

Construction Manager for CM/GC Preconstruction Services Contract

Cover & Signature Pages

State Agency: Colorado Department of Transportation	451XXXXXX [FY]-HA[Region]-XXXX
Construction Manager:	Effective Date: Date of the State Controller Signature
Construction Budget & Construction Manager Preconstruction Management Fee \$ _____ & \$ _____	Termination Date: 5 years from the Effective Date
Project and Contract Purpose: [Preconstruction Services for the Project SOW described in the RFP]	
Exhibits: - 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, CM's Management Price Percentage (MPP) Breakdown; - Exhibit E, Sample Contract Amendment; - Exhibit F, [RESERVED] 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 Contract: - The Department's current Colorado Department of Transportation Standard Specifications for Road and Bridge Construction ("Standard Specifications") and - Request for Proposal dated _____ [note addendum with dates, if any], (the "Request for Proposal" or "RFP") and Construction Manager's proposal including, but not limited to, the technical proposal and the CM's Price Proposal detailing the CM's Cost Model approach, dated _____ (the "Proposal").	

Order of Precedence:

The provisions of this Contract shall govern the relationship of the State and the CM. In the event of conflicts or inconsistencies between this Contract, 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:

1. Any federal laws, rules, or regulations applicable to the Contract including Exhibit G;
2. Colorado Special Provisions;
3. The provisions of the main body of this Contract;
4. Any fully executed Amendment;
5. Exhibits A-E of this Contract in descending order
6. Request for Proposal;
7. CM's Proposal; and
8. The Standard Specification, incorporated by reference.

Notice Contacts:**CDOT Project Director**

Title _____

Address _____

Phone _____

Email _____

CM Project Director

Address _____

Phone _____

Email _____

[REMANDER OF PAGE BLANK]

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.

CONSTRUCTION MANAGER Construction Manager:	STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Transportation For the Executive Director Shoshana M. Lew
By: Title: Date: _____	By: Keith Stefanik, P.E. Chief Engineer Date: _____
STATE OF COLORADO Jared S. Polis, Governor Statewide Bridge and Tunnel Enterprise Signed By: _____ For the Executive Director Colorado Department of Transportation for Statewide Bridge and Tunnel Enterprise Date: _____	
STATE OF COLORADO STATE CONTROLLER Robert Jaros, CPA, MBA, JD Signed By: _____ Colorado Department of Transportation, Controller Delegate Effective Date: _____	

CONSTRUCTION MANAGER FOR CMGC PRECONSTRUCTION SERVICES CONTRACT

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CONSTRUCTION MANAGER FOR CMGC PRECONSTRUCTION SERVICES CONTRACT

1. RECITALS

- A. [Formal legal name of CM], the Construction Manager (CM) and [if funding then “the Statewide Bridge and Tunnel Enterprise and”] the Colorado Department of Transportation [(collectively CDOT or the State)] and [CM company name] have negotiated the terms of this contract (“Contract”) pursuant to Section 24-93-104, C.R.S.
- B. CDOT and the CM for consideration hereinafter set forth, agree that the above Cover, Signature Pages, and these Recitals are incorporated in this Contract for all purposes.
- C. This Contract is for CM Services only during the Preconstruction Phase of the Project with an option to negotiate pricing for Construction Packages of the Project.
- D. Parties acknowledge that the CM was selected after a determination that the CM’s Proposal established the CM as the most advantageous service provider pursuant to CDOT’s Request for Proposal, issued on the dates shown on the Cover Sheet of this Contract.
- E. In the performance of the Work under this Contract, the CM acknowledges that time is of the essence for Project delivery. Accordingly, portions of the Project construction phase will be designed as separate Construction Packages and will be under construction before other Construction Packages are fully designed. This accelerated approach to construction requires maximum cooperation between all parties contracted for the Project including CM, the Design Consultant and the construction general contractor or contractors. It is expressly understood that CDOT shall directly retain the services of the Design Consultant and the construction general contractor or contractors under separate contracts. It is also recognized that the Work to be performed by the CM and the relationship between the parties and the Design Consultant shall be coordinative. Some aspects of the coordinative performance are in a developmental state during performance of this Contract and not fully defined herein. In furtherance thereof, if there appears to be a duplication, overlap or conflict of the responsibilities or duties between the Design Consultant and CM, or an absence of designation, such questions(s) regarding any conflicting responsibilities shall be submitted to the CDOT Project Director in writing to answer. For any such questions presented, CDOT’s Project Director will issue a written determination of the party responsible for the service in question.
- F. The CM and CDOT shall keep the Project, inclusive of any LLTP, within the Estimated Construction Budget during all phases of the Project.
- G. The CM understands the relationship of trust and confidence established with CDOT and accepts those responsibilities as described in this Contract. The CM shall exercise its best skill and judgment and use all possible efforts to cooperate with the Design Consultant and CDOT in furthering the best interests of CDOT.

