



COLORADO
Department of Transportation

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)
AGREEMENT**

Cover Page

State Agency: Department of Transportation	Contract Routing # / CMS #: _____
Contractor: _____ _____ Address _____, Suite _____, City _____, State _____ Zip _____ CDOT Vendor # _____	The Effective Date: Controller Signature Date Noted Herein
Contract Price: \$ _____	Contract Termination Date: _____
Project: _____ Approved by Stephen Harelson P.E., Chief Engineer on _____ Date _____	
Contract Purpose: This Agreement is for CM/GC Services only during the Preconstruction Phase of the project with an option to negotiate one or more Construction Agreed Prices (CAPs) for the construction phase of the project.	
Authority exists in the Law, and Funds have been budgeted, appropriated, and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment in: Non-Bridge Enterprise: Purchase Order #: _____, Project Description: _____, Project #: _____, Subaccount/WBS #: _____, Fund Number: _____, General Ledger Account Number: _____, WBS Element: _____, Fund Center: _____. Bridge Enterprise: Purchase Order #: _____, Project Description: _____, Project #: _____, Subaccount/WBS #: _____, Fund Number: _____, General Ledger Account Number: _____, WBS Element: _____, Fund Center: _____.	
Shopping Cart #: _____	

Cover Page, cont.

Contract Documents included with this Agreement and Order of Precedence:

The following Exhibits and attachments are included with this Agreement:

- Exhibit A, Contractor's Preconstruction Roles and Responsibilities ("Contractor's Preconstruction Roles and Responsibilities Matrix");
- Exhibit B.1, Contractor's Certificate of Liability Insurance ("Certificate of Liability Insurance");
- Exhibit B.2, Contractor's Certification ("Contractor's Certification");
- Exhibit C, Contractor's CM/GC Price Proposal (Form B-3, CM/GC Management Price Percentage Required Information, emailed by Contractor to Owner on DATE);
- Exhibit D, Sample Contract Amendment; and
- Exhibit E, The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination Assurance - Appendix A & E.

The following documents are incorporated by reference and made a part of the terms and conditions of this Agreement:

- The Department's Standard Specifications for Road and Bridge Construction YEAR ("Standard Specifications"); and
- Request for Proposal dated Date, Request for Proposal Addendum # dated Date, and Contractor's Proposal including, but not limited to, the technical proposal and Contractor's Cost Model Approach, dated Date, CDOT received on Date, and the price proposal documents including Exhibit C (collectively, the "Proposal").

The following Contract Amendment(s) (incorporating Bid Packages) Exhibits that are incorporated by reference herein when executed, after a successful CAP negotiation, and made a part of the terms and conditions of this Agreement:

- Exhibit D.1, For the LLTP Bid Package including all CAP documents, Drawings, Plans and Specifications including addenda and Modifications (when approved by the Principal Representative);
- Exhibit D.2, Performance Bond ("Performance Bond");
- Exhibit D.3, Payment Bond ("Payment Bond"); and
- Exhibit D.4, Insurance Certificate ("Insurance Certificate").

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Cover Page, cont.

The following documents will be incorporated by reference and made a part of the terms and conditions of this Agreement upon issuance by the Principal Representative:

- Exhibit F, Contractor Performance Evaluation Report (“Contractor Performance Evaluation Report”);
- Exhibit G, Notice to Proceed to Commence CM/GC Services (“Notice to Proceed to Commence CM/GC Services”);
- Exhibit H, CDOT Acceptance Letter for LLTP CAP or CM/GC Services (each a “CDOT Acceptance Letter”);
- Exhibit I, Notice of Substantial Completion for LLTP CAP or CM/GC Services (each a “Notice of Substantial Completion”); and
- Exhibit J, Notice of Final Settlement (“Notice of Final Settlement”).

The provisions of this Agreement shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, including, but not limited to, those provided by Contractor, 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 Agreement;
2. Colorado Special Provisions;
3. Standard Specifications;
4. The provisions of the main body of this Agreement;
5. Any LLTP CAP proposal;
6. Any fully executed Amendment;
7. Any fully executed Change Order;
8. Any other fully executed, written Modification; and
9. The conditions, attachments and exhibits of this Agreement in descending order.

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

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

<p align="center">Contractor</p> <p align="center">_____ Vendor #: _____</p> <hr/> <p>Signed By: <u> Name </u> <u> Title </u></p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Transportation For the Executive Director Shoshana M. Lew</p> <hr/> <p>Signed By: Stephen Harelson P.E., Chief Engineer</p> <p>Date: _____</p>
<p align="center">COLORADO BRIDGE ENTERPRISE Colorado Department of Transportation</p> <p align="center">_____</p> <p>Signed By: <u> Name </u> Director of Project Support</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Phil Weiser, Attorney General</p> <p align="center">_____</p> <p>Signed By: Kathy Young First Assistant Attorney General</p> <p>Date: _____</p>
<p align="center">In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.*</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p align="center">Signed By: _____ Colorado Department of Transportation</p> <p align="center">Effective Date: _____</p>	

* **EFFECTIVE DATE AND NOTICE OF NON-LIABILITY.** This Agreement shall not be effective or enforceable until it is approved and signed by the State Controller or his designee (“Effective Date”), but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.
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CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT
TABLE OF CONTENTS

1. THE WORK	7
2. DEFINITIONS	9
3. CONTRACTOR'S SERVICES	17
4. PROJECT DRAWINGS, PLANS, AND SPECIFICATIONS	29
5. THE PRINCIPAL REPRESENTATIVE RESPONSIBILITIES	32
6. TIME OF COMMENCEMENT AND COMPLETION	34
7. SUBCONTRACTS	38
8. WORK BY PRINCIPAL REPRESENTATIVE OR BY SEPARATE CONTRACTORS	43
9. COMPENSATION	44
10. CHANGES IN THE WORK	49
11. INSURANCE	51
12. INDEMNIFICATION	56
13. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS	56
14. ACCESS TO WORK AND OBSERVATION	57
15. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT	58
16. PRINCIPAL REPRESENTATIVE'S RIGHT TO TERMINATE CONTRACT	62
17. MISCELLANEOUS PROVISIONS	65
18. COLORADO SPECIAL PROVISIONS	75

STATE OF COLORADO DEPARTMENT OF TRANSPORTATION
CM/GC PRECONSTRUCTION SERVICES

1. THE WORK

- A. The Contractor and the Principal Representative have negotiated the terms of this Agreement pursuant to Section 24-93-104, C.R.S. as amended.
- B. The Contractor acknowledges the statutory authority and responsibility of the Principal Representative within the State of Colorado.
- C. The Principal Representative and the Contractor for the consideration hereinafter set forth, agree that the above Cover Page(s) and Signature Page are incorporated in this Agreement for all purposes.
- D. The Principal Representative intends to design and construct the Project. This Agreement is for CM/GC Services only during the Preconstruction Phase with an option to negotiate CAPs for the construction phase of the repair.
- E. Parties acknowledge that the Contractor was selected after a determination that its proposal was the most advantageous to the Principal Representative pursuant to a request for proposal issued on Date , Addendum **1** issued on Date , Addendum **2** issued on Date , and notified of award in writing on Date .
- F. In the performance of the Work under this Agreement, the Contractor acknowledges that time is critical for Project delivery and that portions of the Work could have their design completed as separate Bid Packages and under construction before other portions of the Work are fully designed. It is further recognized that this accelerated approach to construction utilizing the services of a Design Consultant and Contractor is a unique concept and that its utilization requires maximum cooperation between all parties. It is also recognized that the Work to be performed by the Contractor and the inter-relationships and coordinative aspects thereof are in the developmental state and not fully defined. In furtherance thereof, if there appears to be a duplication, overlap or conflict of the responsibilities of or duties between the Design Consultant and Contractor or an absence of designation, the question shall be submitted to the Principal Representative for determination. The Contractor shall abide by the decision of the Principal Representative provided it does not require the performance of Work beyond what was reasonably contemplated and accepted by the Contractor as its responsibility.

In the performance of the Work, the Contractor agrees that its “key individuals” in its response to the “listed personnel in the Project Management Team” in “Contractor’s Proposal” which is part of the Proposal (collectively, the “Key Personnel”), constitutes an agreement by the Contractor to make such Key Personnel available to complete the Work on the Contract at whatever level the Project requires. Modifications to the Contractor’s Key Personnel and other personnel listed in the Proposal, Contractor’s Proposal are discouraged and will not be approved without justification. Examples of justification include death of a team member, changes in employment status,

bankruptcy, inability to perform, organizational conflict of interest, or other such significant cause. In order to secure the Principal Representative's approval after award of any change to the Contractor's Key Personnel, a written request shall be forwarded to the Principal Representative for consideration as soon as possible after the event. The request shall include:

- i. the nature of the desired change,
 - ii. the reason for the desired change, and
 - iii. a statement of how the desired change will meet the required qualifications for the position/responsibility. No such modification will be made without prior approval by the Principal Representative.
- G. The Contractor agrees to cooperate fully with the Principal Representative in the Design Services and LLTP aspects of the Work to keep within the Contract Price.
- H. The Contractor understands the relationship of trust and confidence established between it and the Principal Representative and accepts those responsibilities as described in this Agreement. The Contractor covenants with the Principal Representative to furnish its best skill and judgment and to cooperate with the Design Consultant in furthering the interests of the Principal Representative.

The Contractor agrees to furnish efficient business administration, project management, and superintendence and to use its best efforts to complete the work in an expeditious and economical manner consistent with the interests of the Principal Representative.

- I. The Contractor, the Principal Representative, and the Design Consultant (collectively, the "Project Team") shall work together during the Preconstruction Phase through to the acceptance of all LLTP CAPs and Construction CAPs. The Contractor shall provide leadership to the Project Team on all matters relating to construction.
- J. The Contract Documents shall not be deemed to create any contractual relationship between the Design Consultant and the Contractor or any separate contractors, Subcontractors of any tier or suppliers on the Project; nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against the Principal Representative, the Design Consultant or Contractor which does not otherwise exist without regard to the Contract Documents.
- K. The Work of the Contractor shall consist of its Work in connection with the Preconstruction Phase. The Preconstruction Phase of the Contractor's Work shall be parallel and coincidental with the Field Inspection Review ("FIR"), Final Office Review ("FOR"), and final Preconstruction Phase of the Design Consultant's services for each Bid Package. As the Bid Packages are prepared and prices are established for the Work to be performed within each respective Bid Package, the Parties contemplate that:
 - i. Principal Representative shall not make a commitment to any alternative considered during the environmental review under the National

- Environmental Protection Act of 1969, (42 U.S.C. 4321 et seq.) (NEPA) process, applicable portions of the implementing regulations at 40 CFR parts 1500-1508, and part 771 of this chapter. Principal Representative shall evaluate and fairly consider the comparative merits of all alternatives identified and contemplated during the NEPA process, including the no-build alternative.
- ii. The procurement of any LLTP by Contractor shall be approved by the Principal Representative through a contract amendment to this Agreement (with corresponding adjustments to the Contract Sum and/or Term) and subject to the issuance of a Notice to Proceed to Commence LLTP; and
 - iii. The Work to be performed by the Contractor during the Construction Phase shall be approved and paid for by the Principal Representative through construction contracts separate from this Agreement and modified for CM/GC projects to incorporate the Bid Packages, Bonds, Certificates of Insurance, LLTP CAP and Construction CAP proposals, and all other contract documents required for the construction contracts.
- L. The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents shall be required unless it is not consistent therewith and is not reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. Numerous exhibits to be developed over a period of time are to be also attached to and made a part of the Contract Documents, some of which may be in conflict with other exhibits or portions of this Agreement.
- M. Federal Requirements - Notwithstanding anything to the contrary contained herein, in the event of any conflict between any Federal Requirement and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

2. DEFINITIONS

- A. "Agreement" or "Contract" is this written standard construction manager/general contractor services agreement entered into by the Principal Representative and the Contractor for the performance of the Work and payment therefor.
- B. "Amendment" means a written change to this Agreement signed by the Contractor, the State Controller, and the Principal Representative, or its authorized agent, issued after the Effective Date of this Agreement, authorizing a change in the Work, the method or manner of performance, an adjustment in the Contract Price, Contract Sum, the Contractor's CM/GC Pre-Construction Fee, or the Term, which can only be changed by Amendment. An

Amendment may be executed using a form attached to this Agreement as Exhibit D and approved by the Contractor and Principal.

