work prior to the Date of Completion specified in Section 6.C, Completion Date, as adjusted by Change Orders and Amendments.

I. PRELIMINARY PROJECT SCHEDULE

- i. Schedule Creation
 - a) Starting at the Project Scoping Workshop, the CM shall begin to develop the Project Schedule encompassing all Construction activities necessary to complete the scope of the project. The Project Schedule shall be updated at each agreed upon Milestone during the Preconstruction Phase.
 - b) At each Construction CAP proposal meeting, the CM shall submit for the Design Consultant's and CDOT's review and acceptance of a Preliminary Project Schedule. The Preliminary Project Schedule shall include the Work encompassing Construction activities necessary to complete the scope of the Project, in a manner that is consistent with previously issued schedules and shall comply with the Date of Completion of the Work authorized by the current Contract Documents. This Project Schedule shall show all completed, in progress, and planned Bid Packages as intended at the appropriate Milestone, Construction CAP.
 - c) Within fourteen (14) calendar days of receiving Notice to Proceed to commence the CM shall submit to the Design Consultant and CDOT a detailed Project Schedule for such Bid Package integrated into the most current preliminary Project Schedule.
 - d) Detailed Project Schedules for Construction CAP Bid Packages shall be incorporated into a general Construction Contract.
- ii. Technical Requirements. The Project Schedule shall be developed utilizing the most recent version of Microsoft Project or Primavera scheduling software as approved by CDOT. The level of detail of the CPM schedule shall be a function of the complexity of the Work involved. The Milestones and total number of activities shall be subject to approval by CDOT.
- iii. Submittals. For the preliminary or detailed Project Schedule submittals, as well as for each Project Schedule update, the CM shall submit a CPM schedule to CDOT in an electronic format. The CM shall utilize the most recent version of Microsoft Project or Primavera to prepare and keep current, for CDOT's approval, a time schedule of submittals in a submittal log which is coordinated with the CM's detailed Project Schedule and allows CDOT 14 Days to review submittals unless otherwise agreed upon by CDOT.
- iv. Schedule Management
 - a) Progress Meetings: Progress meetings shall be held at no less than every fourteen (14) days or more frequently as determined by CDOT. The meeting shall be held to assess the progress achieved by the CM during the previous work week, discuss and resolve issues affecting progress, and review the critical activities anticipated for the following two weeks. The CM is to provide short interval schedules documenting the activities to be accomplished during the past week and the activities forecast for the next two weeks.
 - b) Monthly Project Review Meetings: Once each month on or about the 25th of the month, a meeting shall be held to review a draft invoice and/or Project Schedule update, assess and agree to the progress achieved by the CM during the previous month, discuss and resolve issues affecting progress, and review the critical

activities to be accomplished during the following 90 days. The CM is to provide a draft invoice and Project Schedule update reflecting the Work accomplished during the previous month.

J. SALES AND USE TAXES

- i. CM shall provide CDOT with copies of the following: Colorado Department of Revenue - CM Application for Exemption certification, (Form DR 0172); Agency Tax Exemption Number: 89-156000-0067: Additional Tax exemptions the agency may have with local Cities or Counties (as applicable).

4. PROJECT DRAWINGS, PLANS, AND SPECIFICATIONS

A. PROCUREMENT OF AND RIGHTS IN DATA, DOCUMENTS, AND COMPUTER

- i. Any software, research, reports, studies, estimates, data, photographs, negatives or other documents, Plans, Drawings, Specifications, memoranda, computation sheets or materials prepared by CM in the performance of its obligations under this Agreement shall be the exclusive property of the State without restriction and all such materials shall be delivered to CDOT by the CM upon request, completion, termination, or cancellation of this Agreement. The CM may, at its own expense, keep copies of all its writings for its personal files. CM shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of CM's obligations under this Agreement without the prior written consent of CDOT; provided, however, that CM shall be allowed to use non-confidential materials for writing samples in other pursuits, or marketing materials. Copies of said documents may be retained by the CM but shall not be made available to other individuals or organizations without prior written approval of CDOT. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use written works.
- ii. The Drawings, Plans, and Specifications and other documents are to be used only with respect to this Project and are not to be used on any other project. With exception of one contract set for each Party to this Agreement, such documents are to be returned or suitably accounted for to CDOT on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is to be approved by CDOT.

B. REVIEW OF THE CONTRACT DOCUMENTS

- i. The CM shall carefully study and compare the Contract Documents and shall immediately report to CDOT any error, inconsistency, or omission that may be discovered. The CM shall perform no portion of the Work at any time without Contract Documents or, where required, approved Drawings, Plans, Specifications, instructions, Shop Drawings, Product Data, or Samples for such portion of the Work.
- ii. If the CM or any of its Subcontractors of any tier observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, ordinances, rules, or regulations, in any respect, the CM shall immediately notify CDOT in writing, and any necessary changes shall be accomplished by appropriate Amendment or Change Order.
- iii. If the CM or any of its Subcontractors of any tier perform any Work with knowledge or reason to know that it is contrary to any laws, statutes, building codes, ordinances, rules, or regulations, and does not notify CDOT, as required in Sections 4.B.ii., Review of the Contract Documents, the CM shall assume full responsibility therefor

and shall bear all costs attributable therein.

C. INTERPRETATIONS

- i. CDOT shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder.
- ii. CDOT shall render interpretations consistent with the intent of, and reasonably inferable from the Contract Documents, consisting of additional instructions by means of Drawings, Plan, Specifications or otherwise, necessary for the proper execution or progress of the Work, in accordance with agreed upon time limits and otherwise so as to cause no unreasonable delay. The CM may make a written request to CDOT for such interpretations and decisions.

D. CONFIDENTIALITY

- i. The CM understands that all services hereunder are confidential in character, and that as such, details and investigative results are not to be divulged in whole or in part at any time in the form of press releases, public statements, publication in technical papers by the CM, its agents, employees, or representatives.
- ii. Similarly, no detailed information about the Project shall be tendered to property owners, speculative and promotional interests or to the general public without written authority from CDOT.
- iii. In the event the CM shall obtain access to any records or files of CDOT's in connection with this Agreement, or in connection with the performance of its obligations under this Agreement, the CM shall keep such records and information confidential and shall comply with § 8-72-107, C.R.S., and all other laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to CDOT. The CM shall notify its employees that they are subject to the confidentiality requirements as set forth above and shall provide each employee with a written explanation of the confidentiality requirements before the employee is permitted access to confidential data.

5. THE PRINCIPAL REPRESENTATIVE RESPONSIBILITIES

- A. As the Principal Representative, CDOT shall furnish the CM with detailed program requirements and the Construction Budget established for the Work.
- B. CDOT shall designate a representative (other than the Design Consultant) authorized to act on its behalf with respect to the Project (as indicated in the Cover Page to this Agreement).
- C. CDOT shall retain a Design Consultant for preparation of the Design Services documents required for the Project. The Design Consultant's services, duties, and responsibilities are described in the agreement between CDOT and the Design Consultant, a copy of which shall be furnished to the CM.
- D. The CM shall be furnished, without charge, a set of electronic copies of the Drawings, Plans and Specifications for each Bid Package. Additional sets, as mutually agreed upon to meet construction needs, shall be a direct cost of Work.
- E. CDOT shall furnish the site of the Project, all necessary surveys describing the physical characteristics, legal limitations, utility locations, and a legal description.
- F. CDOT shall identify and make available to CM copies of reports of geotechnical explorations and tests of subsurface conditions at the site which have been utilized by Design Consultant in preparing the Drawings, Plans, and Specifications. CDOT does not represent that these reports show completely and accurately the existing conditions, and

CDOT does not guarantee any interpretation of the reports. The CM expressly assumes all responsibility for deductions and conclusions which may be made as to the nature of the materials to be excavated, and the difficulties of making and maintaining the required excavations, and of doing other work affected by the geology of the site of the Work. The geotechnical information discussed above is for reference only and is not part of the Contract Documents.