- H. The CM shall provide business administration and project management to complete the Preconstruction Services and any resulting general construction contract for this Project in an expeditious and economical manner in the best interests of CDOT.
- I. The Work of the CM shall consist of its Work in connection with the Preconstruction Phase. The Preconstruction Phase of the CM's Service shall be parallel and coincidental with the Field Inspection Review ("FIR"), Design Office Review ("DOR"), Final Office Review ("FOR"), and final Preconstruction Phase of the Design Consultant's services for each Construction Package. As separate Bid Packages are prepared and prices are established for the construction services to be performed, 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 a no-build alternative.
 - ii. If a procurement of any LLTP by CDOT is to be made, it shall be documented in a separate general construction contract.
 - iii. Any work to be performed by the CM, or a third party general contractor, during the construction phase shall be formally agreed to in a general construction contract separate from this Contract.
- J. The intent of the Contract is to include all items and services necessary for the proper execution and completion of the Work. The Contract, the exhibits and all documents incorporated by reference are complementary, and what is required by any one document shall be as binding as if required by all.
- K. Words and abbreviations which have well known technical, or trade meanings are used in the Contract in accordance with such recognized meanings. In the event there is any question as to the meaning of terms in the Contract, such questions shall be presented to CDOT for determination of the term's meaning.

2. DEFINITIONS

- A. "Amendment" means a written change to the terms and conditions of this Contract signed by the CM, the State Controller, and CDOT executed in accordance with the State Fiscal Rules. A sample Amendment is attached to this Contract as Exhibit E.
- B. "Bid Package" means a substantially completed Drawings, Plans, Specifications, and from which a CAP proposal could be prepared for a Construction Package (including LLTP) and which Bid Package may be advertised through the CDOT invitation to bid procurement process.
- C. "CDOT" means the Colorado Department of Transportation [and the Bridge and Tunnel Enterprise, which are collectively] or the State.
- D. "Construction Agreed Price" or "CAP" means the maximum amount to be paid for all materials and construction service required for each Construction

Package. A CAP shall include the Management Price Percentage, computed by the CM in accordance with the provisions of Section 9.E, *Compensation, Construction Agreed Price*. For any CAP to be accepted by CDOT, the Owner's Estimate and the CM's CAP must be within a percentage acceptable to CDOT. Approval of a CAP shall be demonstrated by CDOT's issuance of a formal CAP acceptance letter to CM.

- E. "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 verify the Estimated Construction Budget, furnish the Design Consultant with the information on construction technology and market conditions to help assure that the Project design stays within the Estimated Construction Budget.
- F. "Construction Manager 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 and D.
- G. "Construction Manager Preconstruction Services" or "CM Services" means the services performed by the CM as specified in Section 3, *Construction Manager's Preconstruction Services*.
- H. "Construction Package" is a distinct, severable portion of the physical construction of the Project. Upon issuance of a general construction contract for a Construction Package, the contractor will perform services to complete the Construction Package pursuant to the general construction contract terms. The Construction Package services specifically exclude all Design Services. All Construction Packages shall be delivered during the construction phase of the Project.
- I. "Contract" is this written standard Construction Manager for CM/CG Preconstruction Services Contract entered into by CDOT and the CM for the performance of the services described in this Contract and payment, therefore. This term includes all exhibits and documents incorporated by reference on the Cover Page of the Contract.
- J. "Cost Model" means the transparent estimating tool developed and used by the CM during the Preconstruction Phase. The CM must share all estimates and assumptions and supporting data with CDOT, the Design Consultant, and the Independent Cost Estimator with all other information used by the CM to estimate costs. Cost Model supporting data shall include, but is not limited to, the CM's costs related to labor, materials, equipment, subcontractor and supplier quotes, means and methods, production rates, risks, direct costs and mobilization. Unless approved in writing by the CDOT Project Director, the CM shall use the specific Cost Model identified in the CM's Price Proposal. This Cost Model shall be used consistently across the entire Project and shall be updated at each pricing milestone to estimate material quantities, determine

OPCCs, and develop price proposals.

- K. “Critical Path Method Scheduling” or “CPM Schedule” means a mathematically based algorithm for scheduling a set of project activities for the benefit of efficient project management. It involves constructing a model of the project including a list of all activities required to complete the project. The activities are 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, a CPM Schedule calculates the longest path of planned activities to the end of the project, and the earliest and latest dates 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).
- L. “Day” means calendar day unless specifically designated otherwise.
- M. “Design Consultant” means the professional Design Consultant, or group or association or professional corporation of such professional Design Consultants, engineers, and consultants, who have contracted with CDOT to accomplish Design Services necessary for the Project.
- N. “Design Services” means architectural and engineering services provided by the Design Consultant.
- O. “Direct Cost of the Work” means those items included in any CAP which, pursuant to the general construction contract, are directly related to construction and not otherwise defined under such Construction Package.
- P. “Director” means the individuals named as Notice Contacts on the Contract Cover Page. These individuals will act as team leads for the respective parties.
- Q. “Drawings, Plans and Specifications” means all drawings, plans and specifications approved by CDOT which have been prepared by the Design Consultant showing the work for the Project to be performed.
- R. “Estimated Construction Budget” is the estimated dollar amount available for the total cost for performance of all CAPs (including LLTP, if any) as designed by the Design Consultant.
- S. “Independent Cost Estimator” or “ICE” means the designee of CDOT tasked to perform the independent cost estimates for the Project.
- T. “Innovation Tracking and Performance Report” means a report that tracks all innovations offered by CM, CDOT, and Design Consultant team members. It shall also be used to track the performance of these innovations during the construction phase of the Project.
- U. “Long Lead Time Procurement” or “LLTP” means procurements which must be ordered and/or procured in advance of a Construction Package to expedite construction services.
- V. “Management Price Percentage” means the fee percentage to be applied to all CAP proposals equal to the amount of profit, overhead, and construction general conditions as listed in Section 2.8 of the Proposal.
- W. “Material Sourcing Plan” means the plan that details how the CM shall handle bids from material vendors for any CAP proposals. This plan is part of the Cost Model required as part of any Bid Package development.