- C. “Bid Package” means a substantially complete Plans, Specifications, and Estimate package from which a CAP proposal could be prepared for LLTP or any Construction Phase and which Bid Package may be advertised through the CDOT low bid procurement process.
- D. “Bid Item Pricing” means the prices per unit shown in Contractor’s Price Proposal as provided in Exhibit C including Scoring Form B-3: CM/GC Price Proposal, delivered by Contractor to Principal Representative via email on September 4, 2020.
- E. “CDOT” means the Colorado Department of Transportation, which is the Principal Representative.
- F. “CM/GC Management Price Percentage” means the fee percentage to be applied to all LLTP CAP and Construction CAP proposals equal to the amount of profit, overhead, and construction general conditions as listed in Exhibit C of the Proposal.
- G. “CM/GC Services” means the services performed by Contractor as specified in Section 3.1.2, Completion within Fiscal and Time Constraints.
- H. “CM/GC Construction Contract” means the contract between the Principal Representative and the General Contractor to perform construction activities for any approved Construction CAP.
- I. “Constructability Report” means a written report that reviews each Bid Package at agreed upon Milestones for constructability and feasibility, which includes, but is not limited to, a brief cost and risk analysis with regards to constructability.
- J. “Construction CAP” or “CAP” means the maximum amount for which all Work required for each Construction Phase, excepting LLTP (see definition below “LLTP CAP”, shall be accomplished (including the CM/GC Management Price Percentage) and it shall be computed by the Contractor in accordance with the provisions of Section 9.5, Construction Agreed Price. For any Construction CAP to be accepted by the Principal Representative, the Owner’s Estimate and the Contractor’s Construction CAP must be within a percentage acceptable to the Principal Representative, which shall be demonstrated by the Principal Representative’s issuance of a “CAP Acceptance Letter” to Contractor.
- K. “Construction Phase” means the phase of Work performed by the Contractor in the construction of the Work from award of construction contracts for any Bid Package until the final acceptance of such Bid Package by CDOT. Construction Phase excludes all Design Services.
- L. “Contract Documents” means, collectively, the following documents:
 - i. The exhibits of the Agreement that are attached hereto, incorporated herein, and referenced on the Cover Page of this Agreement;
 - ii. Other documents that are incorporated by reference and made a part of the terms and conditions of this Agreement are referenced on the Cover Page of this Agreement; and

- iii. Contract Amendment(s) (incorporating Bid Packages) Exhibits that will be attached hereto and incorporated by reference herein when executed, after a successful CAP negotiation, are referenced on the Cover Page of this Agreement.
- iv. The documents that are referenced on the Cover Page of this Agreement and made part of the terms and conditions of this Agreement upon issuance by the Principal Representative will be incorporated by reference to this Agreement.
- M. "Contract Goal" means the goal for DBE participation that the Department determines should appropriately be met by the selected contractor, based on the type of work included in each project and the availability of DBEs capable of performing such work. The Contract Goal, if determined by the Principal Representative as required, will be the percentage stated in the invitation for CM/GC Services or in the Contract documents.
- N. "Contract Price" is the dollar amount available for the total cost for performance of all LLTP CAPs and Construction CAPs as designed or specified by the Design Consultant.
- O. "Contract Sum" shall be defined as provided in Section 9.6.1, Construction Agreed Price. The State's financial obligation is limited by this amount, and the Contractor shall perform no Work which will result in a contract value which exceeds the Contract Sum. Any modification or amendment to the terms and conditions of this Agreement must be in writing, executed in accordance with the State Fiscal Rules, and be approved by the Controller or his designee.
- P. "Contractor" means the individual, joint venture, partnership, or corporation which has, been selected by the Principal Representative 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 the Principal Representative and the Design Consultant in order to help formulate the Project Budget, furnish the Design Consultant with the information on construction technology and market conditions to help assure that the Project design stays within the Project Budget, Contract Price, and aggregate of LLTP CAPs and Construction CAPs (except for changes made pursuant to Article 10) and manage the procurement effort.
- Q. "Contractor's CM/GC Preconstruction Fee" means the amount to be paid by the Principal Representative to the Contractor for Work performed by Contractor 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 Exhibit A; and Exhibit C - Scoring Form B-3: CM/GC Price Proposal, and Form C-1 CM/GC Management Price Percentage.
- R. "Cost Model" means the open and transparent model that the Contractor develops and uses through the Preconstruction Phase so that estimates and assumptions are communicated to the Principal Representative, Design Consultant and Independent Cost Estimator. Contractor must use a Cost Model reasonably consistent in approach with that provided for the Bid Item Pricing in

the Contractor's Price Proposal documents unless otherwise agreed to by the Principal Representative. Although the Bid Item Pricing proposal addressed only the bid items listed in the RFP, the accepted estimating model shall be applied to the entire Project during the CM/GC design process to arrive at the OPCCs and Construction CAP. During Project execution, the Contractor shall use the accepted version of the Contractor's proposed approach to price and estimating model.

- S. "Critical Path Method" or "CPM" means a mathematically based algorithm for scheduling a set of project activities, which is an important tool for effective project management. It involves constructing a model of the project including a list of all activities required to complete the project (typically categorized within a work breakdown structure), the time (duration) that each activity will take to completion, and the dependencies between the activities. Using these values, CPM calculates the longest path of planned activities to the end of the project, and the earliest and latest that each activity can start and finish without making the project longer. This process determines which activities are "critical" (i.e., on the longest path) and which have "total float" (i.e., can be delayed without making the project longer).
- T. "Date of Completion" is the date certified by the Principal Representative when the Work, or designated portion thereof, is complete in accordance with the Contract Documents.
- U. "Day" means calendar day unless specifically designated otherwise.
- V. "DBE" means a business currently certified as a "Disadvantaged Business Enterprise" by the Colorado Unified Certification Program.
- W. "DBE Joint Venture" means association of two or more businesses formed to carry out a single business enterprise for profit for which purposes they combine their property, capital, efforts, skills and knowledge. DBE Joint Ventures must be certified as a joint venture by the Principal Representative. The DBE percentage of the joint venture will be determined at the time of certification.
- X. "DBE Program" means Principal Representative's "Disadvantaged Business Enterprise Program" which has been developed in accordance with 49 CFR Part 26 and approved by the appropriate federal government operating agency.
- Y. "DBE Provision" means CDOT's DBE provision located on CDOT's website at: <https://www.codot.gov/business/civilrights/dbe> .
- Z. "Design Consultant" means the legally approved professional Design Consultant, or group or association or professional corporation of such approved professional Design Consultants, engineers and consultants, who have contracted with the Principal Representative to accomplish Design Services necessary for the Project.
- AA. "Design Services" means architectural and engineering services provided by the Design Consultant and/or the Contractor.
- BB. "Direct Cost of the Work" means those items included in any Construction CAP which, pursuant to the Construction General Conditions, are directly related to construction and not otherwise defined under such Construction Phase.

- CC. “Dispute Resolution” means the process through which the Parties (Principal Representative and the Contractor) agree to resolve any issue related to this Agreement that may result in Disputes and Claims.
- DD. “Disputes and Claims” means all disputes and/or claims concerning contract price, time, payment, and/or interpretation of this Agreement. Disputes and Claims include, but are not limited to, any disagreement resulting from a delay, a Change Order, any Modification, another written order, or an oral order from the Principal Representative, including any direction, instruction, interpretation, or determination by the Principal Representative, interpretations of the Agreement provisions, Drawings, Plans, or Specifications or the existence of alleged differing site conditions.
- EE. “Drawings” means all Plans and Specifications approved by the Principal Representative which have been prepared by the Design Consultant showing the work for the Project to be performed.
- FF. “ESB” means any business certified by the Principal Representative to participate in the ESB Program that has not otherwise lost such certification due to graduation or revocation.
- GG. “ESB Program” means Principal Representative’s “Emerging Small Business Program” which has been developed in accordance with 2 CCR 604-1 and approved by the State of Colorado Transportation Commission and is intended to provide assistance and increase opportunities for ESBs.
- HH. “Final Acceptance” or “Finally Complete” mean the stage in the progress of the Work for any LLTP Phase or Preconstruction Phase, after Substantial Completion, when all remaining items of Work for such phase have been completed, all requirements of the Contract Documents related to such phase are satisfied and the CDOT Acceptance Letter for such phase can be issued. Portions of the phase may be separately and partially deemed Finally Complete at the discretion of the Principal Representative when that portion of the phase reaches such stage of completion and a partial CDOT Acceptance Letter for such phase can be issued.
- II. “FIR” means the field inspection review which is the plan review where the Plans and Specifications are at the percent completed specified in the Bid Package.
- JJ. “FOR” means the final office review which is the plan review where the Plans and Specifications are at the percent completed specified in the Bid Package.
- KK. “Health and Safety Plan” means a site specific safety and health plan to protect workers, staff, and visitors that protects their health and safety.
- LL. “Independent Cost Estimate” means an estimate that is conducted with the Project design and construction information independent of the Principal Representative, Design Consultant and the Contractor.
- MM. “Independent Cost Estimator” or “ICE” means the designee of the Principal Representative tasked to perform the Independent Cost Estimate.
- NN. “Innovation Tracking and Performance Report” means a report that tracks all innovations offered by Contractor, Principal Representative, and

Design Consultant team members. It also tracks the performance of these innovations during any Construction Phase or LLTP of the Project.

- OO. "Instruments of Service" means all documents produced by the Design Consultant, including plans, Specifications, Drawings, opinions, reports, and calculations, which have historically been treated as intellectual property belonging to the Design Consultant that created it.
- PP. "LLTP" means long lead-time procurements which must be ordered and/or procured in advance of the Construction Phase for which it shall be used.
- QQ. "LLTP CAP" means the maximum amount for which any LLTP shall be procured and it shall be computed by the Contractor in accordance with the provisions of Section 9.5, Construction Agreed Price. The CM/GC Management Price Percentage is applied to all LLTP CAP proposals. For any LLTP CAP to be accepted by the Principal Representative, the Owner's Estimate and the Contractor's CAP must be within a percentage acceptable to the Principal Representative, which shall be demonstrated by the Principal Representative's issuance of a "CAP Acceptance Letter" to Contractor.
- RR. "Key Personnel" means the listed personnel in the Project Management Team/Capability in "Contractor's Proposal" which is part of the Proposal that constitutes an agreement by the Contractor to make the personnel available to complete the Work at whatever level the Project requires pursuant to Exhibit A.
- SS. "Material Sourcing Plan" means the plan that details how the Contractor will handle bids from material vendors for any LLTP CAP or Construction CAP proposals. This plan is part of the open Cost Model required as part of any Bid Package development.
- TT. "Milestone" means a point in the Preconstruction Phase where Plans, Specifications, and estimates are at an agreed completion point. Milestone examples include FIR, FOR, and LLTP CAP or Construction CAP proposals.
- UU. "Modification" includes (1) a written Amendment to this Agreement signed by both parties, (2) a Change Order, or (3) a written interpretation issued by the Principal Representative pursuant to Section 4.3, Interpretations.
- VV. "Notice" shall mean any communication in writing from either contracting Party to the other by such means of delivery that receipt cannot be properly denied.
- WW. "Notice of Termination" means the delivered Notice that informs the Contractor that the Agreement between the State and the Contractor is being terminated for the convenience of the State or for default pursuant to Article 16.
- XX. "Opinion of Probable Construction Cost" or "OPCC" is the cost to complete the Work for a LLTP or a Construction Phase. This cost includes all labor, materials, equipment, bond premiums, and actual costs of procurement or construction that the Contractor will use for the duration of such LLTP or Construction Phase to complete the Work. Each Opinion of Probable Construction Cost shall be produced in an open book process throughout the Preconstruction Phase of the Project so that the Principal Representative, the Design Consultant, and the

Independent Cost Estimator can make accurate assumptions, calculate prices, and determine the amount of risk in the Project.

- YY. "Pay Estimate" means a request for payment for Work completed on a monthly basis and pursuant to the 2022 Standard Specifications, as amended, revised and modified from time to time.
- ZZ. "Plans" includes the detailed plans and standard plans in any Exhibit D, in which calculated dimensions will govern over scaled dimensions.
- AAA. "Principal Representative" means CDOT or its designee and shall be specifically identified in the Contract Documents.
- BBB. "Preconstruction Phase" means the phase of Work in which CM/GC Services, LLTP, and Design Services are performed.
- CCC. "Procurement Review Report" means the report detailing any LLTP CAP plans, warranties, liquidated damages, procurement strategies, schedules, and details required for LLTPs.
- DDD. "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, cost models, risk registers, communications, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.
- EEE. "Project" is the total design and construction of the project as identified in Section 1 of the "Principal Representative's Request for Proposal" which is part of the Proposal, of which the Work performed under the Contract Documents is a part, and may include construction by the Principal Representative or by separate contractors.
- FFF. "Project Management Software" means the contract-control/project-management software approved by the Principal Representative.
- GGG. "Project Manager" means a qualified individual authorized by the Contractor to be responsible for coordinating time, equipment, money, tasks, and people for all or specified portions of the Project.
- HHH. "Project Schedule" means a schedule that is prepared by the Contractor that shall be used for coordination, for evaluation of progress, for evaluation of changes to the Agreement, and to ensure the timely completion of the Work as called for in the Contract Documents.
- III. "Owner's Estimate" means the estimate reviewed and approved by the Principal Representative to be compared to each OPCC or CAP. The Independent Cost Estimate can serve as the Owner's Estimate if approved by the Principal Representative.
- JJJ. "Quality Control Plan" means the plan describing the Contractor's plans to ensure quality and compliance in construction.
- KKK. "Risk Management Plan" means the agreed to plan which includes risk identification, assessment, and completion of a Risk Register detailing risks, mitigation, and the assigned responsibility for each risk.
- LLL. "Risk Register" means a listing of risks and opportunities, risk assessments, and an evaluation of mitigation and responsibility for those risks.

- MMM. "Samples" are physical examples which illustrate materials, equipment, or reasonable workmanship, and establish standards by which the Work shall be judged.
- NNN. "Schedule of Bid Items" is part of the Contract Documents for any LLTP CAP or Construction CAP proposals, which includes an itemized description of the Work by division and section of the Specifications. The format will be an electrical EBS file submitted to the Principal Representative by floppy disk, flash drive, CD, or electronic submittal.
- OOO. "Shop Drawings" are drawings, diagrams, schedules, and other data specifically prepared for the Work by the Contractor or any Sub-contractor of any tier, manufacturer, Supplier, or distributor, to illustrate some portion of the Work.
- PPP. "Specifications" means the detailed, exact statement of particulars, especially statements prescribing materials and methods; and quality of Work for any LLTP or Construction Phase, which are attached in any Exhibit D and include, but are not limited to, Project special provisions and standard special provisions.
- QQQ. "Standard Specifications" means the provisions in the Standard Specifications for Road and Bridge Construction issued 2022, as amended, revised and modified from time to time.
- RRR. "State" means the State of Colorado.
- SSS. "Subcontracting Plan" means the plan developed by the Contractor which outlines the Contractor's expected approach to subcontracting, including promoting disadvantaged and small business participation, in the Construction Phase of the Project. The Subcontracting Plan shall detail the opportunities that the Contractor has identified for possible participation by ESBs and DBEs. The Subcontracting Plan shall be included in each Bid Package prepared by the Contractor and may be considered by CDOT when determining the goal for DBE participation to be applied to the Construction Phase.
- TTT. "Subcontractor" means a person, firm, or corporation supplying labor and materials, or only labor, for all or any portion of the Work, under separate contract or agreement with the Contractor.
- UUU. "Substantial Completion" or "Substantially Complete" mean the stage in the progress of the Work for any LLTP or Preconstruction Phase when the procurement or CM/GC Services are sufficiently complete, in accordance with the Contract Documents as modified by any Amendment or Change Order, so that the Work, or at the discretion of the Principal Representative, any designated portion thereof, is available for its intended use by the Principal Representative and a Notice of Substantial Completion for such phase can be issued. Portions of the phase may, at the discretion of the Principal Representative, be designated as Substantially Complete.
- VVV. "Superintendent" means the Contractor's authorized employee held responsible in charge of the Work.
- WWW. "Supplier" means any manufacturer, fabricator, distributor, material man or vendor.