- G. CDOT shall secure and pay for necessary approvals, temporary easements, permanent easements, assessments, acquisitions, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- H. CDOT shall furnish such accounting and insurance counseling services as may be necessary for the Project, and such auditing services as CDOT may require ascertaining how or for what purposes the CM has used the monies paid to it under this Agreement.
- I. The services, information, surveys, and reports required by Sections 5.A.iii. through 5.B.vii., The Responsibilities, shall be furnished on a timely basis and at CDOT's expense, and except as may be provided to the contrary elsewhere in this Agreement, the CM shall be entitled to rely upon the accuracy and completeness thereof.
- J. In the review process of any FIR, DOR, or FOR documents and construction documents for each Bid Package, the CM expressly agrees to the following review times by CDOT:
 - i. Any review period of any documents shall be fourteen (14) days, unless otherwise noted in this document.
 - ii. A period of fourteen (14) days for the review of any FIR, DOR, or FOR documents; and
 - iii. Twenty-one (21) days after receipt of all Drawings, Plans and Specifications for any Bid Package, commencing with the date of receipt by CDOT of all documents and any other items which are required to be furnished to CDOT by the terms of CDOT's agreement with the Design Consultant. The Twenty-one (21) days is calculated by a period of fourteen (14) days prior to completion of the construction documents together with an additional seven (7) days following submission of all required documents.

It is expressly understood and expected that the CM shall develop each Construction CAP proposal as agreed upon Milestones are reached and that the final establishment of each Construction CAP proposal shall occur within fourteen (14) days of receipt of the final full scope of any Bid Package, including all associated addenda, for such Construction CAP (as applicable).
- K. In accordance with the provisions of the DBE Program, CDOT shall review each Construction CAP Bid Package for DBE contracting opportunities. CDOT shall set a contract goal for DBE participation within seven (7) days of receipt of the final full scope of such Bid Package if the Bid Package includes Federal Aid.
- L. The foregoing is in addition to other duties and responsibilities of CDOT enumerated elsewhere in the Contract Documents.

6. TIME OF COMMENCEMENT AND COMPLETION

A. COMMENCEMENT

- i. The Parties' performances under this Agreement shall commence on the Effective Date but no work shall be performed prior to the CM's receipt of a Notice to Proceed for CM Preconstruction Services.
- ii. The procurement of any Long Lead Time Procurement (LLTP) phase is expressly

conditioned upon and shall not commence until:

- a) Federal approval of the Construction Phase of the Work;
- b) The applicable LLTP CAP and associated Schedule of Bid Item(s) have been approved and accepted by CDOT;
- c) The date for completion of the LLTP has been approved and accepted by CDOT.
- d) All required Performance Bonds and Payment Bonds and Insurance Certificates have been approved and accepted by CDOT; and
- e) A general Construction Contract for such LLTP phase has been issued, signed, and executed;
- f) A Notice to Proceed to Commence the LLTP phase has been issued by CDOT as part of the general Construction Contract.

If any of the preceding material conditions to be performed by the CM have not been fully satisfied by reason of any act or omission on the part of the CM through no fault of CDOT, CDOT shall give the CM written notice of any and all such deficiencies and allow ten (10) days from the date of such notice to correct and cure such deficiency or deficiencies. If the deficiency or deficiencies are not fully corrected and cured within the ten (10) day period, CDOT may declare the CM to be in default of this Agreement.

iii. The commencement of any Construction Phase is expressly conditioned upon and shall not commence until:

- a) The applicable Construction CAP and associated Schedule of Bid Items have been approved and accepted by CDOT;
- b) A general Construction Contract for such Construction Phase has been issued, signed, and executed;
- c) The date for completion of the Construction Phase Work has been approved and accepted by CDOT;
- d) In accordance with the standard special provisions, as included in any Specifications, which outlines the requirements of the DBE Program on Construction Contracts, the CM has submitted, and CDOT has approved a plan detailing the CM's commitments and efforts to meet the DBE participation goal for such Construction Phase. The CM shall agree to the requirements of the DBE Program and the applicable standard special provisions as part of the general Construction Contract.
- e) All required Performance Bonds and Payment Bonds and Insurance Certificates have been approved and accepted by CDOT; and
- f) A Notice to Proceed to Commence Construction Phase has been issued by CDOT as part of the general Construction Contract.

If any of the preceding material conditions to be performed by the CM have not been fully satisfied by reason of any act or omission on the part of the CM through no fault of CDOT, CDOT shall give the CM written notice of any and all such deficiencies and allow ten (10) days from the date of such notice to correct and cure such deficiency or deficiencies, and if the deficiency or deficiencies are not fully corrected and cured within the ten (10) day period, CDOT may declare the CM to be in default of this Agreement.

B. TIME OF ESSENCE

Time is of the essence of this Agreement. The CM shall begin the Work on the Effective Date. The CM shall carry the Work forward expeditiously with adequate forces and shall achieve completion of the Work by the Termination Date.

7. SUBCONTRACTS

A. SUBCONTRACTING

- i. Any Subcontractor retained by the CM and any and all subcontracts entered into by the CM for any Work performed under this Agreement and any Modifications hereto are subject to prior approval by CDOT. The CM shall not engage the services of any persons then in the employ of CDOT for Work covered by the terms of this Agreement without the written consent of CDOT. All subcontracts exceeding \$10,000.00 in cost, shall contain the provisions included in Section 18 – Colorado Special Provisions.
- ii. Subcontractors as defined in Section 101.81 of the Standard Specifications shall be able to sublet during the Preconstruction Phase of this Project as permitted in Section 108.01 Subletting of Contract in the Standard Specifications. This shall be only allowed during the Preconstruction Phase and as approved by CDOT.

The CM who is the lead for CM Preconstruction Services in the Preconstruction Phase shall sublet no more than 70 percent of such CM Services in the Preconstruction Phase. The percentage of CM Services in any Preconstruction Phase allowed to be sublet shall be determined by dividing the total dollar value of the CM Services Subcontracts in the Preconstruction Phase by the total dollar value of the CM Services in the Preconstruction Phase.

B. SUBCONTRACTING REQUIREMENTS

The CM shall comply with all applicable requirements of the Contract Documents relating to Subcontracts and shall ensure that its Subcontractors comply with all applicable requirements of the Contract Documents relating to subcontracting. The CM shall not sublet, sell, transfer, assign, or dispose of the Contract or any portion thereof without written permission of the Project Manager. Before beginning work by the Subcontractor, the Contractor shall request permission from the Project Manager by submitting a completed Design-Build/Construction Manager Sublet Permit Application, CDOT DB/CM Form 205, via the B2GNow software system (<https://cdot.dbesystem.com/>). The subcontracted work shall not begin until the CM has received the Project Manager's written permission. All firms that the CM will be subletting a portion of the contract shall have an account in the B2GNow software system. If the firm does not have an account created, approval of the CDOT DB/CM Form 205 may be withheld.

C. ASSIGNMENT OF SUBCONTRACT RIGHTS

CM's rights and obligations hereunder are personal and may not be transferred, assigned, or subcontracted without CDOT's prior, written consent. Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to CDOT:

- (i) CDOT is a third-party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit; and
- (ii) all guarantees and warranties, express and implied, shall insure to the benefit of CDOT as well as the CM. Any acceptance of assignment of a Subcontract from CDOT, its successor(s), or assign(s) shall not operate to

make the assignee(s) responsible or liable for any breach of the Subcontract by the CM or for any amounts due and owing under the Subcontract included in an invoice paid by CDOT.