- X. "Milestone" means a point in the Preconstruction Phase where Drawings, Plans, Specifications, and estimates are at an agreed completion point. Milestone examples include FIR, DOR, FOR, and CAP proposals.
- Y. "Modification" includes (1) a written Amendment to this Contract signed by both parties, or (2) a written interpretation issued by CDOT pursuant to Section 4.C, *Project, Drawings, Plans and Specifications, Interpretations*.
- Z. "Notice" shall mean a communication delivered in writing by certified or registered mail or as an email with a read receipt requested to the email address for the Notice Contact on the Cover Page of this Contract. If either party to this Contract delivers a notice to another through email and the email is undeliverable, then, unless the party has been provided with an alternate email contact, the party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail at the address set forth on the Cover Page. Either Party may change its named Project Director or their contact information by Notice submitted in accordance with this definition without a formal amendment to this Contract. Unless otherwise provided in this Contract, Notices shall be effective upon the formal delivery of the written Notice pursuant to this definition.
- AA. "Opinion of Probable Construction Cost" or "OPCC" is the cost to complete the work for a LLTP or a Construction Package. 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 Construction Package to complete the construction services. 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.
- BB. "Plans" includes the detailed plans and standard plans in which calculated dimensions shall govern over scaled dimensions.
- CC. "Preconstruction Phase" means the phase of Work in which Preconstruction Services and Design Services are performed.
- DD. "Preconstruction Services" means the Work to be performed by the CM as defined in Section 3, *Construction Manager's Preconstruction Services*.
- EE. "Project" is the total preconstruction and construction services as identified in Section 1 of the RFP, incorporated by reference herein.
- FF. "Project Schedule" means a schedule that is prepared by the CM that shall be used for coordination, for planning construction activities, and to ensure the timely completion of the construction as called for in the general construction contract.
- GG. "Owner's Estimate" means the estimate reviewed and approved by CDOT to be compared to each OPCC or CM's proposed CAP. The independent cost estimate can serve as the Owner's Estimate if approved by CDOT.
- HH. "Schedule of Bid Items" means the proposed materials and quantities to be incorporated by construction for any Construction Package, which includes an itemized description of the construction services by division and section of the

specifications. The Schedule of Bid Items shall be submitted to CDOT as an electronic EBS file.

- II. "Specifications" means the detailed, exact statement of particulars, especially statements prescribing materials and methods; and quality of work for any LLTP or Construction Package, and include, but are not limited to, Project special provisions and standard special provisions.
- JJ. "Standard Specifications" means the current provisions in the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction.
- KK. "Subcontractor" means a person, firm, or corporation supplying services, labor and/or materials performing any portion of the work under this Contract or a general construction contract with the CM.
- LL. "Termination Date" means the date this Contract shall terminate, which is five years after the Effective Date of this Contract, unless sooner terminated.
- MM. "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.
- NN. "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 whole or part of the Project may constitute Work.

3. CONSTRUCTION MANAGER'S PRECONSTRUCTION SERVICES

The CM shall perform the following services under this Contract:

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 Contract. CM shall approach their CM Services based on Project goals and known risks and CM shall allocate risks to the best party able to manage the risk. CM has been fully informed and has thoroughly reviewed the Project goals, scope elements, the scope of work and Estimated Construction Budget; the work effort of the Design Consultant performed to date for the Project; CM's Preconstruction Roles and Responsibilities Matrix; and the CM Services to be provided by the CM pursuant to the Contract. 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 the CM Services within the requirements of the Contract.
- ii. To accomplish the objectives set forth in this section, the CM shall provide consultation in cooperation with CDOT and the Design Consultant including but not limited to:
 - a. Review all as-builts, current design, and site conditions.
 - b. Conduct and analyze preliminary field work as directed to assist with the

pre-construction phase including but not limited to the preliminary field work identified in the Project RFP.

- c. Prepare for and attend the meetings identified in the RFP and addenda, incorporated by reference.
- d. The CM shall develop and produce the reports and deliverables identified in the RFP.
- e. Formulate and evaluate alternative designs, systems, and materials.
- f. Provide quality assurance of the design deliverables to ensure completeness, and adequacy of the construction documents.
- g. 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.
- h. 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.
- i. Evaluate the alternatives based on factors that include but are not limited to costs, construction schedules, availability of labor, equipment, and materials, and construction feasibility in the form of a constructability report and provide constructability input on all facets of the project including but not limited to those items identified in the RFP.
- j. Provide input to the Design Consultant on the Stormwater Management Plan.
- k. With the assistance of the Design Consultant, prepare written procurement reviews for materials that could be procured by CDOT prior to the issuance of a general construction contract for any Construction Package.
- l. The CM shall provide rough order of magnitude (ROM) cost estimating along with schedule impacts as design concepts/alternatives are being developed and evaluated throughout the Preconstruction Phase to help inform CDOT's decisions. This shall include, but is not limited to the following:
 - 1) evaluating means and methods of various construction techniques that may influence design solutions with considerations of cost and schedule impacts;
 - 2) evaluating industry standard operating and maintenance costs to determine life-cycle costs;
 - 3) proposing design alternatives to reduce costs.
 - 4) Provide initial ROM construction estimate and associated schedule for the full Project within one month of the Effective Date of this Contract.
- m. With the assistance of the Design Consultant and CDOT, make determinations whether multiple independent severable packages are efficient, add value to the project, provide an overall benefit to the project, have the potential to accelerate the start of a construction phase,

and bring the overall Project measurably ahead of schedule or under the Estimated Construction Budget.