XXX. "Term" means the term of the Agreement, which shall commence as set forth in Section 6.1, Commencement, and shall end on the final completion date of the Project pursuant to Article 15.

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

ZZZ. "Termination Date" means the date this Agreement shall terminate, which is June 30, 2023, unless sooner terminated or further extended as specified elsewhere herein.

AAAA. "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.

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

CCCC. "Worker and Public Safety Plan" means the report detailing how the Contractor will provide a safe work site and provide safety for the travelling public.

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

3. CONTRACTOR'S SERVICES

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

A. COMPLETION WITHIN FISCAL AND TIME CONSTRAINTS

- i. The Contractor expressly recognizes that this Project is being undertaken on an accelerated basis and must be completed within the time and fiscal constraints as set forth throughout this Agreement and its Exhibits. The Contractor further represents to the Principal Representative that by executing this Agreement, it has been fully informed and has thoroughly reviewed: the goals of the Project; the work effort of the Design Consultant performed to date for the Project; all of this Agreement's Exhibits and Contract Documents, specifically including, but not limited to, Exhibit A, Contractor's Preconstruction Roles and Responsibilities Matrix; has been informed of the Principal Representative's general time as well as fiscal constraints and contingencies applicable to the Contract Price; and all of the CM/GC Services and LLTPs to be provided by the Contractor pursuant to the Contract Documents. Based upon this review and analysis and recognizing that the contract for Design Services is between the Principal Representative and the Design Consultant, the Contractor nonetheless

represents to the Principal Representative that it shall provide all the necessary services and perform all of the Work within the requirements of the Contract Documents.

- ii. To accomplish the objectives set forth in Section 3.1.1, Completion Within Fiscal and Time Constraints, the Contractor shall provide consultation throughout the Preconstruction Work Package, but not limited to, the furnishing of all necessary CM/GC Services and LLTPs. In cooperation with the Design Consultant and Principal Representative, the Contractor shall:
 - a) Review all as-builts, current design, and site conditions.
 - b) Attend the Project Scoping Workshop.
 - c) Attend all Project, Milestone, Context Sensitive Solutions (CSS), Project action team, LLTP CAP or Construction CAP negotiation meetings with the Project team as agreed at the Project Scoping Workshop.
 - d) Formulate and evaluate alternative designs, systems, and materials.
 - e) Provide 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. The Contractor shall develop the OPCC on designs prepared by the Design Consultant at the completion of any agreed upon Milestone and shall include an analysis and commentary as to any discrepancies observed in any report referenced in Sections 3.1.2 (7) and (8), Completion Within Fiscal and Time Constraints, below.
 - f) Evaluate the alternatives on the basis of costs, construction schedules, availability of labor, equipment, and materials, and construction feasibility in the form of Constructability Reports.
 - g) With the assistance of the Design Consultant, prepare written procurement reviews for materials that could be procured by the Principal Representative or the Contractor ahead of any Construction Phase.
 - h) With the assistance of the Design Consultant, prepare written reports at the end of any FIR or any FOR summarizing the Value Engineering activities accomplished and any recommendations developed within each phase.
 - i) If OPCCs and/or bids received for the Work contained in any Bid Package cause the anticipated cost of the Work to exceed the then current OPCC, the Contract Price, any LLTP CAP, any Construction CAP or Schedule of Bid Items, the Contractor shall, at no additional cost to the Principal Representative unless caused by an increase in the Contractor's Work requested by the Principal Representative, provide additional Value Engineering services in conjunction with any and all appropriate items in the OPCC, the Contract Price, any LLTP CAP, any Construction CAP and/or the Schedule of Bid Items for the Work.
 - j) Lead informal or formal Value Engineering workshop(s), as determined by CDOT, at agreed upon Milestones to coordinate estimating tasks,

bring multidiscipline cost/construction experts to evaluate alternative designs, systems, and materials. This Work includes the submittal and ongoing evaluation of Value Engineering Change Orders, if required.

- k) Develop and submit a Contracting and Diversity Plan to contract with Subcontractors and meet the DBE goals, if applicable, of any Construction Phase.
 - l) Prepare preliminary construction schedules and phasing alternatives.
 - m) In collaboration with the Design Consultant and Principal Representative, develop a Risk Management Plan, perform risk assessments, and prepare a Risk Register.
 - n) With the assistance of the Design Consultant and Principal Representative, develop an Innovation Tracking and Performance Report.
 - o) Develop a Quality Control Plan, a Material Sourcing Plan, and a Worker and Public Safety Plan.
 - p) Prepare and submit a Procurement Review Report for each LLTP CAP.
- iii. The Principal Representative and the Design Consultant shall participate in the formulation and evaluation of alternatives in the Value Engineering activity.

B. AVAILABLE FUNDS

- i. The Parties expressly recognize and agree that this Agreement is subject to and contingent upon the continuing availability of federal and state funds for the purposes hereof. If the State does not receive such funds or any part thereof, the State's performance hereunder is contingent upon the continuing availability of such funds and the State may immediately terminate this Agreement without liability, including liability for termination costs. In the event of termination, the Contractor is entitled to payment, in accordance with this Agreement, for Work completed on the Project as of the date of the termination.
- ii. The Contractor acknowledges that the State is limited in the funds available to design and construct the Project. Should funding of a lesser amount be made available for the Project, it is the obligation of the Principal Representative to revise the Project scope consistent with the ultimate appropriation.
- iii. Payments pursuant to this Agreement shall be made only from available funds encumbered for this Agreement and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds.

C. BUDGETING AND CONTRACT PRICE

- i. The Contractor shall assist the Design Consultant in evaluating the Principal Representative's preliminary budget. Based on consultation with the Design Consultant and the Contractor, the Principal Representative shall furnish a Contract Price to the Contractor which shall set forth a dollar amount available for the total OPCC(s) of the Project and include contingencies for

bidding and construction, shared risk contingency pools, force account items, and the CM/GC Management Price Percentage.

- ii. The Contract Price may be revised only by approved Amendments.

D. COST ESTIMATING AND PROJECT MANAGEMENT SOFTWARE

- i. Cost estimating shall be conducted by three entities during the Preconstruction Phase of the Project. The Principal Representative and Contractor shall maintain their own OPCCs through the Preconstruction Phase. The Principal Representative will provide an Independent Cost Estimator or ICE that will develop an Independent Cost Estimate. At each agreed upon Milestone and after any LLTP CAP, or any Construction CAP proposals are submitted by the Contractor, the Principal Representative's Engineer's Estimate, and the Contractor's OPCC will 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 Contractor's CAP are not within a percentage acceptable by the Principal Representative for any LLTP CAP, or any Construction CAP proposal (as applicable), the Principal Representative will conduct a review to determine where the cost estimates differ and what assumptions or details were used to determine each difference. For any LLTP CAP or Construction CAP to be accepted by the Principal Representative, the Owner's Estimate and the Contractor's CAP must be within a percentage acceptable to the Principal Representative, which shall be demonstrated by the Principal Representative's issuance of a "CAP Acceptance Letter" to Contractor.
- ii. The Contractor shall maintain an open and accurate Cost Model that shall include all details of the OPCC and any LLTP CAP or any Construction CAP proposal when submitted. These details include, but are not limited to labor, materials, equipment, Subcontractor and Supplier quotes, assumptions, risk, direct, mobilization, as listed in the Contractor's Proposal.
- iii. The Cost Model shall be used by all entities to develop Independent Cost Estimates and OPCCs at each agreed upon Milestone and when each LLTP CAP and Construction CAP proposal is submitted.
- iv. Each LLTP CAP and Construction CAP proposal will be submitted in a form acceptable to the Principal Representative.
- v. OPCC: When preparing any OPCC and in development of the Schedule of Bid Items, such documents shall include, without duplication:
 - a) The cost of all labor, materials, equipment, bond premiums, and actual costs of procurement or construction that the Contractor will use for the duration of such LLTP Phase or Construction Phase to complete the Work.
 - b) General Conditions and whether or not incorporated or to be incorporated in the Work.
 - c) The Contractor shall list indirect costs for each item or in a separate list. The Principal Representative will 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 the Principal Representative, 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 Contractor's compensation for CM/GC Services and any LLTP and the cost of Work provided by the Contractor pursuant to this Agreement.
- f) For each OPCC required for the Work, the Contractor shall acquire multiple quotes from potential Subcontractors and Suppliers. This information shall be shared in the open Cost Model and the Contractor shall allow their potential Suppliers and Subcontractors to share their information, quotes, and product data with the ICE, the Principal Representative, and the Design Consultant.
- vi. No OPCC shall include the compensation of the Design Consultant, the Design Consultant's sub-consultants or any other sums due the Design Consultant, the costs of land, right of way, financing or any other costs which are the responsibility of the Principal Representative.
- vii. The Contractor, in preparing its OPCC and providing each LLTP CAP and Construction CAP proposal, shall consult with the Design Consultant to determine what materials, equipment, labor, and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Work, and to include in the Contract Documents alternate items, as approved by the Principal Representative in writing, for bid so as to permit the adjustment of the OPCC.

The Contractor shall prepare an OPCC as soon as major Project requirements have been identified and update it periodically. For each FIR, the Contractor shall prepare an OPCC and update periodically. During each FOR, the Contractor shall prepare a final OPCC in preparation for each LLTP CAP and Construction CAP proposal and update periodically. All OPCC shall make allowance for price escalation. During the final Preconstruction Phase, the Contractor shall continually monitor the cost estimates and develop an OPCC to help assure that the cost of the Work remains within the applicable portion of the Contract Price and LLTP CAP or Construction CAP, as applicable.

- viii. Each OPCC shall be independently prepared but in coordination with the Principal Representative 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 Contractor and the Principal Representative 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 will be compared and reconciled through the Principal Representative.

- ix. During the preparation of each OPCC, the Contractor shall notify the Principal Representative if it appears that the OPCC will exceed the applicable portion of the Contract Price, satisfactorily demonstrate the accuracy of its estimate in such detail as shall be reasonably required by the Principal Representative, and make reasonable recommendations for corrective action consistent with Contract Price. The Contractor shall submit OPCCs to the Principal Representative for review and acceptance. Concurrently, the Contractor shall provide copies to the Design Consultant for review and verification.
- x. The Principal Representative shall reasonably cooperate with the Contractor to keep the Work within the applicable portions of the Contract Price, including, but not limited to, the giving of appropriate and reasonable consideration to all reasonable recommendations of the Contractor, approving redesign, providing constructability reviews and reports, deductive alternatives or reductions in Work, requesting additional Value Engineering, making Modifications to the Contract Documents or exercising such other rights or remedies as may be available elsewhere under this Agreement including termination for convenience. However, the Principal Representative shall be under no duty to reduce the Work to accommodate for any construction contingency used to cover costs to correct errors, omissions, mistakes or rejected Work.
- xi. The Design Consultant, by the terms of its agreement with the Principal Representative, is obligated to provide reasonable cooperation to the Contractor in the development of OPCCs and each LLTP CAP and Construction CAP proposal. Conversely, the Contractor, by the terms of this Agreement is obligated to provide reasonable cooperation to the Design Consultant in the development of OPCCs, each LLTP CAP and Construction CAP proposal. Additionally, both Design Consultant and Contractor are obligated to reconcile their respective cost estimates at the completion of each Bid Package including each LLTP CAP and Construction CAP proposal in a timely manner so as not to negatively impact the Project Schedule.

E. CM/GC SERVICES

- i. During Project development, the Contractor shall review conceptual design; advise on-site use and improvements, selection of materials, building systems, and equipment; and provide recommendations on construction feasibility, availability of materials and labor, local construction activity as it relates to schedules, and time requirements for installation and construction.
- ii. The Contractor shall perform those services included, but not limited to, those designated as “Required” in Exhibit A, CM/GC Roles and Responsibilities Matrix. In addition and not in limitation, the Contractor shall also perform the other CM/GC Services designated in this Article.

- iii. The Contractor 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 Contractor to provide Design Services. Written reviews will be submitted with redlined drawings, plans, and specifications after each Milestone.
- iv. The Contractor shall make recommendations to the Principal Representative and the Design Consultant regarding the division of Work in the Drawings, Plans, and Specifications to facilitate the bidding and awarding of subcontracts, allowing for phased construction and funding, if applicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, etc.
- v. The Contractor shall review Drawings, Plans, and Specifications with the Design Consultant to:
 - a) eliminate areas of conflict, overlapping trade jurisdictions, and overlapping in the Work to be performed by the various Subcontractors,
 - b) endeavor to confirm that all Work has been included, and
 - c) allow for phased construction.

The appropriate representatives of the Principal Representative shall review documents submitted by the Contractor and shall render decisions pertaining thereto without unreasonable delay.

- vi. The Principal Representative through the Design Consultant and consistent with the Principal Representative's contract with the Design Consultant, shall furnish the Contractor a sufficient quantity of documents required for the CM/GC Services.
- vii. As part of each FIR review and OPCC, the Contractor shall develop a preliminary Project Schedule that is coordinated with the Design Consultant's design schedule, agreed upon Milestone dates from the Project Scoping Workshop, the Date of Completion specified in Section 6.1, Commencement, the scope of work described within the Contract Documents, and the work described within each of the FIR documents. The Contractor shall utilize the most recent version of Microsoft Project or Primavera, to develop and manage the schedule. The schedule as agreed to shall be CPM with reasonable detail to allow for assessment of each LLTP schedule for equipment or materials to be furnished by the Principal Representative or Contractor as agreed, the adequacy of the construction duration/period, critical paths among the activities for the building systems, peak manpower requirements, and crunch points within the Project's logic/critical path. As part of each FOR review and OPCC, this preliminary schedule shall be updated by the Contractor to reflect the work described in any FOR documents, and shall be utilized by the Principal Representative to assess each LLTP CAP and Construction CAP proposal. The

Project Schedule will be updated at other Milestone dates as agreed at the Project Scoping Workshop.