D. SUBCONTRACT FORMS

All subcontracts shall be between the CM and the Subcontractors. The form of subcontracts shall be furnished to CDOT for review and consent as to form, which consent shall not be unreasonably withheld.

E. SUBCONTRACT TERMS

- i. Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, and shall include provisions addressing the following requirements as well as any other terms that are specifically required by the Contract Documents to be included therein:
- ii. Each Subcontract shall include terms that are substantially similar to those terms required by Sections 7.A (Subcontracting), 7.B (Subcontracting Requirements), and 7.C (Assignment of Subcontract Rights) specifically including an agreement by the Subcontractor to be joined in any dispute resolution proceeding and each Subcontract other than Subcontracts with Suppliers shall include terms that are substantially similar to those contained in Section 8 – Work by CDOT or by separate contractors. Each Subcontract shall include terms verbatim as required in Sections 7.J ii and iii (Payment to Subcontractors – Prompt Payment and Good Cause Exception), 17.A (Equal Employment Opportunity and Nondiscrimination), Exhibit F, Disadvantaged Business Enterprise (DBE) Requirements for CM Contracts for CM/GC Project Delivery, and Exhibit G, United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination Assurance so that such provisions shall be binding upon each Subcontractor.

F. CM RESPONSIBLE FOR SUBCONTRACTORS

The CM shall be responsible to CDOT for the acts and omissions of its agents and employees, Suppliers, Subcontractors performing Work under a contract with the CM, and its agents, Suppliers, or employees.

G. SUBSTITUTION OF SUBCONTRACTORS

The CM shall not add, delete, make a substitution, or change the role of, any Subcontractor, Supplier, person, or entity previously selected without the prior written approval of CDOT.

H. SUBCONTRACTUAL RELATIONS

By an appropriate agreement, written where legally required for validity, the CM shall require each Subcontractor and Supplier, to the extent of the Work to be performed by the Subcontractor or Supplier, to be bound to the CM by the terms of the Contract Documents, and to assume toward the CM all the obligations and responsibilities which the CM, by the Contract Documents, assumes toward CDOT and the Design Consultant. Said agreement shall preserve and protect the rights of CDOT and the Design Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor or Supplier so that the subcontracting thereof shall not prejudice such rights. Where appropriate, the CM shall require each Subcontractor or Supplier to enter into similar agreements with their subcontractors and suppliers.

The CM shall make available to each proposed Subcontractor or Supplier, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor or Supplier shall similarly make copies of such Contract Documents available to their sub-subcontractors. Each Subcontractor and Supplier shall be bound by this Section 7.H, Subcontractual Relations.

I. CDOT/SUBCONTRACTOR RELATIONSHIP

- i. The Parties recognize that the bidding and subcontracting procedures prescribed herein are intended to promote pricing of the Work that shall be fair and reasonable and based on full and open competition. The CM agrees to comply in a timely manner with reasonable requests for information concerning pre-qualification of a prospective Subcontractor, the evaluation and award of bids, or other obligations under this Agreement concerning pre-qualification, bidding, and subcontracting. Upon notice by CDOT, the CM agrees to meet and confer with CDOT and other invited, interested persons at the Denver office of CDOT or at the site, the choice of such location to be made by CDOT, or at some other location mutually agreeable to CDOT and CM, concerning its pre-qualification, bidding, and subcontracting procedures. The CM agrees to meet within three (3) business days of an election by CDOT and to comply with reasonable requests for information to be provided at such a meeting. CDOT agrees that this administrative procedure shall be exhausted prior to CDOT's exercising any contractual or other remedy relating to the pre-qualification, bidding, or subcontracting procedures specified herein.
- ii. Nothing contained in the Contract Documents, including this Agreement, shall be deemed to create any contractual relationship between any Subcontractor or Supplier and CDOT. Further, consistent with Section 17.K, Waiver, nothing in the Contract Documents, including this Agreement and the pre-qualification, bidding and subcontracting procedures specified herein, is intended to create, or shall be deemed to create third party beneficiary or other rights inuring to the benefit of any prospective Subcontractor, Supplier, or any other third person.

J. PAYMENTS TO SUBCONTRACTORS

- i. Monthly Work Product Review: On a monthly basis, the CM shall review the work product of each Subcontractor or Supplier participating on the Project and document the monthly work product as required under their subcontract. Any dispute which results in a disagreement regarding the amount of work completed or amount due must be detailed in the documentation. Work shall not be deemed completed or ended if there is an outstanding dispute. The CM and Subcontractor or Supplier, as applicable, shall both agree to and sign the documentation. If the Subcontractor or Supplier provides an invoice which is agreed to by the CM, such invoice may satisfy this requirement. This procedure must be carried out by all Subcontractors and Suppliers.
- ii. Prompt Payment. The CM is responsible for ensuring that all Subcontractors and Suppliers at all tiers are promptly paid. All Subcontractors and Suppliers must be paid within seven (7) days of the CM being paid from CDOT. If the CM or its Subcontractors fail to comply with this provision, the Project Manager will not authorize further payments to the CM until the required payments have been made.
- iii. Good Cause Exception. If the CM has "good cause" to delay or withhold a Subcontractor's or Supplier's, as applicable, progress payment, the CM shall notify

CDOT and the Subcontractor or Supplier, as applicable, in writing within seven days after receiving payment from CDOT. The notification shall specify the amount being withheld and provide adequate justification for withholding the payment. The notice shall also clearly state what conditions the Subcontractor or Supplier, as applicable, must meet to receive payment. "Good cause" shall include, but not be limited to, the failure of the Subcontractor or Supplier, as applicable, to make timely submission of required paperwork.

- iv. Monthly Reporting. For CDOT projects, by the 15th of each month, the CM shall record all payments to Subcontractors by completing an audit in the B2GNow System. If the CM has good cause for delay as described in section 7K(iii), the CM shall include the justification in its monthly audit. Once the CM enters a payment to a Subcontractor or Supplier, the Subcontractor or Supplier will receive a notice to confirm payment. The Subcontractor or Supplier shall have fifteen days from the notice to confirm payment or report an issue. If a Subcontractor or Supplier is also a payer, the Subcontractor or Supplier shall also report all prompt payment to its subcontractors. If the Subcontractor or Supplier does not report a prompt payment issue within fifteen days from the Contractor's monthly reporting, the Subcontractor waives CDOT's assistance in resolving the prompt payment issue and the monthly audit will be closed. This provision should not be construed to limit the Subcontractor's contractual remedies.
- v. Duties related to Disputes and Claims. Subject to CDOT's right to withhold from progress payments any amounts in dispute, and except as expressly stated otherwise in this Section, Payments to Subcontractors, any disagreement between CDOT and the CM relating to this Section 7 shall be subject to a Disputes and Claims process. Failure by CDOT to pay any amount in dispute shall not alleviate, diminish, or modify in any respect the CM's obligation to perform under the Contract Documents, including the CM's obligation to achieve Final Acceptance in accordance with the Contract Documents, and the CM shall not cease or slow down performance under the Contract Documents on account of any such amount in dispute. The CM shall proceed as directed by CDOT pending resolution of the dispute. Upon resolution of such dispute, each party shall promptly pay to the other any amount owing. Nothing in this Section is intended to affect the CM's rights and/or responsibilities pursuant to the Agreement.

8. WORK BY CDOT OR BY SEPARATE CONTRACTORS

A. CDOT'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

- i. CDOT reserves the right to perform Work related to the Project with CDOT's own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of this Agreement.
- ii. When separate contracts are awarded for different portions of the Project or other work on the site, the term separate contractor in the Contract Documents in each case shall mean the contractor who executes each separate agreement between CDOT and such contractor.
- iii. If CDOT does not accept any LLTP or any Construction CAP and advertises Bid Packages for such LLTP or Construction Phases for low bid solicitation, the CM

shall not be allowed to bid on such associated LLTP or Construction Phase Bid Packages as the prime contractor.