- n. 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 Construction Package.
- o. 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 Estimated Construction Budget, any 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 Estimated Construction Budget, any CAP, and/or the Schedule of Bid Items for a Construction Package.
- p. 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 specific CM Service includes the submittal and ongoing evaluation of Value Engineering change proposals, if required.
- q. Prepare preliminary construction schedules and phasing alternatives.
- r. In collaboration with the Design Consultant and CDOT, develop a Risk Management Plan, perform risk assessments, and prepare a Risk Register.
- s. With the assistance of the Design Consultant and CDOT, develop an Innovation Tracking and Performance Report.
- t. Develop a quality control plan, a material sourcing plan, and a worker and public safety plan.
- u. Coordinate with CDOT's Public Information Officer during the Preconstruction Phase to ensure a smooth transition of communication into the construction phase.

B. COST ESTIMATING AND PROJECT MANAGEMENT SOFTWARE

- i. CM shall independently calculate quantities for verification purposes of construction packages, independently from CDOT, the Design Consultant and the Independent Cost Estimator.
- ii. The CM shall maintain an open and accurate Cost Model that shall include all details of the OPCC and any CAP proposal when submitted. These details shall allow CDOT the opportunity to reconcile the costs represented in the 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 CAP proposal is submitted.
- iv. Each 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 Construction Package to complete the construction work under the general construction contract with CDOT.
 - b. General conditions.
 - 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 installations or other services to utilize the LLTP which will be made part of any LLTP CAP general construction contract or an associated CAP general construction contract CAP.
 - g. For each OPCC required for the construction 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 to the Design Consultant,
 - d. the costs of land, right of way, and
 - e. financing or any other costs which are the responsibility of CDOT.
- vii. Based on consultation with the Design Consultant and the CDOT, CM shall furnish an estimated budget for each Construction Package which shall set forth a dollar amount available for the construction of the specific Construction Package including contingencies, excluding shared risk contingency pools, force account items, and the Management Price Percentage
- viii. The CM, in preparing its OPCC and providing each Construction Package CAP proposal, shall consult with the Design Consultant to determine what materials, equipment, labor, and types of construction are to be included in the general construction contract, to make reasonable adjustments in the scope of the work, and to include in the general construction contract alternate items, as approved by CDOT in writing, for bid so as to permit the adjustment of the OPCC.
- ix. The CM shall prepare an OPCC as soon as major Project requirements have

been identified. For each Project Milestone, and in preparation for each CAP proposal, the CM shall prepare an OPCC. 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 construction phase remains within the applicable portion of the Estimated Construction Budget and Construction Package CAP, as applicable.

- x. 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.
- xi. During the preparation of each OPCC the CM shall notify CDOT if it appears that the OPCC for the Construction Package shall cause the overall Project to exceed the Estimated 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 to stay within the Estimated 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.
- xii. CDOT shall reasonably cooperate with the CM to keep the Project within the Estimated 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 constructability reports, deductive alternatives or reductions in work, reviewing and additional Value Engineering, making modifications to the general construction contract or exercising such other rights or remedies as may be available elsewhere under this Contract including Termination for Convenience. However, CDOT shall be under no duty to reduce the construction services to accommodate 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.
- xiii. The CM, by the terms of this Contract is obligated to provide reasonable cooperation to the Design Consultant in the development of OPCCs, and each 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 CAP proposal in a timely manner so as

not to negatively impact the Project Schedule.

C. CM SERVICES

- i. Thorough review of all plans, specifications, reports, diagrams, shop drawings, as-built plans, site conditions, and all other necessary Project documentation to provide design validation from a construction expertise perspective.
- ii. The CM shall perform those services included, but not limited to, those for which the CM is designated as either lead, collaborative or support for those duties identified 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 Section 1 of the RFP.
- 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 construction 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, provisions for temporary facilities, etc.
- v. The CM shall review drawings, plans, and specifications with the Design Consultant to:
 - a. provide quality assurance of the design deliverables, to mitigate errors in the design deliverables,
 - b. eliminate areas of conflict and overlapping in the work to be performed by the various construction 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 Contract Termination Date from the Contract Cover Page, commencement of the Construction Packages, the anticipated commencement and scope of work described within the general construction contract, the work described within each of the Preconstruction Phase documents. The CM shall utilize the most recent version of Microsoft Project or Primavera, or other technology agreed to