- viii. The Contractor shall attend all regular Project status meetings with the Principal Representative and the Design Consultant and such additional meetings as the Principal Representative may request. All regular meetings shall be scheduled by the Principal Representative with the agreement of the Contractor and Design Consultant. All additional meetings shall be scheduled by the Principal Representative.
- ix. The Contractor shall investigate and recommend materials and equipment that could be purchased by the Principal Representative or the Contractor as agreed; consider LLTP opportunities, and mass purchasing power in making such recommendations; recommend a schedule for such purchases after coordination with the Design Consultant in the schedule for preparation of Contract Documents; and expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates.
- x. The Principal Representative and the Design Consultant will prepare all Drawings, Plans, Specifications, and engineering estimates for the Bid Packages for any LLTP CAP and Construction CAP proposal.
- xi. The Contractor shall provide the requirements and assignment of responsibilities for safety precautions and programs as required for the execution of the Work, temporary project facilities, and for equipment, materials and services for common use of Subcontractors and verify that all are included in the Contract Documents.
- xii. The Contractor shall participate in Project design review sessions at the close of each FIR, each 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 the Principal Representative. The purposes of the Project design review sessions are to:
 - a) assure consistency with the design intent;
 - b) ensure complete, coordinated, constructible and cost-effective designs for all disciplines (e.g. architectural, structural, mechanical, geotechnical, electrical and roadway);
 - c) assure that the design documents are code compliant;
 - d) endeavor to confirm that all Work has been included and described in sufficient detail to assure complete pricing of Work;
 - e) allow for phased construction; and
 - f) identify errors and omissions.

The Contractor shall provide the Design Consultant written reviews and redlined hard copies of Drawings, Plans, and Specifications. The Design Consultant shall collect all design review comments from the various participants, provide reports to the Principal Representative, 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 the Principal Representative.

- xiii. The Contractor shall provide, not later than the first of each month, a monthly report documenting the current status of the Project's schedule, OPCC updates, updates to the Contracting and Diversity Plan, requests for information, submittals, manpower, 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 Phase shall be attached/included. This monthly report shall be provided in Preconstruction Phase of the Project.
- xiv. If the Contractor or any of its Subcontractors of any tier participating in the Design reviews observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, ordinances, rules or regulations, in any respect, the Contractor shall promptly notify the Principal Representative in writing, noting the applicable Drawing, Plan or Specification, and recommending an appropriate alternative for correcting the Contract Document.
- xv. All reviews by the Contractor shall include written responses and redlined documents that detail recommendations, changes, and questions.

F. ACCESS TO WORK

- i. The Design Consultant and Principal Representative shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide safe and reasonable facilities for such access so that the Design Consultant and Principal Representative may exercise their rights and perform their functions under the Contract Documents.
- ii. During all phases of the Work and services to be provided hereunder the Contractor agrees to establish a working office at a place agreeable to the State and the federal government and permit duly authorized agents and employees of the State, the federal government to enter the Contractor's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

G. DESIGN CONSULTANT'S AUTHORITY

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

H. NO RESPONSIBILITY FOR DESIGN CONSULTANT

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

I. SCHEDULE, COORDINATION, AND COST CONTROL

In the performance of the Work under this Agreement, the Contractor acknowledges that time is of the essence of this Agreement. The Contractor shall begin the performance of CM/GC Services upon receiving a Notice to Proceed to Commence CM/GC Services. The Contractor shall begin the LLTP upon receiving the Notice to Proceed to Commence LLTP, in accordance with Section 6.1, Commencement. The Contractor shall schedule and coordinate the work of all of its Suppliers on the Project including their use of the site. The Contractor shall keep the Suppliers informed of the Project Schedule to enable the Suppliers to plan and perform the work properly. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve completion of the Work prior to the Date of Completion specified in Section 6.3, Completion Date, as adjusted by Change Orders and Amendments.

J. PRELIMINARY PROJECT SCHEDULE

i. Schedule Creation

- a) Starting at the Project Scoping Workshop, the Contractor shall begin to develop the Project Schedule encompassing all LLTPs and Construction Phases. The Project Schedule shall be updated at each agreed upon Milestone during the Preconstruction Phase.
- b) At each LLTP CAP or Construction CAP proposal meeting, the Contractor shall submit for the Design Consultant's and the Principal Representative's review and acceptance of a Preliminary Project Schedule. The Preliminary Project Schedule shall include the Work encompassing all LLTP CAPs and Construction CAPs, in a manner that is consistent with previously issued schedules, and shall comply with the Date of Completion of the Work authorized by the current Contract Documents. This Project Schedule shall show all completed, in progress, and planned Bid Packages as intended at the appropriate Milestone, LLTP CAP or Construction CAP.
- c) Within fourteen (14) calendar days of receiving Notice to Proceed to commence any LLTP, the Contractor shall submit to the Design Consultant and Principal Representative a detailed Project Schedule for such LLTP Bid Package integrated into the most current preliminary Project Schedule.
- d) Detailed Project Schedules for Construction CAP Bid Packages will be incorporated into a CM/GC Construction Contract.
- e) Upon acceptance by the Principal Representative, the most current Project Schedule shall be used as a basis for determining progress payments.

ii. Technical Requirements:

- a) The Project Schedule shall be developed utilizing commercially available scheduling software as approved by the Principal Representative and the CPM. The level of detail of the Contractor's schedule shall be a function of the complexity of the Work involved. The Milestones and total number of activities shall be subject to approval by the Principal Representative.

The activities and resource loading will correspond with the Cost Model as required by Contract Documents.

- b) Schedule activities shall be cost-loaded as agreed to and the assigned dollar value (cost loading) of each activity of the network shall cumulatively equal the total of all OPCCs.

Costs for mobilization, bonds, permits, insurance costs may be shown separately. For any items that the Contractor intends to bill for stored materials, these items need to be shown as separate material procurement activities in the schedule and the material dollars only placed on these activities.

Billing for stored materials on any other schedule activities not broken out in this manner shall not be allowed. General and administrative cost, overhead, and profit shall not be included within the cost loading and payment for these costs/fees shall be administered separately by the CM/GC Management Price Percentage.

- c) The Contractor shall assign manpower loading as agreed to for each activity of the network. In addition, the Contractor shall prepare and submit a separate manpower summary analysis in graphic format depicting manpower by Subcontractor and aggregate. The graph(s) shall show the number of man-days of effort, by month, over the duration of the Project Schedule for each LLTP or Construction Phase.
- d) For all major equipment and materials fabricated or supplied for this Project, the network shall show a sequence of activities including, preparation of Shop Drawings and Samples submissions, review and approval of Shop Drawings and Samples, shop fabrication and delivery, erection or installation, and testing of equipment and materials.

iii. Submittals:

For the preliminary or detailed Project Schedule submittals, as well as for each Project Schedule update, the Contractor shall submit the following:

- a) Electronic copies of schedule reports, to include the following minimum items:
 - (1) Cost report showing activity dollar value, dollar value of Work in place to-date and dollar value for current period.
 - (2) Cost report showing activity dollar value, dollar value of Work in place to-date, and dollar value for current period summarizing to Schedule of Bid Items.
 - (3) Resource report showing man-day allocations by specific trade on each activity.
 - (4) Variance report comparing current dates to target dates.
 - (5) Cash flow report showing monthly projections of expenditures.
- b) A narrative schedule report documenting:

- (1) Description of the actual Work accomplished during the reporting period.
- (2) Description of any problem areas.
- (3) Description of current and anticipated delays with recommended corrective actions to mitigate such delays.
- (4) A list of proposed modifications, additions, deletions, and changes in logic to the approved construction schedule.
- c) A Contractor's schedule to the Principal Representative in an electronic format.
- iv. The Contractor shall utilize the most recent version of Microsoft Project or Primavera to prepare and keep current, for the Principal Representative's approval, a time schedule of submittals in a submittal log which is coordinated with the Contractor's detailed Project Schedule and allows the Principal Representative a reasonable time to review submittals.
- v. Schedule Management
 - a) Progress Meetings: Progress meetings will be held in a number per week or month mutually agreed to by the Principal Representative and the Contractor, a meeting shall be held to assess the progress achieved by the Contractor during previous work week, discuss and resolve issues affecting progress, and review the critical activities anticipated for the following two weeks. The Contractor is to provide short interval schedules documenting the activities to be accomplished during the past week and the activities forecast for the next two weeks.
 - b) Monthly Project Review Meetings: Once each month on or about the 25th of the month, a meeting shall be held to review a draft Pay Estimate and/or Project Schedule update, assess and agree to the progress achieved by the Contractor during the previous month, discuss and resolve issues affecting progress, and review the critical activities to be accomplished during the following 90 days. The Contractor is to provide a draft Pay Estimate and Project Schedule update reflecting the Work accomplished during the previous month.
 - c) Monthly Schedule Reporting: After the monthly Project review meeting, but not later than the 28th of the month, the Contractor shall update the preliminary or detailed Project Schedule and submit the Pay Estimate and the current submittal log consistent with Section 3.10.5, Schedule, Coordination, and Cost Control.
 - d) Schedule Modifications: If, as a result of the monthly schedule update, it appears the preliminary or detailed Project Schedule no longer represents the actual /logical progression of the Work or the Contractor's plan for prosecution and progress of the Work, the Principal Representative shall require the Contractor to submit a revision to the preliminary or detailed Project Schedule. Such revisions to the preliminary or detailed Project Schedule shall not alter any of the Milestone dates unless approved by the Principal Representative.

- e) Schedule Impacts, Schedule Delays, Time Extensions: During the course of the Project, it may be appropriate to revise the preliminary or detailed Project Schedule to incorporate impacts or delay issues into the Project Schedule. If the Contractor feels it has encountered schedule impacts that it feels may warrant a time extension, it shall present an impacted Project Schedule in accordance with Article 6, to the Principal Representative supporting its claim.
- f) Recovery Schedule: If progress falls behind schedule dates, the Contractor shall prepare a recovery schedule indicating its revised plan to assure the timely completion of the Work. The recovery plan shall be subject to the Principal Representative's approval.

K. SALES AND USE TAXES

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

4. PROJECT DRAWINGS, PLANS, AND SPECIFICATIONS

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

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

Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is to be approved by the Principal Representative.

B. REVIEW OF THE CONTRACT DOCUMENTS

- i. The Contractor shall carefully study and compare the Contract Documents and shall immediately report to the Principal Representative any error, inconsistency, or omission that may be discovered. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Drawings, Plans, Specifications, instructions, Shop Drawings, Product Data, or Samples for such portion of the Work.
- ii. If the Contractor or any of its Subcontractors of any tier observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, ordinances, rules, or regulations, in any respect, the Contractor shall immediately notify the Principal Representative in writing, and any necessary changes shall be accomplished by appropriate Amendment or Change Order.
- iii. If the Contractor 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 the Principal Representative, as required in Sections 4.2.1 and 4.2.2, Review of the Contract Documents, the Contractor shall assume full responsibility therefor and shall bear all costs attributable therein.

C. INTERPRETATIONS

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

D. SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

- i. The Contractor shall furnish for approval, all Samples as directed by the Design Consultant. The Design Consultant shall check and approve such Samples with reasonable promptness.
- ii. The Contractor shall prepare, review, approve, and submit to the Design Consultant, with reasonable promptness and in such sequence as to cause no unreasonable delay in the Work or in the work of the Principal Representative or any separate Contractor, all Samples and sufficient copies of all Shop Drawings and Product Data required by the Contract Documents. Specific quantities, format, size, etc. of Samples, Shop Drawings, and Product Data shall be described in the Contract Documents prepared by the Design Consultant. All Shop Drawings shall contain identifying nomenclature

and each submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures.

- iii. By preparing, approving, and submitting Shop Drawings, Product Data, and Samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto, or shall do so with reasonable promptness, and has checked and coordinated the information contained within such submittal with the requirements of the Work, the Project, the Contract Documents, and prior approvals.
- iv. The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Consultant's approval of Shop Drawings, Product Data, or Samples unless the Contractor has specifically informed the Principal Representative and Design Consultant in writing of such deviation at the time of submission and the Design Consultant and Principal Representative have both given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, or Samples by the Design Consultant's approval of them.
- v. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, or Samples, to revisions other than those requested by the Principal Representative on previous submittals.
- vi. No portion of the Work requiring submission of a Shop Drawing, Product Data, or Sample shall be commenced until the submittal has been approved by the Principal Representative.
- vii. All such portions of the Work shall be in accordance with approved submittals. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, shall not be acceptable unless previously accepted in writing by the Principal Representative.
- viii. Principal Representative will review and approve or take other appropriate action upon the Contractor's submission of any document such as Shop Drawings, Product Data, and Samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no unreasonable delay. Principal Representative's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Any and all approved substitutions shall be coordinated with the Contract Documents and all prior approvals.
- ix. Transmittal of copies of Shop Drawings, Product Data and Samples to the Principal Representative is solely for convenience of the Principal Representative and shall neither create nor imply a responsibility or duty of review by the Principal Representative.

E. CONFIDENTIALITY

- i. The Contractor 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 Contractor, 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 the State.
 - iii. In the event the Contractor shall obtain access to any records or files of the State in connection with this Agreement, or in connection with the performance of its obligations under this Agreement, the Contractor 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 the State. The Contractor shall notify its employees that they are subject to the confidentiality requirements as set forth above, and shall provide each employee with a written explanation of the confidentiality requirements before the employee is permitted access to confidential data.