B. COORDINATION

To the extent separate contractors are not assigned to the CM for coordination pursuant to Section 10-Changes in the Work, CDOT shall provide and be responsible for the coordination of the Work of CDOT's own forces and of each separate contractor with the Work of the CM, who shall cooperate therewith as provided in Sections 8.C.i. through 8.C.v., Mutual Responsibility.

C. MUTUAL RESPONSIBILITY

- i. The CM shall afford to CDOT and separate contractors' reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall connect and coordinate the Work with theirs as required by the Contract Documents.
- ii. To ensure the proper execution of its subsequent Work, if any part of the CM's Work depends for proper execution or results upon the work of CDOT or any separate contractor, the CM shall, prior to proceeding with the Work, inspect and promptly report to CDOT any apparent discrepancies or defects in such other work that renders it unsuitable for such proper execution and results. The CM shall also measure work already in place and shall promptly report to CDOT and the Design Consultant any discrepancy between the executed work and the Drawings, Plans or Specifications. Failure of the CM to so report shall constitute an acceptance of CDOT's or separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the separate contractor's work after execution of the Work.
- iii. Any costs caused by defective or ill-timed work shall be borne by the party responsible, therefore.
- iv. Should the CM cause damage to the Work or property of CDOT, or to other work or property on the site, the CM shall promptly remedy such damage.
- v. Should the CM wrongfully delay or cause damage to the work or property of any separate contractor, the CM shall, upon due notice, promptly attempt to settle with such other separate contractor by agreement or otherwise to resolve the dispute.

9. COMPENSATION

A. CM'S CM PRECONSTRUCTION FEE

- i. All invoices shall be submitted by the CM to CDOT for payment pursuant to the terms of this Agreement. The CM shall submit its billings such that the cost for each activity or task contained in the Agreement shall be separately shown. Upon approval thereof, CDOT shall pay the appropriate amount of each invoice to the CM within 45 days of receipt of invoice if all charges are adequately documented and undisputed. Interest shall be paid on all undisputed and unpaid invoices that exceed the 45-day payment requirements under § 24- 30-202(24)(a) C.R.S. Progress payments may be claimed on a monthly basis pursuant to the payment format approved in this Agreement.
- ii. Subject to the provisions of this Agreement, and in consideration of the performance of this Agreement, CDOT shall pay the CM in current funds as compensation for its services, a "CM Preconstruction Fee" amount listed below:

CM's Preconstruction Fee

CM's Preconstruction Fee	Amount
CM's CM Preconstruction Fee through the Preconstruction Phase*	\$ _____
Total Compensation (Contract Sum)	\$ _____

*Only the CM Preconstruction Fee is initially approved for payment.

B. CM PRECONSTRUCTION FEE

- i. The CM Preconstruction Fee for the Work on this Project shall be equal to the Contract Sum, as stated in Section 9.F, Contract Sum.
- ii. If, after the Effective Date, Construction Budget increases by more than 25% from the original Construction Budget, which results in an increase to the total CM's CM Preconstruction Fee, CM shall be paid for such increases by Amendment.

C. CM'S MANAGEMENT PRICE PERCENTAGE

The Management Price Percentage shall be 10.5% as established in CDOT's Request for Proposal incorporated herein. This percentage shall be applied to all accepted Construction CAP Proposals and shall apply to all resulting general Construction Contracts.

D. ADJUSTMENTS IN CM'S MANAGEMENT PRICE PERCENTAGE

The Management Price Percentage shall not be changed at any point during the Project.

E. CONSTRUCTION AGREED PRICE (CAP)

- i. At an agreed upon Milestone, the CM shall deliver to CDOT, a Construction CAP proposal, as detailed in the Request for Proposal and all amendments. After CM and CDOT negotiation, and after mutual agreement to a CAP (including the CM's Management Price Percentage and incorporating CM's Bid Item Pricing proposal to the extent applicable) that is within the Construction Budget as established by CDOT, the CM shall agree to perform all of the Work required for such Construction Phase, even though all of the construction documents have not all been finalized and released for construction, and guarantee the maximum price to CDOT for the entire cost of the Work required for the applicable Construction Phase, as adjusted by deductive alternates required to maintain the aggregate of all LLTP CAPs and Construction CAPs below the Construction Budget, which have been previously approved by CDOT pursuant to Section 3.C, Cost Estimating and Project Management Software.
- ii. Each LLTP CAP and Construction CAP proposal shall include all of the CM's obligations to be performed pursuant to the terms of the Contract Documents for such LLTP or Construction Phase and shall include, but not be limited to, the following:
 - a) The total of all unit prices for the applicable Bid Package for such LLTP CAP or Construction CAP, as applicable;
 - b) For each Construction CAP, the installation cost of items to be procured by CDOT or CM in any LLTP and for the applicable Construction CAP;
 - c) The estimated maximum direct cost of Work for such LLTP or Construction Phase to be performed by the CM;
 - d) Costs for all Performance Bonds, Payment Bonds and insurance premiums

required by CM pursuant to this Agreement for such LLTP CAP or Construction CAP, as applicable;

- e) For each LLTP CAP and Construction CAP, the Management Price Percentage shall be included;
 - f) For each LLTP CAP and Construction CAP, CM shall use the unit prices provided in their bid item pricing as documented in CAP Acceptance Letter.
 - g) An aggregate amount for items 1 through 5 above (as applicable);
 - h) The Schedule of Bid Items, which shall be consistent with previously approved Schedules of Bid Items, as adjusted as required pursuant to the agreed upon OPCC;
 - i) Contain no conditions, exceptions, or allowances;
 - j) Be substantiated with complete supporting documentation acceptable to CDOT to clearly define the anticipated Work to be performed by the CM and facilitate a determination when final Drawings, Plans and Specifications are released for construction, as to whether there has been an increase in the Work required of the CM in the documents released for construction from the agreed upon Milestone documents on which the LLTP CAP or Construction CAP (as applicable) was based.
- iii. If the CM submits a LLTP CAP or Construction CAP proposal contrary to the provisions of Sections 9.E.i, 9.E.ii, and/or 9.E.iii, Construction Agreed Price, the proposal may be rejected by CDOT. CDOT shall be under no obligation to accept such LLTP CAP or Construction CAP proposals or any subsequent proposals. CDOT may declare the CM to be in default; and payment may be withheld from the CM, excepting the CM's CM Preconstruction Fee for the CM Preconstruction Services and all previously approved LLTPs, until a satisfactory LLTP CAP or Construction CAP is furnished in compliance with Sections 9. E i. if, 9.E.ii, and 9.E.iii, Construction Agreed Price.
- iv. If, in developing a LLTP CAP or Construction CAP, the CM believes any documentation or information, consistent with the agreed upon Milestone Drawings, Plans and Specifications, is not sufficiently complete to clearly define the anticipated Work, the CM shall be responsible for making all necessary inquiries and requests to establish the same.
- v. When any Construction CAP is agreed upon and accepted by CDOT, it shall be made a part of a separate general Construction Contract and subject to the terms thereof. If the CM, in good faith, furnishes CDOT with a Construction CAP proposal which meets the criteria of Sections 9.E.ii and 9.E.iii, Construction Agreed Price, and the Parties fail to mutually agree to that number as set forth above, the Parties expressly agree that default termination of the CM shall not be a remedy therefor under this Agreement, and CDOT shall be entitled to proceed with the Work as set forth elsewhere in this Agreement.