by the CDOT in writing, to develop and manage the schedule. The schedule as agreed to shall utilize the Critical Path Method Scheduling with reasonable detail to allow assessment of each LLTP schedule, equipment, or materials to be furnished by CDOT, CM, or by a third party general construction contractor, the adequacy of the construction duration/period, critical paths among the activities for the construction of the Construction Packages, 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 Phase documents and shall be utilized by CDOT to assess each 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 Director of the CM and the project manager of the 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; 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 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 construction services, temporary project facilities, and for equipment, materials, and services for common use of Subcontractors and verify that all are included in the Drawings, Plans and Specifications and in the Bid Packages for the general construction contract negotiation or solicitation.
- 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. CM's tasks during the Project design review are:
 - a. Thorough review of all plans, specifications, reports, diagrams, shop drawings, as-built plans, site conditions, and all other necessary Project documentation to provide design validation from a construction expertise perspective.
 - b. assure consistency with the design intent;
 - c. ensure complete, coordinated, constructible and cost-effective designs

- for all disciplines (e.g., architectural, structural, mechanical, geotechnical, electrical and roadway);
 - d. assure that the design documents are code compliant;
 - e. endeavor to confirm that all construction work has been included and described in sufficient detail to assure complete pricing of that work;
 - f. allow for phased construction; and
 - g. 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 analyze 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, 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 the 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 Drawings, Plans, Specifications or Bid 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 for CDOT or the Design Consultant.
- xvii. CM agrees that the individuals identified as the 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 a contractual obligation to make such Key Personnel available to complete the Preconstruction Services on the Contract at whatever level the Project requires as determined by the CDOT Project Director. If the CM seeks to replace Key Personnel, they must obtain CDOT's Project Director's advance written approval for any change. In this event, the CM shall submit a written request with the reason for a change, proposing at least two qualified candidates, and a statement of how the desired change shall meet or exceed the required qualifications, and responsibilities for the position. CDOT's Project Director shall respond to any requested change of Key Personnel within

fifteen (15) working days of receipt of the written request.

D. ACCESS TO CM RECORDS

In order to reconcile quantity and schedule, the Design Consultant and CDOT shall have access to the Work to determine CM's assumptions and means and methods 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. During CAP proposal reviews, the CM shall provide CDOT all production rates, material assumptions, indirect costs, and any other information as requested by CDOT to aid in reaching an agreement on a CAP proposal.

E. 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.

F. NO RESPONSIBILITY FOR DESIGN CONSULTANT

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

G. SCHEDULE, COORDINATION, AND COST CONTROL

In the performance of the Work under this Contract, the CM acknowledges that time is of the essence of this Contract and for the proposed schedules for the construction phases. The CM shall begin the performance of CM Services upon the execution of this Contract. If performing work under a general construction contract, the CM shall minimize impacts to the traveling public and is a high priority consideration in the determination of daily working time schedules allowed. Upon execution of a general construction contract, the CM must work and communicate with Project stakeholders and citizens before and during construction. Seasonal, weekly, and daily traffic patterns must be considered when planning and scheduling Construction Packages. The CM shall schedule and coordinate the work of all service providers, including Subcontractors, and suppliers on the Project including their use of the site. The CM shall keep the service providers, including Subcontractors, and suppliers informed of the Project Schedule to enable the service providers, Subcontractors and suppliers to plan and perform the work properly. If CM enters a general construction contract, they shall carry the work forward expeditiously with adequate forces and shall achieve completion of the work prior to the general construction contract completion date.

H. PRELIMINARY PROJECT SCHEDULE

i. Schedule Creation

- a. Starting at the project scoping workshop, the CM shall begin to develop a 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 CAP proposal meeting, the CM shall submit for the Design Consultant's and CDOT's review and acceptance, a Preliminary Project

Schedule. The Preliminary Project Schedule shall include the construction work encompassing all activities necessary to complete the scope of the work, in a manner that is consistent with previously issued schedules and shall comply with the general construction contract completion date. This Project Schedule shall show all completed, in progress, and planned Construction Packages detailing dates for the Bid Packages as intended at the appropriate Milestone.

- c. Within fourteen (14) Days of the execution of a general construction contract, CM shall submit to the Design Consultant and CDOT a detailed Project Schedule for such Construction Package integrated into the most current preliminary Project Schedule.
- d. Detailed Project Schedules for Construction Packages shall be incorporated into general construction contracts.
- 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 construction work involved. The milestones and total number of activities shall be subject to approval by CDOT.
- iii. Submittals. CM shall provide CDOT the Project Schedules in an electronic format for the preliminary and all Project Schedule updates. 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 a different timeframe for review is 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 weeks, 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 accomplished during the past weeks 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.

I. SALES AND USE TAXES

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; and 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 whether approved or pending approval, memoranda, computation sheets or materials prepared by CM in the performance of its obligations under this Contract 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 Contract. The CM may, at its own expense, keep copies of all its writings for its company 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 Contract 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 or electronic 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. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is to be approved in writing by CDOT.
- iii. If the CM or any of its Subcontractors of any tier perform any CM Services or construction services 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 Section 4.B.ii., *Review of the General Construction Contract and Drawings, Plans and Specifications*, the CM shall assume full responsibility therefor and shall bear all costs attributable therein. Default of this provision is subject to all other remedies available to CDOT.