5. THE PRINCIPAL REPRESENTATIVE RESPONSIBILITIES

A. THE RESPONSIBILITIES

- i. The Principal Representative shall furnish the Contractor with detailed program requirements and the Contract Price established for the Work.
- ii. The Principal Representative shall designate a representative (other than the Design Consultant) authorized to act on its behalf with respect to the Project (as indicated in Section 3.6, Administration).
- iii. The Principal Representative shall retain a Design Consultant for preparation of the Design Services documents required for the Project. The Design Consultant's services, duties, and responsibilities are described in the agreement between the Principal Representative and the Design Consultant, a copy of which will be furnished to the Contractor.
- iv. The Contractor shall be furnished, without charge 1 set of electronic copies of the Drawings, Plans and Specifications for each LLTP. Additional sets, as mutually agreed upon to meet construction needs, shall be a direct cost of Work.
- v. The Principal Representative shall furnish the site of the Project, all necessary surveys describing the physical characteristics, legal limitations, utility locations, and a legal description.
- vi. The Principal Representative shall identify and make available to Contractor 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. The Principal Representative does not represent that these reports show completely and accurately the existing conditions and the Principal Representative does not guarantee any interpretation of the reports. The Contractor expressly assumes all responsibility for deductions and conclusions which may be made as to the nature of the materials to be excavated, and the difficulties

of making and maintaining the required excavations, and of doing other work affected by the geology of the site of the Work. The geotechnical information discussed above is for reference only and is not part of the Contract Documents.

- vii. The Principal Representative 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.
- viii. The Principal Representative shall furnish such legal, accounting, and insurance counseling services as may be necessary for the Project, and such auditing services as the Principal Representative may require to ascertain how or for what purposes the Contractor has used the monies paid to it under this Agreement.
- ix. The services, information, surveys, and reports required by Sections 5.1.3 through 5.1.8, The Responsibilities, shall be furnished on a timely basis and at the Principal Representative's expense, and except as may be provided to the contrary elsewhere in this Agreement, the Contractor shall be entitled to rely upon the accuracy and completeness thereof.
- x. The Contractor recognizes that the Principal Representative is a governmental body with certain procedural requirements to be satisfied. The Contractor has and shall make reasonable allowance in its performance of the Work for such additional time as may be required for approvals and decisions by the Principal Representative, in addition to the times specifically provided in Section 5.1.11, The Responsibilities.
- xi. In the review process of any FIR or FOR documents and construction documents for each Bid Package, the Contractor expressly agrees to the following review times by the Principal Representative:
 - a) A period of fourteen (14) days for the review of any FIR or FOR documents; and
 - b) A period of fourteen (14) days prior to completion of the construction documents together with an additional seven (7) days after receipt of all Drawings, Plans and Specifications for such Bid Package, commencing with the date of receipt by the Principal Representative of all documents and any other items which are required to be furnished to the Principal Representative by the terms of the Principal Representative's agreement with the Design Consultant.

It is expressly understood and expected that the Contractor shall develop each LLTP CAP and Construction CAP proposal as agreed upon Milestones are reached and that the final establishment of each LLTP CAP and Construction CAP proposal shall occur within fourteen (14) days of receipt of the final full scope of such Bid Package, including all associated addenda, for such LLTP CAP or Construction CAP (as applicable).

- xii. In accordance with the provisions of the DBE Program, the Principal Representative shall review each Construction CAP Bid Package for DBE contracting opportunities. The Principal Representative shall set a contract goal for DBE participation within seven (7) days of receipt of the final full scope of such Bid Package, if the Bid Package includes Federal Aid.
- xiii. The foregoing are in addition to other duties and responsibilities of the Principal Representative enumerated elsewhere in the Contract Documents.

6. TIME OF COMMENCEMENT AND COMPLETION

A. COMMENCEMENT

- i. The Parties' performances under this Agreement shall commence on the Effective Date but no work shall be performed prior to the Contractor's receipt of a Notice to Proceed for CM/GC Services.
- ii. The procurement of any LLTP is expressly conditioned upon and shall not commence until:
 - a) The applicable LLTP CAP and associated Bid Package have been approved and accepted by the Principal Representative added to this Agreement by Amendment;
 - b) The date for completion of the LLTP has been approved and accepted by the Principal Representative;
 - c) All required Performance Bonds and Payment Bonds and Insurance Certificates have been approved and accepted by the Principal Representative; and
 - d) Notice to Proceed to Commence LLTP has been issued by the Principal Representative and made a part of the Contract Documents.

If any of the preceding material conditions to be performed by the Contractor have not been fully satisfied by reason of any act or omission on the part of the Contractor through no fault of the Principal Representative, the Principal Representative shall give the Contractor 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, the Principal Representative may declare the Contractor to be in default of this Agreement.

- iii. The commencement of any Construction Phase is expressly conditioned upon and shall not commence until:
 - a) The applicable Construction CAP and associated Schedule of Bid Items have been approved and accepted by the Principal Representative;
 - b) A CM/GC Construction Contract for such Construction Phase has been issued, signed, and executed;
 - c) The date for completion of the Construction Phase Work has been approved and accepted by the Principal Representative;

- d) In accordance with the standard special provisions (as included in any Specifications) which outlines the requirements of the DBE Program on construction contracts, the Contractor has submitted and the Principal Representative has approved a plan detailing the Contractor's commitments and efforts to meet the DBE participation goal for such Construction Phase. The Contractor shall agree to the requirements of the DBE Program and the applicable standard special provisions as part of the CM/GC Construction Contract;
- e) All required Performance Bonds and Payment Bonds and Insurance Certificates have been approved and accepted by the Principal Representative; and
- f) A Notice to Proceed to Commence Construction Phase has been issued by the Principal Representative as part of the CM/GC Construction Contract.

If any of the preceding material conditions to be performed by the Contractor have not been fully satisfied by reason of any act or omission on the part of the Contractor through no fault of the Principal Representative, the Principal Representative shall give the Contractor 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, the Principal Representative may declare the Contractor to be in default of this Agreement.

B. TIME OF ESSENCE

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

C. COMPLETION DATE

- i. The Date of Completion for performance hereunder shall be established:
 - a) The initial Date of Completion for any LLTP is stated in the Amendment incorporating the applicable Bid Package. Amendments to such Date of Completion are made by approved Amendments to the applicable Bid Package.
 - b) The initial Date of Completion for CM/GC Services is the Termination Date. Amendments to such Date of Completion are made by Amendments to the Termination Date.

D. DELAYS AND EXTENSIONS OF TERM AND FOR COMPLETION OF WORK

- i. Extensions of the Term of this Agreement shall be granted only to the extent that the critical path was delayed or the time allowed for any activity or activities affected exceed the identified available float or slack that occurs, or should occur, along the channels involved.
- ii. Subject to the limitations as provided in Section 6.4.1, Delays and Extensions of Term and for Completion of Work, if the Contractor is delayed

- at any time in the progress of the Work by any act or omission of the Principal Representative, the Design Consultant, or of any employee of either, or by any separate contractor that is not a Subcontractor of the Contractor, or by changes ordered in the Work, or by strikes, lockouts, fire, unusual delay in transportation, directed suspensions of the Work pursuant to Section 6.5.1, Temporary Suspension of the Work, unavoidable casualties, or any other causes beyond the Contractor's control, the Term of this Agreement shall be extended by the Principal Representative for such period of time as the Principal Representative may determine based upon the Contractor's showing of the delay to the critical path in accordance with Section 6.4.1, Delays and Extensions of Term and for Completion of Work, and that it could not have avoided the delay by the exercise of due diligence.
- iii. If adverse weather conditions are the basis for a claim for an extension of the Term of this Agreement, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and that the weather conditions complained of had an adverse effect on the critical path. Substantiation shall be based on a comparison of current conditions with recorded conditions for the same time period over the duration of the past 10 years. For all Disputes and Claims, the Parties shall use Dispute Resolution pursuant to Sections 105.22, 105.23, and 105.24 of the Standard Specifications.
 - iv. If the Contractor intends to assert a claim for an extension of the Term of this Agreement, the Parties shall use Dispute Resolution pursuant to Sections 105.22, 105.23, and 105.24 of the Standard Specifications.
 - v. If no schedule is prepared fixing the dates on which various detail Drawings, Plans, Specifications and instruction (not including final construction documents to be released for construction) will be needed, no extension to the term of this Agreement shall be allowed for failure to furnish such Drawings, Plans, Specifications or instructions as needed, except in respect of that part of any delay in furnishing Drawings, Plans, Specifications or instructions extending beyond a period of two (2) weeks after written demand for such Drawings, Plans, Specifications or instructions is received by the Design Consultant. In any event, any claim for an extension of the term of this Agreement for such cause shall be recognized only to the extent of the delay directly caused by failure to furnish Drawings, Plans, Specifications or instructions pursuant to schedule, or such two (2) weeks demand, without fault on the part of the Contractor or those for whom the Contractor is responsible.

E. TEMPORARY SUSPENSION OF THE WORK

- i. The Principal Representative shall have the authority to suspend the Work (each a "Suspension of Work"), either wholly or in part, for such period or periods as it may deem necessary due to:
 - a) Unsuitable weather;

- b) Faulty workmanship;
 - c) Contractor's material and substantial failure to carry out orders or to perform any provision of the Contract Documents;
 - d) Conditions which are considered unfavorable for the prosecution of the Work; or
 - e) Any other reason, with or without cause, including but not limited to the availability of funding for the Project as well as any other construction projects and the need to allocate funds between them.
- ii. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such manner that they shall not become an obstruction or become damaged in any way; and it shall take every precaution to prevent damage to or deterioration of the Work, provide suitable drainage, and erect temporary structures where necessary.
 - iii. Such notice of Suspension of Work shall be in writing and the Contractor shall again proceed with the Work when so notified in writing. The Contractor may assert any claims for an adjustment of the Contract Sum, any LLTP CAP or Term of this Agreement as provided in Article 6 through Dispute Resolution pursuant to Sections 105.22, 105.23, and 105.24 of the Standard Specifications.

F. DELAY DAMAGES

The Principal Representative's liability for delay damages shall be limited to delays of completion of the Work caused by those sources identified in the Standard Specifications, section 109.10, Compensation for Compensable Delays.

G. LIQUIDATED DAMAGES

- i. If the Contractor shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Agreement and the State of Colorado, acting by and through the Principal Representative, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in Section 17.9, Modification of Article 6. Time of Commencement and Completion.
- ii. The Contractor and the Contractor's surety shall be jointly liable for and shall pay the Principal Representative, or the Principal Representative may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay in the entire Project resulting from delays in any LLTP, which is determined by when such LLTP is 1) Substantially Complete, and the Notice (or all Notices) of Substantial Completion are issued, 2) Finally Complete and accepted and the CDOT Acceptance Letter is issued, or 3) both. Delay in Substantial Completion shall be measured from the date of the Notice to Proceed to Commence LLTP and delay in final completion and acceptance shall be measured from the date of the Notice of Substantial Completion for such LLTP.
- iii. In the first instance, specified in Section 17.9, Modification of Article 6. Time of Commencement and Completion, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning

- after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed to Commence LLTP, until the date of the Notice of Substantial Completion for such LLTP. In the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.
- iv. In the second instance, specified in Section 17.9, Modification of Article 6. Time of Commencement and Completion, liquidated damages, if any, shall be the amount specified in Section 17.9, Modification of Article 6. Time of Commencement and Completion, for each calendar day in excess of the number of calendar days specified in the Contractor's LLTP CAP for such LLTP and stipulated in the Agreement to Finally Complete the LLTP (as defined by the issuance of the CDOT Acceptance Letter) after the final Notice of Substantial Completion has been issued.
 - v. In the third instance, when so specified in Section 17.9, Modification of Article 6. Time of Commencement and Completion, both types of liquidated damages shall be separately assessed where those delays have occurred.
 - vi. The Parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Agreement was formed; the liquidated damages in the first instance representing an estimate of damages due to the inability to use the LLTP and resulting Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all guarantees and warranties, the submittals of sales and use tax payment forms, the calling for the final inspection and issuance of the Notice of Substantial Completion.
 - vii. The Parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed Substantial Completion or Final Acceptance. Such liquidated damages shall not be avoided by virtue of the fact of concurrent delay caused by the Principal Representative, or anyone acting on behalf of the Principal Representative, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with Section 6.4, Delays And Extensions of Term and for Completion of Work.

7. SUBCONTRACTS

A. SUBCONTRACTING

- i. Any Subcontractor retained by the Contractor and any and all subcontracts entered into by the Contractor for any Work performed under this Agreement and any Modifications hereto are subject to prior approval by the Principal Representative. The Contractor shall not engage the services

of any persons then in the employ of the Principal Representative for Work covered by the terms of this Agreement without the written consent of the Principal Representative. All subcontracts exceeding \$10,000.00 in cost, shall contain the provisions included in Article 18 - Colorado Special Provisions.

- ii. Subcontractors as defined in Section 101.81 of the Standard Specifications shall be able to sublet during the Preconstruction Phase of this Project as permitted in Section 108.01 Subletting of Contract in the Standard Specifications. This shall be only allowed during LLTPs unless a specialty Subcontractor is required for the Preconstruction Phase and as approved by the Principal Representative.

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

B. SUBCONTRACTING REQUIREMENTS

The Contractor shall comply with all applicable requirements of the Contract Documents relating to Subcontracts, and shall ensure that its Subcontractors comply with all applicable requirements of the Contract Documents relating to subcontracting. No Subcontractor shall commence work on the Project until a form 205B has been submitted to and approved by the Regional Civil Rights Office. The Contractor shall not add, delete, or change the role of, any Subcontractor without the prior written approval of the Principal Representative.

C. ASSIGNMENT OF SUBCONTRACT RIGHTS

Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to the Principal Representative: (i) the Principal Representative is a third party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit; and (ii) all guarantees and warranties, express and implied, shall inure to the benefit of the Principal Representative as well as the Contractor. Any acceptance of assignment of a Subcontract from the Principal Representative, its successor(s), or assign(s) shall not operate to make the assignee(s) responsible or liable for any breach of the Subcontract by the Contractor or for any amounts due and owing under the Subcontract included in an invoice paid by the Principal Representative.