F. CONTRACT SUM

The Contract Sum shall be the maximum amount payable under this Agreement and the Contract Documents to CM by the State and CDOT, as determined by CDOT from available funds. The Contract Sum can only be modified by Amendment.

G. PAYMENTS

- i. CM's CM Preconstruction Fee - For the performance of CM Preconstruction Services in the Preconstruction Phase, the compensation set forth in Section 9.A, CM's

Preconstruction Fee, shall be paid monthly based upon detailed invoices totaling the aggregate of all Work previously performed as submitted by the CM, with the total payment not to exceed the fee for such services as set forth in Section 9.A, CM's Preconstruction Fee.

ii. LLTP CAPs

At the time of the agreement and acceptance of each LLTP CAP, the CM shall submit to CDOT, using the CDOT Electronic Bid System or an excel spreadsheet approved by CDOT, a complete, detailed, and itemized Schedule of Bid Items for such LLTP CAP.

iii. All payments to the CM shall be in the form of invoices.

H. CONDITIONS OF COMPENSATION/CONDITION PRECEDENT

i. Financial obligations of the State payable after the current fiscal year are contingent upon funds for the purpose being appropriated, budgeted, and otherwise made available.

ii. The total cost of the Work including but not limited to the CM's CM Preconstruction Fee, and any and all sums claimed by the CM to be due as set forth throughout this Agreement, are expressly subject to the limitations set forth in Sections 9.H.i, Conditions of Compensation/Condition Precedent, and nothing herein contained shall be construed or understood to commit CDOT to a total expense greater than that which is provided in the appropriation or allocation. Further, no funds appropriated or allocated for any other purpose shall be expended for this Agreement. CDOT agrees not to issue any Modifications which would cause the sums due the CM pursuant to this Agreement to exceed the appropriation or allocation for the Work.

iii. CM shall not receive payment for any Work without its receipt of the required, appropriate Notice to Proceed.

10. CHANGES IN THE WORK

AMENDMENTS AND CHANGE ORDERS

A. CDOT, with the approval of State Controller, without invalidating this Agreement and without notice to any surety, may order extra work, or make changes by altering, adding to, or deducting from the Work, the Construction Budget, the Contract Sum, any LLTP CAP, the CM's CM Preconstruction Fee and Term being adjusted accordingly.

B. Each adjustment in the Work, the Construction Budget, the Contract Sum, any LLTP CAP, the CM's CM Preconstruction Fee and Term resulting from an Amendment shall clearly separate the amount attributable to the cost of the Work and the CM's Fee, if any. The Construction Budget, Contract Sum, any LLTP CAP, the CM's CM Preconstruction Fee, and Term may be changed only by Amendment.

C. Except Work. Any changes in the Work that result in an increase in the Work, the Construction Budget, the Contract Sum, any LLTP CAP, the CM's CM Preconstruction Fee, and Term shall be added to this Agreement by an Amendment pursuant to Section 10 Amendments and Change Orders.

D. No extra Work or change in the Contract Documents shall be made unless by a written Amendment or Change Order. No claim for any change to the Work, the Construction Budget, the Contract Sum, any LLTP CAP, the CM's CM Preconstruction Fee and Term shall be valid unless so ordered. An Amendment or Change Order signed by the CM conclusively establishes the CM's agreement therewith, including the adjustment in the Contract Sum, any LLTP CAP, the CM's CM Preconstruction Fee, and the Term.

- E. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both Parties in an Amendment.
- F. All Change Orders, changes in estimated quantities, hazardous materials, and differing site conditions shall follow the Standard Specifications.

11. **INSURANCE**

CM shall obtain and maintain and ensure that each Subcontractor shall obtain and maintain all applicable insurance as specified in this section at all times during the term of this Contract, but Subcontractors at a minimum shall maintain workers' compensation, commercial general liability, and commercial automobile liability insurance. All insurance policies required by this Contract shall be issued by insurance companies as approved by CDOT. Any additional insurance that is required for the general Construction Contract, should parties successfully negotiate a CAP, shall be documented in the independent contract for that service.

A. **WORKERS' COMPENSATION INSURANCE**

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all CM or Subcontractor employees acting within the course and scope of their employment. In cases where any class of employees engaged in hazardous work under this Agreement at the site of the Project is not protected under the workers' compensation statute, the CM shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

B. **COMMERCIAL GENERAL LIABILITY INSURANCE ("CGL")**

- i. Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

Insurance Category	Amount
Each occurrence	\$1,000,000
General aggregate	\$2,000,000
Products and completed operations aggregate	\$2,000,000
Any one fire	\$50,000
Personal injury	\$1,000,000

- ii. The following coverages shall be included in the CGL:
 - a) Per project general aggregate (CG 25 03 or similar).
 - b) Additional insured status in favor of the State of Colorado and any other parties as outlined in the Agreement and must include both ONGOING operations and COMPLETED operations per CG2010 10/01 and CG 2037 10/01 or equivalent as permitted by law.
 - c) Personal injury liability.
 - d) Contractual liability coverage to support indemnification obligation per Section 12.
 - e) Explosion, collapse and underground (coo).

- iii. The following exclusionary endorsements are prohibited in the CGL policy:
 - a) Damage to Work performed by Subcontract/vendor (CG 22-94 or similar).
 - b) Contractual liability coverage exclusion modifying or deleting the definition of an "insured contract" from the unaltered SO CG 0001 1001 policy from (CG 24 26 or similar).
 - c) If applicable to the Work to be performed: residential or multi-family.
 - d) If applicable to the Work to be performed: exterior insulation finish systems.
 - e) If applicable to the Work to be performed: subsidence or earth movement.

The CM shall maintain general liability coverage including products and completed operations insurance, and the additional insured with primary and non-contributory coverage as specified in this Agreement for three (3) years after completion of the Project.

C. AUTOMOBILE LIABILITY INSURANCE

- i. Automobile liability insurance covering any auto (including owned, hired, and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. CYBER/NETWORK SECURITY AND PRIVACY LIABILITY

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation, or infringement of right to privacy, consumer data protection law, confidentiality, or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a) \$1,000,000 each occurrence; and
- b) \$2,000,000 general aggregate.

E. PROFESSIONAL LIABILITY INSURANCE

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each claim; and
- ii. \$1,000,000 general aggregate.

F. CRIME INSURANCE

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. UMBRELLA LIABILITY INSURANCE

The CM shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in Section 11.B., Commercial General Liability Insurance, above.

Coverage shall follow the terms of the underlying insurance. The amounts of insurance required in Sections above may be satisfied by the CM purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned.

- i. Each occurrence \$5,000,000 and
- ii. Aggregate \$5,000,000

H. BUILDER'S RISK INSURANCE

- i. If the CM provides any construction material or services during the Preconstruction Phase, CM shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the sum of the construction during the Preconstruction Phase, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising total value for the Work at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, or the Date of Notice specified on the CDOT Notice of Acceptance, whichever occurs first.
- ii. This builder's risk insurance obtained in the Preconstruction Phase shall include interests of the CDOT, the CM, Subcontractors and sub-subcontractors in the Project as named insureds.
- iii. All associated deductibles shall be the responsibility of the CM. Under no circumstance should CM increase the total cost of the Preconstruction Phase due to the deductible of the builder's risk insurance.
- iv. Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design Consultant's and CM's services and expenses required as a result of such insured loss. The policy may contain commercially available sublimits for the perils of earthquake and flood.
- v. The CM shall maintain builders risk coverage including partial use by CDOT. The CM shall waive all rights of subrogation as regards the State of Colorado and CDOT, its officials, its officers, its agents, and its employees, all while acting within the scope and course of their employment and for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work.
- vi. The CM shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts.
- vii. Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such an event, the CM shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

I. POLLUTION LIABILITY INSURANCE

If the CMCM is providing work, directly or indirectly, with pollution/environmental hazards, the CM must provide or cause those conducting the work to provide pollution liability insurance coverage. Pollution liability policy must include contractual liability coverage. The State of Colorado must be included as additional insureds on the policy.