B. REVIEW OF THE GENERAL CONSTRUCTION CONTRACT, AND DRAWINGS, PLANS AND SPECIFICATIONS

- i. The CM shall carefully study and compare the proposed general construction contract, and Drawings, Plans and Specifications. CM shall immediately report to CDOT any error, inconsistency, or omission in

these documents that may be discovered. The CM shall perform no portion of the work at any time without a general construction contract or, where required, Drawings, Plans, Specifications, instructions, Shop Drawings, Product Data, or Samples for such portion of the work.

- ii. If the CM observes that any of the general construction contracts 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.
- 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 this section, the CM shall assume full responsibility therefor and shall bear all costs attributable therein.

C. INTERPRETATIONS

CDOT shall be the interpreter of the requirements of the Contract and any general construction contract and shall be the judge of the performance thereunder.

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 Contract, or in connection with the performance of its obligations under this Contract, 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. CDOT's RESPONSIBILITIES

- A. As the owner of the Project, CDOT has furnished the CM with detailed program requirements, scope elements, goals, known risks, scope of work and the Estimated Construction Budget for the Project.
- B. CDOT's designated Project Director is named on the Contract Cover Sheet as Notice Contact. This individual is authorized to act on CDOT's behalf with respect to the Project.
- 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 contract between CDOT and the Design Consultant, a copy of which shall be furnished to the CM.

- D. CDOT and the Design Consultant shall participate in the formulation and evaluation of alternatives in the Value Engineering activity. The CM shall be furnished, without charge, with 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. Upon request from CM, CDOT will review CM's proposed subcontract(s) and issue a written response to the request.
- F. CDOT shall furnish information regarding the site of the Project, all necessary surveys describing the physical characteristics, legal limitations, utility locations, and a legal description.
- G. 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 Project site. The geotechnical information discussed above is for reference only and is not part of the Contract.
- H. CDOT shall review and may approve CM's proposed design alternatives which could be subject to Project stakeholder(s) approval.
- I. 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.
- J. CDOT shall furnish such auditing services as CDOT may require ascertaining how or for what purposes the CM has used the monies paid to it under this Contract.
- K. The services, information, surveys, and reports required by this section shall be furnished on a timely basis and at CDOT's expense, and except as may be provided to the contrary elsewhere in this Contract, the CM shall be entitled to rely upon the accuracy and completeness thereof.
- L. CDOT shall provide an Independent Cost Estimator ("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 estimates. At each agreed upon Milestone and after any LLTP 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.

- M. 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 contract 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.
 - iv. It is expressly understood and expected that the CM shall develop each CAP proposal as agreed upon milestones are reached and that the final establishment of each 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 CAP (as applicable).
- N. CDOT shall also observe the following for compliance with the contract:
- i. Shop Drawings; and
 - ii. Any special testing required in the contract.

6. CONTRACT EFFECTIVE AND TERMINATION DATES

A. EFFECTIVE DATE

This Contract is not 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 CM for any services performed or expense incurred before the Effective Date nor after the Contract

- i. The procurement of any Long Lead Time Procurement (LLTP) is expressly conditioned upon and shall not commence until all of the following requirements are complete:
 - a. Federal approval of the construction phase of the Project;
 - b. CDOT's approval of the applicable LLTP CAP and associated Schedule of Bid Items;
 - c. CDOT's approves a completion date for the LLTP;
 - d. All required Performance Bonds and Payment Bonds and Insurance Certificates have been approved and accepted by CDOT;

- e. A general construction contract for such LLTP phase has been fully executed by the parties to the contract; and
- f. CDOT has issued a written notice to proceed to commence a LLTP under a general construction contract.
- g. Execution of CDOT's LLTP 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 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 Contract.

- ii. The commencement of any construction phase is expressly conditioned upon and shall not commence until all of the following requirements are complete:

- a. A general construction contract for such Construction Package has been fully executed by the parties to the contract;
- b. A notice to proceed to commence the construction package has been issued by CDOT as part of the general construction contract; and
- c. The date for completion of the Construction Phase work has been approved and accepted by CDOT;

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 Contract.

B. TIME OF ESSENCE

Time is of the essence of this Contract. The CM shall begin their Preconstruction Services after the Contract Effective Date. The CM shall perform Preconstruction Services expeditiously with adequate forces and shall achieve completion of their Preconstruction Services on or before the Contract Termination Date.

C. TERMINATION DATE

Contract Termination Date established on the Cover Page or sooner termination per Section 13, *CDOT's Right to Termination Contract*.

7. SUBCONTRACTS

A. SUBCONTRACTS

CM's rights and obligations hereunder are personal and may not be transferred, assigned, or subcontracted without CDOT's prior, written consent. If approved by CDOT, CM's subcontracts shall provide:

- i. The form of subcontracts shall be furnished to CDOT for review and

- consent as to form, which consent shall not be unreasonably withheld;
- ii. Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract;
 - iii. CDOT is a third-party beneficiary of the subcontract and CDOT shall have the right to enforce all terms of the subcontract for its own benefit; and
 - iv. CM shall ensure all subcontracts exceeding \$10,000 in cost, shall contain the provisions included in Section 15 – *Colorado Special Provisions*.

Each Subcontract shall include terms that are substantially similar to those terms required by this section specifically including a contract 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 F ii and iii, *Payments to Subcontractors – Prompt Payment and Good Cause Exception*, 14.A, *Equal Employment Opportunity and Nondiscrimination*, 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.