D. SUBCONTRACT FORMS

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

E. SUBCONTRACT TERMS

- i. Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, and shall include provisions addressing the following requirements as well as any other terms that are specifically required by the Contract Documents to be included therein:
 - ii. Each Subcontract shall include terms that are substantially similar to those terms required by Sections 7.1 (Subcontracting), 7.2 (Subcontracting Requirements), and 7.3 (Assignment of Subcontract Rights). , and the DBE Provision, specifically including an agreement by the Subcontractor to be joined in any dispute resolution proceeding and each Subcontract other than Subcontracts with Suppliers shall include terms that are substantially similar to those contained in Article 8 - Work by Principal Representative or by Separate Contractors.
- F. CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS
- The Contractor shall be responsible to the Principal Representative for the acts and omissions of its agents and employees, Suppliers, Subcontractors performing Work under a contract with the Contractor, and its agents, Suppliers, or employees.
- G. SUBCONTRACT DATA
- i. The Contractor shall notify the Principal Representative, in writing, of the name and address of, and licenses held by, each Subcontractor (excluding Suppliers), as soon as the potential Subcontractor has been identified by Contractor, but in no event less than 14 days prior to the scheduled initiation of Work by such proposed Subcontractor. A Form 205P must be submitted and approved for each Subcontractor prior to commencement of the Subcontractor's work on the Project. Monthly the Contractor shall provide to the Principal Representative a Subcontractor report (including suppliers), divided according to the CM/GC Services, detailing the following:
 - a) Name of Subcontractor;
 - b) Whether the Subcontractor is a DBE, ESB or both;
 - c) Total contract amount;
 - d) The amount and type of work completed in recent month;
 - e) Total payments paid to date;
 - f) Most recent payment and its date;
 - g) Payments due; and
 - h) Status of the work (i.e. in progress, ended, etc.).
 - ii. The monthly report shall include separate subtotals for to-date DBE and ESB participation on the Agreement, The Contractor shall allow the Principal Representative access to all Subcontracts and records regarding Subcontracts; and shall deliver to the Principal Representative, within ten days after execution, copies of all Subcontracts.
- H. SUBSTITUTION OF SUBCONTRACTORS

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

I. SUBCONTRACTUAL RELATIONS

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

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

J. PRINCIPAL REPRESENTATIVE/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 Contractor agrees to comply in a timely manner with reasonable requests for information concerning pre-qualification of a prospective Subcontractor, the evaluation and award of bids, or other obligations under this Agreement concerning pre-qualification, bidding, and subcontracting. Upon notice by the Principal Representative, the Contractor agrees to meet and confer with the Principal Representative and other invited, interested persons at the Denver office of CDOT or at the site, the choice of such location to be made by the Principal Representative, or at some other location mutually agreeable to the Principal Representative and Contractor, concerning its pre-qualification, bidding and subcontracting procedures. The Contractor agrees to meet within three (3) business days of an election by the Principal Representative and to comply with reasonable requests for information to be provided at such meeting. The Principal Representative agrees that this administrative procedure shall be exhausted prior to the Principal Representative's exercising any contractual or other remedy relating to the pre-qualification, bidding, or subcontracting procedures specified herein.
- ii. Nothing contained in the Contract Documents, including this Agreement, shall be deemed to create any contractual relationship between any

Subcontractor or Supplier and the Principal Representative. Further, consistent with Section 17.24, -Waiver, nothing in the Contract Documents, including this Agreement and the pre-qualification, bidding and subcontracting procedures specified herein, is intended to create or shall be deemed to create third party beneficiary or other rights inuring to the benefit of any prospective Subcontractor, Supplier, or any other third person.

K. PAYMENTS TO SUBCONTRACTORS

- i. **Monthly Work Product Review:** On a monthly basis, the Contractor shall review the work product of each Subcontractor or Supplier participating on the Project and document the monthly work product review as part of the Subcontractor Data report required in 7.7.1-Subcontract Data. 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 Contractor 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 Contractor, such invoice may satisfy this requirement. This procedure must be carried out by all Subcontractors and Suppliers.
- ii. **Prompt Payment.** The Contractor is responsible for ensuring that all Subcontractors and Suppliers are promptly paid. All Subcontractors and Suppliers must be paid within thirty (30) days of the monthly work product review detailed in .7.7.1-Subcontract Data.
- iii. **Good Cause Exception.** If the Contractor has “good cause” to delay or withhold a Subcontractor’s or Supplier’s, as applicable, progress payment, the Contractor shall notify the Principal Representative and the Subcontractor or Supplier, as applicable, in writing within seven days after receiving payment from the Principal Representative. 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. **Subject to CDOT’s right to withhold from progress payments any amounts in dispute, and except as expressly stated otherwise in this Section, Payments to Subcontractors, any disagreement between CDOT and the Contractor relating to this Article 7 shall be subject to a Disputes and Claims process. Failure by CDOT to pay any amount in dispute shall not alleviate, diminish, or modify in any respect the Contractor’s obligation to perform under the Contract Documents, including the Contractor’s obligation to achieve Final Acceptance in accordance with the Contract Documents, and the Contractor shall not cease or slow down performance under the Contract Documents on account of any such amount in dispute. The Contractor 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 Article is intended to affect the Contractor's rights and/or responsibilities pursuant to the Agreement.

8. WORK BY PRINCIPAL REPRESENTATIVE OR BY SEPARATE CONTRACTORS

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

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

B. COORDINATION

To the extent separate contractors are not assigned to the Contractor for coordination pursuant to Article 10-Changes in the Work, the Principal Representative shall provide and be responsible for the coordination of the Work of the Principal Representative's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Sections 8.3.1 through 8.3.5, Mutual Responsibility.

C. MUTUAL RESPONSIBILITY

- i. The Contractor shall afford to Principal Representative and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate the Work with theirs as required by the Contract Documents.
- ii. To ensure the proper execution of its subsequent Work, if any part of the Contractor's Work depends for proper execution or results upon the work of the Principal Representative or any separate contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the Principal Representative any apparent discrepancies or defects in such other work that renders it unsuitable for such proper execution and results. The Contractor shall also measure work already in place and shall promptly report to the Principal Representative and the Design Consultant any

discrepancy between the executed work and the Drawings, Plans or Specifications. Failure of the Contractor to so report shall constitute an acceptance of the Principal Representative'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 Contractor cause damage to the Work or property of the Principal Representative, or to other work or property on the site, the Contractor shall promptly remedy such damage.
- v. Should the Contractor wrongfully delay or cause damage to the work or property of any separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other separate contractor by agreement or otherwise to resolve the dispute. If such separate contractor sues the Principal Representative on account of any delay or damage alleged to have been caused by the Contractor, the Principal Representative shall notify the Contractor, the Principal Representative shall defend any proceedings, and if any judgment or award against the Principal Representative arises therefrom and to the extent that Contractor is responsible, the Contractor shall pay or satisfy it and reimburse the Principal Representative for all attorney's fees and court costs which the Principal Representative has incurred.

9. COMPENSATION

A. CONTRACTOR'S CM/GC PRECONSTRUCTION FEE AND LLTP CAP

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

Contractor's Compensation		
1	Contractor's CM/GC Preconstruction Fee through the Pre-Construction Phase**	\$_____***
2	LLTP CAP (if applicable)	TBD

Total Compensation (Contract Sum)	\$ _____
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**Only the CM/GC Preconstruction Fee is initially approved for payment. Payment of any LLTP CAP will be authorized by Amendment.

***This amount is based on _____% of the Contract Price. In the event additional funding is secured and in the event additional work is added to the scope, CDOT will add an additional _____% [of added Contract Price if relevant] cost to pay for additional preconstruction services;

B. PRECONSTRUCTION FEE

- i. The CM/GC Preconstruction Fee for the Work on this Project shall be equal to the Contract Sum, as stated in Section 9.6.1, Contract Sum.
- ii. If, after the Effective Date, Contract Price increases by more than 25% from the original Contract Price, which results in an increase to the total Contractor’s CM/GC Preconstruction Fee, Contractor shall be paid for such increases by Amendment.

C. CONTRACTOR’S CM/GC MANAGEMENT PRICE PERCENTAGE

The CM/GC Management Price Percentage shall be _____% as defined in Scoring Form B-3 attached hereto as Exhibit C. This percentage will be applied to all LLTP CAP and Construction CAP Proposals and will apply to all CM/GC Construction Contracts.

D. ADJUSTMENTS IN CONTRACTOR’S CM/GC MANAGEMENT PRICE PERCENTAGE

After establishing the CM/GC Management Price Percentage on Scoring Form B-3 in Exhibit C, no change will be made to the percentage at any point during the Project.

E. CONSTRUCTION AGREED PRICE (“CAP”)

- i. At an agreed upon Milestone, the Contractor shall deliver to the Principal Representative, a LLTP CAP proposal. After Contractor and Principal Representative negotiation and after mutual agreement to an LLTP CAP, the Contractor shall agree to procure the LLTP and guarantee the maximum price to the Principal Representative for the entire cost of such negotiated and agreed to LLTP, as adjusted by deductive alternates required to maintain the aggregate of all LLTP CAPs and Construction CAPs below the Contract Price, which have been previously approved by the Principal Representative pursuant to Section 3.4, Cost Estimating and Project Management Software.
- ii. At an agreed upon Milestone, the Contractor shall deliver to the Principal Representative, a Construction CAP proposal, as detailed in the Request for Proposal and all amendments. After Contractor and Principal Representative negotiation, and after mutual agreement to a CAP (including the Contractor’s CM/GC Management Price Percentage and incorporating Contractor’s Bid Item Pricing proposal to the extent applicable) that is within the Contract Price as established by the Principal Representative, the Contractor shall agree to perform all of the Work required for such Construction Phase, even though all of the construction documents have not all been finalized and released for construction, and guarantee the

maximum price to the Principal Representative for the entire cost of the Work required for the applicable Construction Phase, as adjusted by deductive alternates required to maintain the aggregate of all LLTP CAPs and Construction CAPs below the Contract Price, which have been previously approved by the Principal Representative pursuant to Section 3.4, Cost Estimating and Project Management Software.

- iii. Each LLTP CAP and Construction CAP proposal shall include all of the Contractor's obligations to be performed pursuant to the terms of the Contract Documents for such LLTP or Construction Phase and shall include, but not be limited to, the following:
- a) The total of all unit prices for the applicable Bid Package for such LLTP CAP or Construction CAP, as applicable;
 - b) For each Construction CAP, the installation cost of items to be procured by the Principal Representative or Contractor in any LLTP and for the applicable Construction CAP;
 - c) The estimated maximum direct cost of Work for such LLTP or Construction Phase to be performed by the Contractor;
 - d) Costs for all Performance Bonds, Payment Bonds and insurance premiums required by Contractor pursuant to this Agreement for such LLTP CAP or Construction CAP, as applicable;
 - e) For each LLTP CAP and Construction CAP, the CM/GC Management Price Percentage shall be included;
 - f) For each LLTP CAP and Construction CAP, Contractor shall use the unit prices provided in their Bid Item Pricing proposal as shown in Exhibit C unless the Contractor has identified a clear justification for change and the change has been approved in writing by the Principal Representative, except that unit pricing may be adjusted in accordance with Section 109.06(i) of the CDOT Standard Specifications for Road and Bridge Construction, "Fuel Cost Adjustments" and (j) "Asphalt Cost Adjustments." For the purposes of establishing "BP" in the adjustment formula listed in Section 109.06, "the calendar month in which bids are opened" will be defined as the month of the price proposal opening (April 2021).
 - g) An aggregate amount for items 1 through 5 above (as applicable);
 - h) The Schedule of Bid Items, which shall be consistent with previously approved Schedules of Bid Items, as adjusted as required pursuant to the agreed upon OPCC;
 - i) Contain no conditions, exceptions or allowances;
 - j) Be substantiated with complete supporting documentation acceptable to the Principal Representative to clearly define the anticipated Work to be performed by the Contractor 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 Contractor in the documents released for construction from the agreed

upon Milestone documents on which the LLTP CAP or Construction CAP (as applicable) was based.

- iv. If, through no fault on the part of the Contractor, and after receiving reasonable cooperation by the Principal Representative and Design Consultant, the Contractor submits a LLTP CAP or Construction CAP proposal contrary to the provisions of Sections 9.5.1, 9.5.2, and/or 9.5.3, Construction Agreed Price, the proposal may be rejected by the Principal Representative. The Principal Representative shall be under no obligation to accept such LLTP CAP or Construction CAP proposals or any subsequent proposals. The Principal Representative may declare the Contractor to be in default; and payment may be withheld from the Contractor, excepting the Contractor's CM/GC Preconstruction Fee for the CM/GC Services and all previously approved LLTPs, until a satisfactory LLTP CAP or Construction CAP is furnished in compliance with Sections 9.5.1, 9.5.2, and 9.5.3, Construction Agreed Price.
- v. If, in developing a LLTP CAP or Construction CAP, the Contractor believes any documentation or information, consistent with the agreed upon Milestone Drawings, Plans and Specifications, is not sufficiently complete to clearly define the anticipated Work, the Contractor shall be responsible for making all necessary inquiries and requests to establish the same.
- vi. When any LLTP CAP is agreed upon and accepted by the Principal Representative, it shall be made a part of this Agreement by Amendment; and shall be subject to modification in accordance with Article 10-Changes in the Work. If the Contractor, in good faith, furnishes the Principal Representative with a LLTP CAP proposal which meets the criteria of Sections 9.5.1 and 9.5.3, 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 Contractor shall not be a remedy therefor under this Agreement, and the Principal Representative shall be entitled to proceed with the Work as set forth elsewhere in this Agreement.
- vii. When any Construction CAP is agreed upon and accepted by the Principal Representative, it shall be made a part of a separate CM/GC Construction Contract and subject to the terms thereof. If the Contractor, in good faith, furnishes the Principal Representative with a Construction CAP proposal which meets the criteria of Sections 9.5.2 and 9.5.3, 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 Contractor shall not be a remedy therefor under this Agreement, and the Principal Representative shall be entitled to proceed with the Work as set forth elsewhere in this Agreement.
- viii. When the Contractor provides a LLTP CAP or Construction CAP, the subcontracts for the Work shall either be with the Contractor or shall contain the necessary provisions to allow the Contractor to control the performance of the Work. The Principal Representative shall also authorize the Contractor to take all steps necessary in the name of the Principal

Representative to assure that any separate contractors, having separate contracts with the Principal Representative for the Project, perform their contracts in accordance with their terms.