The policy limits shall be \$1,000,000. Any deductible will be the sole responsibility of the CM.

J. ADDITIONAL INSURED

The State shall be named as additional insured on all commercial general liability policies (leases and Construction Contracts require additional insured coverage for completed operations) required of CM and Subcontractors.

K. PRIMACY OF COVERAGE

Commercial General, Automobile and Pollution Liability Coverage required of CM and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by CM or the State.

L. CANCELLATION

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to CM and CM shall forward such notice to the State in accordance with §15 within seven days of CM's receipt of such notice.

M. SUBROGATION WAIVER

The Workers' Compensation, Commercial General, Automobile and Pollution Liability, as well as the Builders' Risk insurance policies secured or maintained by CM or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against CM or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

N. PUBLIC ENTITIES

If CM is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, et seq., C.R.S. (the "GIA"), CM shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, CM shall ensure that the Subcontractor maintains at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

O. CERTIFICATES

CM shall provide to CDOT certificates evidencing CM's insurance coverage required in this Contract within seven Business Days following the Effective Date. CM shall provide to CDOT certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if CM's subcontract is not in effect as of the Effective Date, CM shall provide to CDOT certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following CM's execution of the subcontract. No later than 15 days before the expiration date of CM's or any Subcontractor's coverage, CM shall deliver to CDOT certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by CDOT, CM shall, within seven Business Days following the request by CDOT, supply to CDOT evidence satisfactory to CDOT of compliance with the provisions of this section.

12. INDEMNIFICATION

A. The CM shall indemnify, save and hold harmless the State, its employees and agents,

against any and all claims, damages, liability and court awards including costs, expenses and attorney's fees, to the extent such claims are caused by any negligent act or omission of the CM, its employees, agents, Subcontractors or assignees pursuant to the terms of this Agreement, but not to the extent such claims are caused by any act or omission of, or breach of contract by the State, its employees, agents, other contractors or assignees, or other parties not under control of or responsible to the CM.

- B. In any and all claims against CDOT, its agents or employees, by any employee of the CM, any Subcontractor of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 12 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CM or any Subcontractor of any tier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- C. The obligations of the CM under this Section 12 shall not extend to the liability of the Design Consultant, its consultants, agents, or employees, arising out of:
 - i. the preparation or approval of maps, Drawings, Plans, opinions, reports, surveys, Amendments, Change Orders, designs, or Specifications;
 - ii. the giving of or the failure to give direction or instructions by the Design Consultant, its consultants, agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage; or
 - iii. any acts of the Design Consultant, its consultants, agents, or employees outside of the scope of their duties pursuant to the Contract Documents.

13. CM'S PERFORMANCE AND PAYMENT BONDS

- A. The CM shall furnish a Performance Bond and a Payment Bond on approved CDOT forms, executed by a corporate surety licensed to transact such business in the State of Colorado, each in the full amount of the applicable LLTP CAP with the Amendment for the addition of the applicable Bid Package to this Agreement. If subsequent Amendments are made to this Agreement which substantially increase the applicable LLTP CAP, increased bond limits shall be furnished by the CM upon the acceptance of the increase in the applicable LLTP CAP. The then current bonds shall apply to all Work included within the scope of the applicable LLTP, including but not limited to all prior Work which may have been performed when previous bonds were in effect.
The Amendment for such applicable LLTP shall not take effect or be in force until the CM shall have furnished and delivered to CDOT a Payment Bond and Performance Bond, attached hereto as Exhibits D.2 and D.3, acceptable to CDOT, in a penal sum equal to the nearest integral \$100.00 in excess of the applicable LLTP CAP duly executed by a corporate surety, qualified and licensed to do business in Colorado and maintaining a general agent therein.
- B. The Performance Bond shall remain in effect until at least one (1) year after the date when such LLTP receives Finally Acceptance, except as otherwise provided by law or regulation or by the Contract Documents. The Payment Bond shall remain in effect for not less than the required statutory period.
All bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit

Staff Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. All bonds must be acceptable to CDOT.

- C. The initial Bonds shall be filed with CDOT at the time of execution of the initial, applicable Bid Package.
- D. If the surety on any bond furnished by CM is declared bankrupt, becomes insolvent, its right to do business in the State of Colorado is terminated or it ceases to meet the requirements of Sections 13.1 and 13.2, CM's Performance and Payment Bonds, the CM shall within ten (10) days thereafter, substitute another bond and surety, both of which must be acceptable to CDOT.
- E. Upon the issuance and acceptance of the Performance Bonds and Payment Bonds, the premium therefor shall be included in the first invoice for the applicable LLTP CAP. The premiums for all bonds and increases thereto to be provided by the CM as well as those Subcontractors required to be bonded by the CM shall be included in the applicable LLTP CAP, and the price of each applicable Amendment and Change Order, and the CM shall not be entitled to additional compensation therefor.

14. ACCESS TO WORK AND OBSERVATION

CM'S WORK

- A. CDOT shall be in the first instance, the judge of the performance of the CM as it relates to compliance with the Contract Documents and quality of workmanship and material.
- B. CDOT and its professional consultants, staff or practicing, shall make visits to the site appropriate to the stage of construction to become familiar with the progress and quality of the Work, and to determine that the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of materials.
- C. CDOT shall also observe the following for compliance with the Contract Documents:
 - i. Shop Drawings; and
 - ii. Any special testing required in the Contract Documents.

15. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT

A. CDOT ACCEPTANCE LETTER

- i. The CDOT Acceptance Letter shall establish the final completion date of the Work or any portion thereof. It shall not be authorized until the CM shall have performed all of such Work to allow completion and approval of the pre-acceptance list.
- ii. Where partial Notices of Substantial Completion have been issued, partial CDOT Acceptance Letters may be similarly issued when appropriate for that portion of the Work. Partial CDOT Acceptance Letters may also be issued to exclude the Work described in Change Orders executed during late stages of the Work where a later completion date for the Change Order Work is expressly provided for in the Agreement as amended by the Change Order, provided the Work can be adequately described to allow advertisement of the Notice of Final Settlement to be issued without confusion as to the Work included for which final payment shall be made.

B. FINAL SETTLEMENT

- i. Final payment and settlement shall be made on the date fixed and published for such

- payment except as hereafter provided. CDOT shall not authorize final payment until all items on the pre- acceptance list have been completed, the CDOT Acceptance Letter issued for all of the Work, and the Notice of Final Settlement published. Before CDOT may issue the Notice of Final Settlement and advertise the Work for final payment, the CM shall have corrected all items on the pre-acceptance list except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have delivered to CDOT, all statements to support local sales tax refunds, if any.
- ii. Upon completion of the foregoing, the Project shall be advertised in accordance with the Notice of Final Settlement by two publications of such notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Work, or the CM from Subcontractors, suppliers or material men based on good faith disputes; the resolution of the question of payment in such cases being directed by statute.
 - iii. Except as hereafter provided, on the date of final settlement thus advertised, provided the CM has submitted a written Notice of Final Settlement to CDOT that no Disputes and Claims are outstanding, and further provided that CDOT shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due the CM, CDOT and the State Controller shall withhold from the CM on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as CDOT reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to complete unfinished Work or the cost to repair defective Work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the CM, as set forth in the published Notice of Final Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a notice of such action at law shall have been filed with CDOT. At the expiration of the ninety (90) day period, CDOT shall release to the CM all other money not the subject of such action at law or withheld based on the cost to complete unfinished Work or the cost to repair defective Work.