B. 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.

C. SUBSTITUTION OF SUBCONTRACTORS

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

D. SUBCONTRACTUAL RELATIONS

The CM shall require each of their Subcontractor, to the extent of the scope of work to be performed by the Subcontractor or supplier, to be bound to the CM by the terms of the Contract, and to assume toward the CM all the obligations and responsibilities which the CM, by the Contract, assumes toward CDOT and the Design Consultant. Said contract shall preserve and protect the rights of CDOT and the Design Consultant under the Contract 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 similar contracts 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 to which the Subcontractor or supplier shall similarly make copies of such Contract available to their sub-subcontractors. Each subcontractor, supplier and sub-subcontractor shall be bound by this subsection.

E. 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 CDOT's approval of a prospective Subcontractor, the evaluation and establishment of pricing or other obligations under this Contract concerning subcontracting or supplies. 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 approval, 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 approval, bidding, or subcontracting procedures specified herein.
- ii. Nothing contained in the general construction contract, or in the terms of this Contract, shall be deemed to create any contractual relationship between any Subcontractor, supplier or sub-subcontractor and CDOT. Further, consistent with Section 14.J, *Waiver*, nothing in the general construction contract, or in the terms of this Contract, and the solicitation process for a general construction contract 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.

F. 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 CDOT Project Director will not authorize further payments to the CM until the required payments have been made or CDOT determines that there is sufficient good cause to delay payment.
- 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 (7) 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 7 F iii, *Payments to Contractors, Good Cause Exception*, 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 (15) 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 (15) 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 and in the general construction contract, any disagreement between CDOT and the CM relating to this section shall be subject to a disputes and claims process pursuant to the general construction contract. 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, including the CM's obligation to achieve Final Acceptance under any active general construction contract, if any, in accordance with those contract(s), and the CM shall not cease or slow down performance under the contract(s) 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 this Contract and/or any general construction contracts.

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

Construction Packages of the Project or other work on the site under these or similar conditions of this Contract.

- ii. When separate contracts are awarded for different Construction Packages or other work on the site, the term separate contractor in the contract in each case shall mean the contractor who executes each separate contract between CDOT and such contractor.
- iii. If CDOT does not accept any CAP and advertises a Bid Package for low bid solicitation, the CM shall not be allowed to bid on such associated Bid Package 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-Amendment*, CDOT shall provide and be responsible for the coordination of the work of CDOT's own forces and of each separate contractor, who shall cooperate therewith as provided in Sections 8.C, Mutual Responsibility.

C. MUTUAL RESPONSIBILITY

- i. If CM enters into a general construction contract, 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 general construction contract.
- 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. Should the CM wrongfully delay or cause damage to the work or property of any separate contractor, the CM shall, upon due notice, shall promptly settle with such other separate contractor by contract or otherwise to resolve the dispute.

9. COMPENSATION

A. CM'S PRECONSTRUCTION FEE

- i. Subject to the provisions of this Contract, and in consideration of the performance of this Contract, CDOT shall pay the CM as compensation for

its services, a “CM Preconstruction Fee” in the amount of \$ _____. This is the set amount for all CM Preconstruction Services as established in the RFP. Parties cannot change this CM Preconstruction Fee by amendment to this Contract.

- ii. All invoices shall be submitted by the CM to CDOT for payment pursuant to the terms of this Contract. The CM shall submit its billings such that the cost for each activity or task contained in the Contract shall be separately shown. Upon approval thereof, the State 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.

B. ESTIMATED CONSTRUCTION BUDGET

The Estimated Construction Budget for this project has been set at \$ _____. This budget is not encumbered in this Contract. CDOT will encumber construction funds through separate general construction contracts. Parties agree that the Estimated Construction Budget identified in this Contract does not operate as a not to exceed amount for the aggregate cost of all Construction Packages and associated general construction contracts. Actual costs for those obligations will be documented in and encumbered by separate contracts.

C. CM’S MANAGEMENT PRICE PERCENTAGE

The Management Price Percentage shall be 10.5% as established in CDOT’s RFP. This percentage shall be applied to all accepted CAP proposals and shall apply to all resulting general construction contracts.

D. NO ADJUSTMENTS IN CM’S MANAGEMENT PRICE PERCENTAGE

Parties are prohibited from changing the Management Price Percentage.

E. CONSTRUCTION AGREED PRICE

- i. At an agreed upon milestone, the CM shall deliver to CDOT, a CAP proposal. After CM and CDOT negotiations, and if parties reach a mutual agreement to a CAP including the CM's Management Price Percentage with CM’s Bid Item Pricing proposal, CM shall be awarded a general construction contract. CM agrees to perform all of the construction services required for such Construction Package, even if all of the construction documents have not been finalized and released for construction. The general construction contract shall specify the CDOT approved CAP for the work required for the applicable Construction Package scope of work. Parties will use deductive alternates to maintain the aggregate of all CAPs below the Estimated Construction Budget.
- ii. Each CAP proposal shall include all of the general construction contractor’s obligations to be performed pursuant to the terms of the general construction contract for such Construction Package and shall include, but not be limited to, the following:
 - a. The total of all unit prices for the applicable Bid Package for such CAP, as applicable;

- b. For each CAP, the installation cost of items procured by LLTP contract for the applicable CAP;
 - c. The estimated maximum Direct Cost of Work for such 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 Contract for such CAP, as applicable;
 - e. For each CAP, the Management Price Percentage shall be included;
 - f. For each 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 a through f 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 CAP (as applicable) was based.
- iii. If, in developing a 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 construction services, the CM shall be responsible for making all necessary inquiries and requests to establish the same.
 - iv. When any CAP is agreed upon and accepted by CDOT, it shall be made part of a separate general construction contract and subject to the terms thereof. If the CM, in good faith, furnishes CDOT with a 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 Contract, and CDOT shall be entitled to proceed with the Work as set forth elsewhere in this Contract.