F. CONTRACT SUM

- i. Subject to the provisions of Articles 3 (Contractor's Services), 9 (Compensation), and 16 (Principal Representative's Right to Terminate Contract), the Contract Sum is equal to the CM/GC Preconstruction Fee plus any accepted LLTP CAP.
- ii. After execution of the Amendment to the Agreement establishing and accepting any LLTP CAP, the Contractor shall be paid a sum equal to the amount accepted in the applicable LLTP CAP for the procurement of such LLTP as defined in the payment schedule; and
- iii. The Contract Sum shall be the maximum amount payable under this Agreement and the Contract Documents to Contractor by the State and the Principal Representative, as determined by the Principal Representative from available funds. The Contract Sum can only be modified by Amendment.

G. PAYMENTS

- i. Contractor's CM/GC Preconstruction Fee - For the performance of CM/GC Services in the Preconstruction Phase, the compensation set forth in Section 9.1, Contractor's CM/GC Preconstruction Fee and LLTP CAP, shall be paid monthly based upon detailed invoices totaling the aggregate of all Work previously performed as submitted by the Contractor, with the total payment not to exceed the fee for such services as set forth in Section 9.1, Contractor's CM/GC Preconstruction Fee and LLTP CAP, which will be determined after Agreement execution.
- ii. LLTP CAPs
 - a) At the time of the agreement and acceptance of each LLTP CAP, the Contractor shall submit to the Principal Representative, using the CDOT Electronic Bid System or an excel spreadsheet approved by the Principal Representative, a complete, detailed, and itemized Schedule of Bid Items for such LLTP CAP.
 - b) The State shall pay the Contractor, according to the requirements of the Drawings, Plans, Specifications and Standard Specifications, the amounts required for the completed LLTP at the unit prices set forth in such LLTP CAP proposal, and such further amounts as may be required for extra work or materials, all according to the provisions and subject to the conditions as set forth in the Drawings, Plans, Specifications and Standard Specifications as required in this Agreement.
- iii. All payments to Contractor shall be in the form of Pay Estimates.

H. CONDITIONS OF COMPENSATION/CONDITION PRECEDENT

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

- ii. The Contractor shall submit monthly progress reports to the Principal Representative. Failure to submit a progress report may result in non-payment to the Contractor for the month. The progress report will be reviewed by the Principal Representative and, after deemed satisfactory by the Principal Representative, will be used as justification for billing. The progress report shall contain, but not limited to, the following:
 - a) Report on progress of each Work activity or Milestone identified in the Agreement, to show the amount of Work accomplished during the current month and the amount of Work accomplished overall;
 - b) A report on the time scheduled for each Work activity or Milestone identified in the Agreement to show planned time completion and actual times used to do the Work;
 - c) A description of the cause for delays beyond the planned completion time of Work activities or Milestones contained in the Agreement;
 - d) A report on the cost incurred to date on each Work activity or Milestone contained in the Agreement and a comparison to the cost estimates for such Work activity or Milestone;
 - e) A description of possible remedies to get Work activities or Milestones that are behind schedule, back on schedule, and to get Work activities or Milestones that are exceeding cost estimates, back within planned costs;
 - f) Documentation of meetings that were held during the subject time period;
 - g) A report on the participation of DBE, Subcontractors and Suppliers; and
 - h) A description of problems and concerns that could affect delivery of the Work or Project.
- iii. The total cost of the Work including but not limited to the Contractor's CM/GC Preconstruction Fee, all LLTP CAPs, and any and all sums claimed by the Contractor to be due as set forth throughout this Agreement, are expressly subject to the limitations set forth in Sections 9.8.1, Conditions of Compensation/Condition Precedent, and nothing herein contained shall be construed or understood to commit the Principal Representative to a total expense greater than that which is provided in the appropriation or allocation. Further, no funds appropriated or allocated for any other purpose shall be expended for this Agreement. The Principal Representative agrees not to issue any Modifications which would cause the sums due the Contractor pursuant to this Agreement to exceed the appropriation or allocation for the Work.
- iv. Contractor shall not receive payment for any Work without its receipt of the required, appropriate Notice to Proceed.

10. CHANGES IN THE WORK

A. AMENDMENTS AND CHANGE ORDERS

- i. The Principal Representative, with the approval of State Controller, without invalidating this Agreement and without notice to any surety, may order extra work or make changes by altering, adding to, or deducting from the Work, the Contract Price, the Contract Sum, any LLTP CAP, the Contractor's CM/GC Preconstruction Fee and Term being adjusted accordingly.
- ii. Each adjustment in the Work, the Contract Price, the Contract Sum, any LLTP CAP, the Contractor's CM/GC Preconstruction Fee and Term resulting from an Amendment shall clearly separate the amount attributable to the cost of the Work and the Contractor's Fee, if any. The Contract Price, Contract Sum, any LLTP CAP, the Contractor's CM/GC Preconstruction Fee, and Term may be changed only by Amendment.
- iii. Except Work. Any changes in the Work that result in an increase in the Work, the Contract Price, the Contract Sum, any LLTP CAP, the Contractor's CM/GC Preconstruction Fee, and Term shall be added to this Agreement by an Amendment pursuant to Section 10.1.2, Amendments and Change Orders.
- iv. No extra work or change in the Contract Documents shall be made unless by a written Amendment or Change Order. No claim for any change to the Work, the Contract Price, the Contract Sum, any LLTP CAP, the Contractor's CM/GC Preconstruction Fee and Term shall be valid unless so ordered. An Amendment or Change Order signed by the Contractor conclusively establishes the Contractor's agreement therewith, including the adjustment in the Contract Sum, any LLTP CAP, the Contractor's CM/GC Preconstruction Fee and the Term.
- v. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations.

Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both Parties in an Amendment.

- vi. All Change Orders, changes in estimated quantities, hazardous materials, and differing site conditions will follow the Standard Specifications.
- B. ADJUSTMENTS IN CONTRACT SUM WITHIN A LLTP CAP**
- i. The value of any change shall be determined in one or more of the following ways:
 - i) By estimate and acceptance;
 - j) By unit prices named in the Contract Documents or subsequently agreed upon;
 - k) By actual cost plus a fixed fee being agreed upon prior to starting the changed Work; or
 - l) In the absence of agreement by the Parties, by a unilateral determination by the Principal Representative of the costs attributable

to the events or situation under such clauses with an adjustment to the fee, all as computed by the Principal Representative pursuant to the applicable sections of any rules issued under Sections 24-107-101, et seq. C.R.S., as amended, and subject to the provisions of Title 24, Article 109.

The Contractor shall be required to submit cost or pricing data if any adjustment in Contract Sum or any LLTP CAP is subject to the provisions of Section 24-103-403 et seq. C.R.S., as amended. Changed Work shall be adjusted and considered separately for the Work either added or omitted. The amount of adjustment for Work omitted shall be estimated at the time it is authorized, and the agreed adjustment shall be deducted from the subsequent monthly estimates.

11. INSURANCE

(new language inserted) Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

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

(CDOT Original Language below)

The Contractor shall procure and maintain workers' compensation insurance during the life of this Agreement, including occupational disease provisions for all employees per statutory requirements.

The Contractor shall also require each Subcontractor to furnish workers' compensation insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Contractor accepts full liability and responsibility for Subcontractor's employees.

In cases where any class of employees engaged in hazardous work under this Agreement at the site of the Project is not protected under the workers' compensation statute, the Contractor 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:

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

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

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

C. AUTOMOBILE LIABILITY INSURANCE

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

D. CYBER/NETWORK SECURITY AND PRIVACY LIABILITY (remove if not applicable) (new section inserted)

- i. Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of

income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

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

E. PROFESSIONAL LIABILITY INSURANCE (new section inserted)

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

F. CRIME INSURANCE (new section inserted)

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

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

G. UMBRELLA LIABILITY INSURANCE (for construction projects exceeding \$10,000,000) (new language is the same as old, except for the yellow highlight)
The Contractor shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in Section 11.B., Commercial General Liability Insurance, above.

Coverage shall follow the terms of the underlying insurance. The amounts of insurance required in Sections above may be satisfied by the Contractor 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
- ii. Aggregate \$5,000,000

H. BUILDER'S RISK INSURANCE (new section inserted)

- i. Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Modifications and cost of materials supplied or installed by others, comprising total value for the Work at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, or the Date of Notice specified on the CDOT Notice of Acceptance.

- ii. This insurance shall include interests of the Principal Representative, the Contractor, Subcontractors and sub-subcontractors in the Project as named insureds.
- iii. All associated deductibles shall be the responsibility of the Contractor. Such policy may have a deductible clause but not to exceed ten thousand dollars (\$10,000.00).
- iv. Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design Consultant's and Contractor's services and expenses required as a result of such insured loss.
- v. The Contractor shall maintain builders risk coverage including partial use by Principal Representative. The Contractor shall waive all rights of subrogation as regards the State of Colorado and the Principal Representative, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment and for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work.

The Contractor shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts.

- vi. Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Contractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.
 - vii. The Principal Representative, with approval of the State Controller, shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.
- I. POLLUTION LIABILITY INSURANCE (new section inserted)
 If Contractor is providing directly or indirectly work with pollution/environmental hazards, the Contractor must provide or cause those conducting the work to provide pollution liability insurance coverage. Pollution liability policy must include contractual liability coverage. State of Colorado must be included as additional insureds on the policy. The policy limits shall be

in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor/vendor.

J. ADDITIONAL INSURED (new section inserted)

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

K. PRIMACY OF COVERAGE (new section inserted)

Coverage required of Contractor and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Contractor or the State.

L. CANCELLATION (new section inserted)

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 Contractor and Contractor shall forward such notice to the State in accordance with §15 within seven days of Contractor's receipt of such notice.

M. SUBROGATION WAIVER (new section inserted)

All insurance policies secured or maintained by Contractor 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 Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

N. PUBLIC ENTITIES

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

O. CERTIFICATES (INSERTED)

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of

coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

12. INDEMNIFICATION

- A. The Contractor 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 Contractor, its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement, but not to the extent such claims are caused by any act or omission of, or breach of contract by, the State, its employees, agents, other contractors or assignees, or other parties not under control of or responsible to the Contractor.
- B. In any and all claims against the Principal Representative, its agents or employees, by any employee of the Contractor, 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 Article 12 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor 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 Contractor under this Article 12 shall not extend to the liability of the Design Consultant, its consultants, agents or employees, arising out of:
 - i. the preparation or approval of maps, Drawings, Plans, opinions, reports, surveys, Amendments, Change Orders, designs or Specifications;
 - ii. the giving of or the failure to give direction or instructions by the Design Consultant, its consultants, agents or employees, provided such giving or failure to give is the primary cause of the injury or damage; or
 - iii. any acts of the Design Consultant, its consultants, agents or employees outside of the scope of their duties pursuant to the Contract Documents.

13. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS

- A. The Contractor shall furnish a Performance Bond and a Payment Bond on approved State forms, executed by a corporate surety licensed to transact such business in the State of Colorado, each in the full amount of the applicable LLTP CAP with the Amendment for the addition of the applicable Bid Package to this Agreement. If subsequent Amendments are made to this Agreement which substantially increase the applicable LLTP CAP, increased bond limits shall be furnished by the Contractor upon the acceptance of the increase in the applicable LLTP CAP. The then current bonds shall apply to all Work included within the scope of the applicable LLTP, including but not limited to all prior

Work which may have been performed when previous bonds were in effect.

The Amendment for such applicable LLTP shall not take effect or be in force until the Contractor shall have furnished and delivered to the State a Payment Bond and Performance Bond, attached hereto as Exhibits D.2 and D.3, acceptable to the State, in a penal sum equal to the nearest integral \$100.00 in excess of the applicable LLTP CAP duly executed by a corporate surety, qualified and licensed to do business in Colorado and maintaining a general agent therein.

- B. The Performance Bond shall remain in effect until at least one (1) year after the date when such LLTP receives Finally Acceptance, except as otherwise provided by law or regulation or by the Contract Documents. The Payment Bond shall remain in effect for not less than the required statutory period.

All bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. All bonds must be acceptable to the Principal Representative.

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

14. ACCESS TO WORK AND OBSERVATION

A. DESIGN CONSULTANT'S WORK

- i. The Principal Representative shall be in the first instance, the judge of the performance of the Contractor as it relates to compliance with the Contract Documents and quality of workmanship and material.
- ii. The Principal Representative and its professional consultants, staff or practicing, shall make visits to the site appropriate to the stage of construction to become familiar with the progress and quality of the Work, and to determine that the Work is proceeding in accordance with the

- Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.
- iii. The Principal Representative shall also observe the following for compliance with the Contract Documents:
 - a) Shop Drawings; and
 - b) Any special testing required in the Contract Documents.

15. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT

A. NOTICE OF COMPLETION

- i. When the LLTP, or a portion of the Work (as hereafter described) which the Principal Representative has agreed to accept separately, is Substantially Complete and ready for final inspection, the Contractor shall file a Notice of Substantial Completion with the Principal Representative that the Work, or such portion, in the opinion of the Contractor, is Substantially Complete in accordance with the Contract Documents. The Contractor shall prepare and submit with such Notice of Substantial Completion a comprehensive list of items to be completed or corrected prior to final payment, which shall be subject to review and additions as the Design Consultant or the Principal Representative shall determine after inspection.

If the Design Consultant or the Principal Representative believe that any of the items on the list of items submitted, or any other item of Work to be corrected or completed, or the cumulative number of items of Work to be corrected or completed, shall prevent a determination that the Work is Substantially Complete, those items shall be completed by the Contractor and the Notice of Substantial Completion shall then be resubmitted.

B. FINAL INSPECTION

- i. The Principal Representative and the Contractor shall make a “final inspection” of the Work to determine whether the Work is Substantially Complete and has been completed in accordance with the Contract Documents and the Standard Specifications.
- ii. The Contractor shall provide the Principal Representative an updated list in sufficient detail to fully outline the following:
 - a) Work to be completed, if any; and
 - b) Work not in compliance with the Drawings, Plans or Specifications, if any.
- iii. A list shall be made by the Principal Representative in sufficient detail to fully outline to the Contractor:
 - a) Work to be completed, if any;
 - b) Work not in compliance with the Drawings or Specifications, if any; and
 - c) Unsatisfactory Work for any reason, if any.