C. RECORDS

- i. Maintenance- The CM (and any Subcontractor) shall maintain a complete file of all books, records, accounts, and other written or computerized materials which pertain to the accounting and performance of Work, the delivery of services, and the compliance with applicable requirements under this Agreement, and shall maintain such records for a period of six (6) years after the date of termination of the Agreement, or for such further period as may be necessary to resolve any matters which may be pending.
- ii. Access- The CM (and any Subcontractor) shall permit CDOT, the FHWA, and their designated representatives, during normal business hours, to access all books, records,

- accounts, and other relevant material concerning the Work performed or services provided under this Agreement for the purpose of investigation, audit, and copying to ascertain compliance with, or to detect violation of, any applicable federal and/or State law or regulation or with the terms of the Agreement, or to evaluate performance under the Agreement. All records or information obtained in this manner shall be used only for the purpose described herein, except as otherwise authorized by law.
- iii. Subcontracts- For the benefit of CDOT, the CM shall include the language of this Section 15.C, Records, in all subcontracts, in order to require the Subcontractor(s) to comply with the record maintenance and access conditions described above.

16. CDOT'S RIGHT TO TERMINATE CONTRACT

A. TERMINATION FOR LACK OF SELECTION OF BUILD ALTERNATIVE

CDOT may terminate in the event the NEPA environmental review process does not result in the selection of a build alternative.

B. TERMINATION FOR DEFAULT

- i. Causes for Default
 - a) If the CM should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed to take over its affairs, or if it should fail to prosecute the Work with due diligence and carry the Work forward in accordance with its work schedule or if it should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by it, CDOT may service written notice on the CM and the surety on its Performance Bonds and Payment Bonds, stating its intention to exercise one of the remedies hereinafter set forth and the grounds upon which CDOT may, without prejudice to any other right or remedy, exercise their Termination for Default Rights, having first obtained a certificate from the Design Consultant that sufficient causes exist to justify such action.
 - b) CM's failure to comply with Section 5, Commitment Modification of Exhibit F, they commit a material breach of the Contract and CDOT may, without prejudice to any other right or remedy, exercise their Termination for Default right.
- ii. Conditions and Procedures
 - a) CDOT may terminate the services of the CM, which termination shall take effect immediately upon service of a Notice of Termination thereof on the CM and its surety, whereupon the surety shall have the right to take over and perform the Agreement. If the surety does not commence performance of this Agreement within ten (10) days after service of the Notice of Termination, CDOT may take over the Work, take possession of and use all materials, equipment, and deliverables on the site, and prosecute the Work to completion by such means as it shall deem best. In the event of such termination of its service, the CM shall not be entitled to any further payments under this Agreement until the Work is completed and accepted. If the cost, expenses, and damages to perform the Work, as determined by CDOT, exceed such unpaid balance of the Contract Sum or the applicable LLTP CAP as the case may be, the CM and its surety shall pay the difference to CDOT.
 - b) CDOT may take control of the Work and either make good the deficiencies of the CM or direct the activities of the CM in doing so, employing such additional help as CDOT deems advisable. In such event, CDOT shall be entitled to collect from

the CM and its surety, or to deduct from any payment then or thereafter due the CM, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of the CM, provided CDOT approves the amount thus charged to the CM.

- c) CDOT may require the surety on the CM's Performance Bond to take control of the Work at once and see to it that all the deficiencies of the CM are made good, with due diligence. As between CDOT and the surety, the cost of making good such deficiencies shall all be borne by the surety. If the surety takes over the Work, either upon termination of the services of the CM or upon instructions from CDOT to do so, the provisions of the Contract Documents shall govern in respect to the Work done by the surety, the surety being substituted for the CM as to such provisions, including provisions as to payment for the Work and provisions of this Section as to the right of CDOT to do the Work or to take control of the Work.

C. TERMINATION FOR CONVENIENCE OF CDOT

- i. The performance of Work under this Agreement may be terminated, in whole or in part, by CDOT when CDOT determines that the purposes of the distribution of State monies under this Agreement would no longer be served by completion of the Work. Termination of Work hereunder shall be affected by delivery to the CM of a Notice of Termination specifying the extent to which performance of Work under this Agreement is terminated and the date upon which such termination becomes effective.
- ii. After receipt of the Notice of Termination, the CM shall cancel its outstanding commitments hereunder covering the procurement of all applicable LLTP and CM Services deliverables. In addition, the CM shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering all applicable LLTP and CM/GC Services and extending beyond the date of such termination to the extent that they relate to the performance of any Work terminated by the Notice of Termination. With respect to such canceled commitments, the CM agrees to:
 - a) Settle all outstanding liabilities, disputes and claims arising out of such cancellation of commitments, with the approval or ratification of CDOT, to the extent it may require, which approval and ratification shall be final for all purposes of this clause; and
 - b) Assign to CDOT in the manner, at the time and to the extent directed by CDOT, all of the right, title, and interest in the CM under the orders and Subcontractors so terminated, in which case CDOT shall have the right, in its discretion, to settle or pay any or all liabilities, disputes and claims arising out of the termination of such orders and subcontracts.
- iii. The CM shall submit its Termination Claim to CDOT within 90 days after receipt of a Notice of Termination unless one or more extensions in writing are granted by CDOT upon written request of the CM within such 90-day period or authorized extension thereof. Upon failure of the CM to submit its Termination Claim within the time allowed, CDOT may determine, on the basis of information available to it, the amount, if any, due to the CM by reason of the termination, and shall thereupon pay to the CM the amount so determined.
- iv. Costs claimed, agreed to, or determined pursuant to this Section 16, Termination for

Convenience of CDOT, shall be in accordance with the provisions of Section 108 Prosecution and Progress in the Standard Specifications as in effect on the date of this Agreement all of which is limited to the Contract Sum and the applicable LLTP CAP and the provisions of Sections 9.F, Contract Sum, and 9.H, Conditions of Compensation/Condition Precedent. The sums to be paid to the CM shall not include any compensation, loss, or lost profit on Work not performed by the CM or any of its Subcontractors of any tier or suppliers.

- v. Subject to the provisions of Section 16.B, Termination for Convenience of CDOT, above, the CM and CDOT may agree upon the whole or any part of the amount(s) to be paid to the CM by reason of the termination under this section, which amount(s) may include any reasonable cancellation charges thereby incurred by the CM and any reasonable loss upon outstanding commitments for applicable LLTP CAP and CM Services which it is unable to cancel; provided, however, that in connection with any outstanding commitments for applicable LLTP CAP and CM Services which the CM is unable to cancel, the CM shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an Amendment to this Agreement, and the CM shall be paid the agreed amount.
- vi. CDOT may from time to time, under such terms and conditions as it may prescribe, make partial payment against costs incurred by the CM in connection with the terminated portion of this Agreement, whenever, in the opinion of CDOT, the aggregate of such payment is within the amount to which the CM shall be entitled hereunder.
- vii. The CM agrees to transfer title and deliver to CDOT, in the manner, at the time, and to the extent, if any, directed by CDOT, such information and items which, if this Agreement had been completed, would have been required to be furnished to CDOT, such information and items which, if this Agreement had been completed, would have been required to be furnished to CDOT, including:
 - a) Completed or partially completed Drawings (including as-built Drawings), Shop Drawings, Plans, Specifications, and information; and
 - b) Materials and equipment produced or in process or acquired in connection with the performance of the Work terminated by the Notice of Termination.