F. NOT TO EXCEED AMOUNT

The not to exceed amount for this Contract shall be the Preconstruction Management Fee shown on the Cover Page payable to CM by the State from available funds

G. PAYMENTS

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

forth in this section.

10. CHANGES IN THE WORK -- AMENDMENTS

No modification of this Contract shall be effective unless agreed to in a written amendment signed by both parties.

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 Contract 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 Contract 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 this Section.

- 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 Contract for three (3) years after completion of the construction Project.

C. AUTOMOBILE LIABILITY INSURANCE

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:

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

- \$1,000,000 each occurrence; and
- \$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., *Insurance, 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. 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 at least \$1,000,000. Any deductible will be the sole responsibility of the CM.

I. ADDITIONAL INSURED

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

J. 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.

K. 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.

L. 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.

M. 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.

N. 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 Contract, 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 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 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, general construction contract change orders, designs, or Specifications;
 - ii. the giving of or the failure to give directions or instructions by the Design Consultant, its subconsultants, agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage; or a
 - iii. any acts of the Design Consultant, its consultants, agents, or employees outside of the scope of their duties pursuant to the Contract.

13. 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

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 to be performed by it, CDOT may service 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.

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. In the event of such termination of its service, the CM shall not be entitled to any further payments under this Contract unless the Work has been completed and accepted prior to the termination. If the cost, expenses, and damages to perform the Work after termination, as determined by CDOT, exceed such unpaid balance of the CM Preconstruction Fee, the CM shall pay the difference to CDOT.

b. If CDOT terminates CM's Preconstruction Services, 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, or to deduct from any payment then or thereafter due to 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. TERMINATION FOR CONVENIENCE OF CDOT

i. The performance of CM Services under this Contract may be terminated, in whole or in part, by CDOT when CDOT determines that the purposes of the distribution of State monies under this Contract would no longer be served by completion of the Project. Termination of CM Services hereunder shall be affected by delivery to the CM of a Notice of Termination specifying the extent to which performance of CM Services under this Contract shall be 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 CM Services deliverables. In addition, the CM shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering all CM Services and extending beyond the date of such termination to the extent that they relate to the performance of any CM Services 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, based on 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 shall be in accordance with the provisions of Section 108, *Prosecution and Progress* in the Standard Specifications as in effect on the date of a general construction contract all of which is limited to the Preconstruction Fee and the provisions of Sections 9.A, *CM Preconstruction Fee*. The sums to be paid to the CM shall not include any compensation, loss, or lost profit on service not performed by the CM or any of its Subcontractors of any tier or suppliers.
- v. Subject to the provisions of this section, 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 CM Services which it is unable to cancel; provided, however, that in connection with any outstanding commitments for applicable 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 Contract, 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 Contract, 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 Contract had been completed, would have been required to be furnished to CDOT, such information and items which, if this Contract 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 Contract 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 Contract or shall otherwise be credited to the price or cost of work covered by this Contract 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 Contract, which is in the possession of the CM, and in which CDOT has or may acquire an interest.

14. 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 CM, subrecipients of DOT-assistance through CDOT, or Subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CM shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as CDOT deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

- iii. 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.
- iv. The CM shall not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age, or handicap.
- v. 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.
- vi. Inclusion in Subcontracts. The CM shall include Sections 7.A (Subcontracting) and 16.A (Equal Employment Opportunity and Nondiscrimination in every Subcontract (including purchase orders), so that such provisions shall be binding upon each Subcontractor.

B. 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.

C. 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.

D. 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 Contract for CM Services, 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 Contract 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 Contract.

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 Contract, 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 Contract 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.

E. EXECUTION OF EXHIBITS

It is contemplated by the Parties that certain exhibits hereto shall not be accomplished or finalized at the time this Contract 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 Contract. The Parties shall be diligent in accomplishing such exhibits at the earliest appropriate time in accordance with the provisions hereof.

F. CAPTIONS

The captions and headings in this Contract are for convenience of reference

only, and shall not be used to interpret, define, or limit its provisions.

G. ENTIRE UNDERSTANDING

This Contract 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.

H. 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.

I. THIRD PARTY BENEFICIARIES

Enforcement of this Contract 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 Contract are incidental to the Contract, and do not create any rights for such third parties.

J. WAIVER

Waiver of any breach under a term, provision, or requirement of this Contract, 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.

K. CORA DISCLOSURE

To the extent not prohibited by federal law, this Contract 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.

15. 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 this Special Provision in all subcontracts issued pursuant to this contract.

16. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to and shall be included in all State 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 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 (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) 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 and 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) and 24-30-202.4, 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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