Other than the above, any termination inventory resulting from the termination of this Agreement may, with the written approval of CDOT, be sold or acquired by the CM under the conditions prescribed by and at a price or prices approved by CDOT. The proceeds of any such disposition shall be applied in reduction of any payments to be made by CDOT to the CM under this Agreement or shall otherwise be credited to the price or cost of Work covered by this Agreement or paid in such other manner as CDOT may direct. Pending final disposition of property arising from the termination, the CM agrees to take such action as may be necessary, or as CDOT may direct, for the protection and preservation of the property related to this Agreement, which is in the possession of the CM, and in which CDOT has or may acquire an interest.

D. AVAILABLE FUNDS CONTINGENCY TERMINATION

- i. The Parties expressly recognize that the CM is to be paid, reimbursed, or otherwise compensated with funds provided to CDOT for the purpose of contracting for the Work provided for herein, and therefore, the CM expressly understands and agrees that all its rights, demands, and claims to compensation arising under this Agreement

are contingent upon receipt of such funds by the State. If such funds or any part thereof are not received by the State, the State may immediately terminate this Agreement without liability, including for termination costs.

17. MISCELLANEOUS PROVISIONS

A. EQUAL EMPLOYMENT OPPORTUNITY, AND NONDISCRIMINATION

- i. The CM confirms that it has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion, or handicap; and that it maintains no employee facilities segregated on the basis of race, color, religion, or national origin.
- ii. The terms of the US Department of Transportation Standard Title VI/Non-Discrimination Assurances, Exhibit G, shall be followed by the CM during the performance of this contract. The CM shall comply with all applicable legal requirements that enumerate unlawful employment practices including discrimination because of race, religion, color, gender, age, disability, or national origin, and that define actions required for affirmative action and minority/disadvantaged business programs.

The CM shall not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age, or handicap.

The CM shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, national origin, religion, gender, age, or handicap. Such action shall include the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CM agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- iii. Inclusion in Subcontracts. The CM shall include Sections 7.A (Subcontracting), 17.A (Equal Employment Opportunity, Labor Compliance, and on the Job Training) and 17.B (Disadvantaged Business Enterprises (DBE) and Emerging Small Business (ESB)) in every Subcontract over \$10,000 (including purchase orders), so that such provisions shall be binding upon each Subcontractor.

B. DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND EMERGING SMALL BUSINESS (ESB)

- i. Disadvantaged Business Enterprises. The CM shall comply with CDOT's Disadvantaged Business Enterprises (DBE) Policy ensuring that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The CM shall comply with the (DBE) Requirements for Construction Manager (CM) Contracts for CM/GC Project Delivery, Exhibit F. The CM shall either meet Contract Goal for CM/GC Services and/or shall make a good faith effort to meet the Contract Goal.
- ii. The CM will look for opportunities to facilitate and incorporate the participation of ESBs throughout the project.

C. LIENS

Colorado statutes do not provide for any right of lien against public property. In lieu thereof, Sections 38-26-107 et seq. C.R.S., as amended, provided adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment or services

toward construction of the particular public work in that final payment may not be made to a CM until all such creditors have been put on notice by publication in the public press of such pending payment and given opportunity to stop payment to the CM in the amount of such claims.

D. COMPLIANCE WITH CDOT INFORMATION INTERCHANGE SYSTEM ACCESS POLICY

If the CM requires access to the CDOT Information Interchange system, the CM shall comply with the requirements and responsibilities for such access, which are set forth in the instructions accompanying CDOT's Information Interchange system. Under no circumstances shall the CM or any of its employees, Subcontractors or Suppliers access, or attempt to access, the CDOT Information System through the account of a CDOT employee or a former CDOT employee.

E. INTELLECTUAL PROPERTY

- i. **PATENT RIGHTS (Federal Funds).** If any invention, improvement, or discovery of the CM or any of its Subcontractors is conceived or first actually reduced to practice in the course of or under this Agreement's Work, and if such is patentable, the CM shall notify CDOT immediately and provide a detailed written report.

The rights and responsibilities of the CM, Subcontractors, Design Consultant, and CDOT with respect to such invention, improvement, or discovery shall be determined in accordance with applicable federal laws and regulations in existence on the date of execution of this Agreement which define CM's title, right to elect title, federal government "march in" rights, and the scope of the federal government's right to a nonexclusive, irrevocable, paid-up license to use the subject invention for its own. The CM shall include the requirements of this section in its subcontracts for the performance of any Work under this Agreement.

- ii. **RIGHTS IN DATA AND COPYRIGHT (Federal Reserved Rights).** Except for its own internal use, the CM shall not publish or reproduce any data/information, in whole or part, that is recorded in any form or medium whatsoever and that is delivered or specified to be delivered under this Agreement, nor may it authorize or permit others to do so, without the written consent of the federal government, through the State, until such time as the federal government may have released such data/information to the public. As authorized by 49 C.F.R. 18.34, the federal government, through the State, reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize the State and others to use:

- a) any Work developed under this Agreement or a resulting subcontract irrespective of whether or not it is copyrighted; and
- b) any rights of copyright to which the CM, or Subcontractor purchases ownership with federal assistance.

- iii. **INFRINGEMENT**

The CM shall hold and save harmless the State, from any and all claims for infringement, by reason of the use of any patented design, device, material, process, any trademark, or copyright and shall indemnify the State for any costs, expenses and damages which it may be obligated to pay, by reason of infringement, at any time during the prosecution or after completion of the Work.

F. EXECUTION OF EXHIBITS

It is contemplated by the Parties that certain exhibits hereto shall not be accomplished or

finalized at the time this Agreement is executed as such exhibits must, by the nature of the provisions relative thereto, be executed by the Parties subsequent to the execution of this Agreement. The Parties shall be diligent in accomplishing such exhibits at the earliest appropriate time in accordance with the provisions hereof.

G. CAPTIONS

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

H. ENTIRE UNDERSTANDING

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

I. TAXES

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under §§39-26-101 and 201, et seq., C.R.S. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. CM shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing CM for such taxes.

J. THIRD PARTY BENEFICIARIES

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

K. WAIVER

Waiver of any breach under a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

L. CORA DISCLOSURE

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under §24-93-101 et seq., C.R.S. if any, are subject to public release through the Colorado Open Records Act, §24-72-201, et seq., C.R.S.

18. FHWA SPECIAL PROVISIONS

Federal Maritime Administration (MARAD), 46 CFR 381, commonly known as cargo preference requirements, are applicable to the Federal Aid Highway Program. The requirements of this Special Provision apply to items transported by ocean vessel.

- A. CM shall utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. Gross tonnage is computed separately for dry bulk carriers, dry cargo liners, and tankers.

CM shall furnish a legible, English language copy of a rated 'on-board' commercial ocean bill- of-lading for each shipment of cargo described in the previous paragraph. Furnish the

bill-of-lading within 20 days following the date of loading for shipments originating in the United States and within 30 working days following the date of loading from shipments originating outside the United States.

Furnish bills-of-lading to the CDOT Engineer and to the following:

Division of National Cargo

Office of Market

Development Maritime

Administration

Washington, DC 20590

B. Subcontracts

Include the language in Section “A, General” of this Special Provision in all subcontracts issued pursuant to this contract.

19. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State’s Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State’s risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

CM shall perform its duties hereunder as an independent contractor and not as an employee. Neither CM nor any agent or employee of CM shall be deemed to be an agent or employee of the State. CM shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. CM and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for CM or any of its agents or employees. CM shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. CM shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

CM shall comply with all applicable federal and State laws, rules, and regulations in

effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold CM harmless; requires the State to agree to binding arbitration; limits CM's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. CM hereby certifies and warrants that, during the term of this Contract and any extensions, CM has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that CM is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 & 24-50-507 C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. CM has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of CM's services and CM shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) & 24-30-202.4, C.R.S.

Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq., C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to CM in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by CM by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and CM, or by any other appropriate method for collecting debts owed to the State.

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