- iv. The required number of copies of the list shall be countersigned by the authorized representative of the Principal Representative and shall then be transmitted by the Principal Representative to the Contractor and Design Consultant. The Principal Representative's final list shall control over the Contractor's preliminary list.

C. NOTICE OF SUBSTANTIAL COMPLETION

- i. Notice of Substantial Completion shall establish the date of Substantial Completion of the Work or portion thereof. The Contractor acknowledges and agrees that because the departments, agencies and institutions of the State of Colorado are generally involved with the business of the public at large, greater care must be taken in establishing the date of Substantial Completion than might otherwise be the case to ensure that the Project, the Work or any portion thereof is fully usable and safe for public use.
- ii. The Notice of Substantial Completion shall not be issued until the following have been fully established:
 - a) The Work, or portion thereof, has been fully inspected as required by the Drawings, Plans and Specifications, and the overall state of completion is appropriate for presentation to the public; and
 - b) The Contractor has provided a schedule for the completion of each and every item identified on the list which specifies the Subcontractor or trade responsible for the Work, and the dates the completion or correction of the item shall be commenced and finished, with the exception of only those items which are beyond the control of the Contractor despite due diligence. The schedule shall provide for a reasonable list inspection process. Unless liquidated damages have been specified, the cost to the Principal Representative, if any, for re-inspections due to failure to adhere to the Contractor's proposed list completion schedule shall be the responsibility of the Contractor and may be deducted by the Principal Representative from final amounts due to the Contractor.
- iii. Substantial Completion of the Work, or portion thereof, shall not be conclusively established by a decision by the Principal Representative to take possession and use of a portion, or all of the Work, where portions of the Work cannot meet all the criteria noted above. Notice of Substantial Completion for the Work, or portion thereof, shall, however, only be withheld for substantial reasons when the Principal Representative has taken possession and uses the Work, or portion thereof, in accordance with the Agreement. Failure to furnish the required completion schedule shall constitute a substantial reason for withholding the issuance of any Notice of Substantial Completion.
- iv. The Contractor shall have the right to request an inspection of any portion of the Work when in the opinion of the Design Consultant a pre-acceptance list can be reasonably prepared, without confusion as to which portions of the Work are referred to in any subsequent CDOT Acceptance Letter which might be issued after such portion is accepted. Portions of the Work may

be, but shall not necessarily be limited to, such portions of the Work, as separate deliverables where such Work consists of multiple deliverables. In such circumstances, when in the opinion of the Principal Representative and the Design Consultant, the requirements for issuance of a Notice of Substantial Completion can be satisfied with respect to the portion of the Work, a partial Notice of Substantial Completion may be issued for such portion of the Work.

D. CDOT ACCEPTANCE LETTER

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

E. FINAL SETTLEMENT

- i. Final payment and settlement shall be made on the date fixed and published for such payment except as hereafter provided. The Principal Representative shall not authorize final payment until all items on the pre-acceptance list have been completed, the CDOT Acceptance Letter issued for all of the Work, and the Notice of Final Settlement published. Before the Principal Representative may issue the Notice of Final Settlement and advertise the Work for final payment, the Contractor shall have corrected all items on the pre-acceptance list except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have:
 - a) Delivered to the Principal Representative:
 - (1) All guarantees and warranties;
 - (2) All statements to support local sales tax refunds, if any;
 - (3) Three (3) complete bound sets of required operating maintenance instructions and Shop Drawings;
 - (4) One (1) set of as-built Contract Documents showing all job changes; and
 - (5) All required Drawings, Plans, Specifications and reports.
 - b) Demonstrated to the operating personnel of the Principal Representative the proper operation and maintenance of all equipment.
- ii. Upon completion of the foregoing, the Project shall be advertised in accordance with the Notice of Final Settlement by two publications of such

notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Work or the Contractor from Subcontractors, suppliers or material men based on good faith disputes; the resolution of the question of payment in such cases being directed by statute.

- iii. Except as hereafter provided, on the date of final settlement thus advertised, provided the Contractor has submitted a written Notice of Final Settlement to the Principal Representative that no Disputes and Claims are outstanding, and further provided that the Principal Representative shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due the Contractor, the Principal Representative and the State Controller shall withhold from the Contractor on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as the Principal Representative reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to complete unfinished Work or the cost to repair defective Work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Contractor, as set forth in the published Notice of Final Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a notice of such action at law shall have been filed with the Principal Representative. At the expiration of the ninety (90) day period, the Principal Representative shall release to the Contractor all other money not the subject of such action at law or withheld based on the cost to complete unfinished Work or the cost to repair defective Work.

F. RECORDS

- i. Maintenance- The Contractor (and any Subcontractor) shall maintain a complete file of all books, records, accounts, and other written or computerized materials which pertain to the accounting and performance of Work, the delivery of services, and the compliance with applicable requirements under this Agreement, and shall maintain such records for a period of three (3) years after the date of termination of the Agreement, or for such further period as may be necessary to resolve any matters which may be pending.
- ii. Access- The Contractor (and any Subcontractor) shall permit the State, the FHWA, and their designated representatives, during normal business hours, to access all books, records, accounts, and other relevant material

concerning the Work performed or services provided under this Agreement for the purpose of investigation, audit, and copying to ascertain compliance with, or to detect violation of, any applicable federal and/or State law or regulation or with the terms of the Agreement, or to evaluate performance under the Agreement. All records or information obtained in this manner shall be used only for the purpose described herein, except as otherwise authorized by law.

- iii. Subcontracts- For the benefit of the State, the Contractor shall include the language of this Section 15.6, Records, in all subcontracts, in order to require the Subcontractor(s) to comply with the record maintenance and access conditions described above.

16. PRINCIPAL REPRESENTATIVE'S RIGHT TO TERMINATE CONTRACT

A. TERMINATION FOR LACK OF SELECTION OF BUILD ALTERNATIVE

Principal Representative 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. General- If the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed to take over its affairs, or if it should fail to prosecute the Work with due diligence and carry the Work forward in accordance with its work schedule or if it should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by it, the Principal Representative may service written notice on the Contractor 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 the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies, at once, having first obtained a certificate from the Design Consultant that sufficient causes exist to justify such action.
- ii. Conditions and Procedures
 - a) The Principal Representative may terminate the services of the Contractor, which termination shall take effect immediately upon service of a Notice of Termination thereof on the Contractor and its surety, whereupon the surety shall have the right to take over and perform the Agreement. If the surety does not commence performance of this Agreement within ten (10) days after service of the Notice of Termination, the Principal Representative may take over the Work, take possession of and use all materials, equipment, and deliverables on the site, and prosecute the Work to completion by such means as it shall deem best. In the event of such termination of its service, the Contractor shall not be entitled to any further payments under this

Agreement until the Work is completed and accepted. If the cost, expenses, and damages to perform the Work, as determined by the Principal Representative, exceed such unpaid balance of the Contract Sum or the applicable LLTP CAP as the case may be, the Contractor and its surety shall pay the difference to the Principal Representative.

- b) The Principal Representative may take control of the Work and either make good the deficiencies of the Contractor or direct the activities of the Contractor in doing so, employing such additional help as the Principal Representative deems advisable. In such event, the Principal Representative shall be entitled to collect from the Contractor and its surety, or to deduct from any payment then or thereafter due the Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of the Contractor, provided the Principal Representative approves the amount thus charged to the Contractor.
- c) The Principal Representative may require the surety on the Contractor's Performance Bond to take control of the Work at once and see to it that all the deficiencies of the Contractor are made good, with due diligence. As between the Principal Representative and the surety, the cost of making good such deficiencies shall all be borne by the surety. If the surety takes over the Work, either upon termination of the services of the Contractor or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern in respect to the Work done by the surety, the surety being substituted for the Contractor as to such provisions, including provisions as to payment for the Work and provisions of this Article as to the right of the Principal Representative to do the Work or to take control of the Work.

C. TERMINATION FOR CONVENIENCE OF THE STATE

- i. The performance of Work under this Agreement may be terminated, in whole or in part, by the Principal Representative when the Principal Representative determines that the purposes of the distribution of State monies under this Agreement would no longer be served by completion of the Work. Termination of Work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of Work under this Agreement is terminated and the date upon which such termination becomes effective.
- ii. After receipt of the Notice of Termination, the Contractor shall cancel its outstanding commitments hereunder covering the procurement of all applicable LLTP and CM/GC Services deliverables. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering all applicable LLTP and CM/GC Services and extending beyond the date of such termination to the extent that they relate to the performance of any Work terminated by the Notice of Termination. With respect to such canceled commitments, the Contractor agrees to:

- a) Settle all outstanding liabilities, disputes and claims arising out of such cancellation of commitments, with the approval or ratification of the Principal Representative, to the extent it may require, which approval and ratification shall be final for all purposes of this clause; and
 - b) Assign to the Principal Representative in the manner, at the time and to the extent directed by the Principal Representative, all of the right, title, and interest in the Contractor under the orders and Subcontractors so terminated, in which case the Principal Representative 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 Contractor shall submit its Termination Claim to the Principal Representative within 90 days after receipt of a Notice of Termination unless one or more extensions in writing are granted by the Principal Representative upon written request of the Contractor within such 90 day period or authorized extension thereof. Upon failure of the Contractor to submit its Termination Claim within the time allowed, the Principal Representative may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.
- iv. Costs claimed, agreed to, or determined pursuant to Sections 16.2.3 and 16.2.5, Termination for Convenience of the State, shall be in accordance with the provisions of Section 108 Prosecution and Progress in the Standard Specifications as in effect on the date of this Agreement all of which is limited to the Contract Sum and the applicable LLTP CAP and the provisions of Sections 9.6, Contract Sum, and 9.8, Conditions of Compensation/Condition Precedent. The sums to be paid to the Contractor shall not include any compensation, loss, or lost profit on Work not performed by the Contractor or any of its Subcontractors of any tier or suppliers.
- v. Subject to the provisions of Section 16.2.3, Termination for Convenience of the State, above, the Contractor and the Principal Representative may agree upon the whole or any part of the amount(s) to be paid to the Contractor by reason of the termination under this section, which amount(s) may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for applicable LLTP CAP and CM/GC Services which it is unable to cancel; provided, however, that in connection with any outstanding commitments for applicable LLTP CAP and CM/GC Services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an Amendment to this Agreement, and the Contractor shall be paid the agreed amount.
- vi. The Principal Representative may from time to time, under such terms and conditions as it may prescribe, make partial payment against costs incurred by the Contractor in connection with the terminated portion of this

Agreement, whenever, in the opinion of the Principal Representative, the aggregate of such payment is within the amount to which the Contractor shall be entitled hereunder.

- vii. The Contractor agrees to transfer title and deliver to the Principal Representative, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if this Agreement had been completed, would have been required to be furnished to the Principal Representative, including:
 - a) Completed or partially completed Drawings (including as-built Drawings), Shop Drawings, Plans, Specifications, and information; and
 - b) Materials and equipment produced or in process or acquired in connection with the performance of the Work terminated by the Notice of Termination.

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

D. AVAILABLE FUNDS CONTINGENCY TERMINATION

- i. The Parties expressly recognize that the Contractor is to be paid, reimbursed, or otherwise compensated with funds provided to the State for the purpose of contracting for the Work provided for herein, and therefore, the Contractor expressly understands and agrees that all its rights, demands, and claims to compensation arising under this Agreement are contingent upon receipt of such funds by the State. If such funds or any part thereof are not received by the State, the State may immediately terminate this Agreement without liability, including for termination costs.

17. MISCELLANEOUS PROVISIONS

A. DESIGN CONSULTANT

- i. It is expressly understood that the Principal Representative shall directly retain the services of the Design Consultant.

B. EQUAL EMPLOYMENT OPPORTUNITY, LABOR COMPLIANCE, AND ON THE JOB TRAINING

- i. The Contractor 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. Non-Discrimination The Contractor shall comply with all applicable legal requirements that enumerate unlawful employment practices including discrimination because of race, religion, color, gender, age, disability, or national origin, and that define actions required for affirmative action and minority/disadvantaged business programs.

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

The Contractor 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 Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

- i. Disadvantaged Business Enterprises. The Contractor shall comply with CDOT's Disadvantaged Business Enterprises (DBE) Policy ensuring that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The Contractor shall comply with the requirements of the DBE Provision. The Contractor shall either meet Contract Goal for CM/GC Services and/or shall make a good faith effort to meet the Contract Goal.
- ii. Emerging Small Business. CDOT expects the Contractor to facilitate and incorporate participation by ESBs throughout the Project.
- iii. Inclusion in Subcontracts. The Contractor shall include Section 7.2.1, Equal Employment Opportunity, Labor Compliance, and on the Job Training, and the DBE Provision in every Subcontract (including purchase orders), and shall require that they be included in all Subcontracts, so that such provisions will be binding upon each Subcontractor.

D. 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 Contractor 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 Contractor in the amount of such claims.

E. COMPLIANCE WITH CDOT INFORMATION INTERCHANGE SYSTEM ACCESS POLICY

If the Contractor requires access to the CDOT Information Interchange system, the Contractor shall comply with the requirements and responsibilities for such access, which are set forth in the instructions accompanying CDOT's Information Interchange system user Account Request Form 1273A. Under no circumstances shall the Contractor 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.

F. DISPUTES AND CLAIMS

All Disputes and Claims shall use Dispute Resolution pursuant to Sections 105.22, 105.23, and 105.24 of the 2022 Standards Specifications, as amended, revised and modified from time to time.

G. INTELLECTUAL PROPERTY

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

The rights and responsibilities of the Contractor, Subcontractors, Design Consultant, and the State with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws and regulations in existence on the date of execution of this Agreement which define Contractor'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 Contractor shall include the requirements of this section in its subcontracts for the performance of any Work under this Agreement.

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

through the State, reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize the State and others to use: a) any Work developed under this Agreement or a resulting subcontract irrespective of whether or not it is copyrighted; and b) any rights of copyright to which the Contractor, or Subcontractor purchases ownership with federal assistance.

- iii. INFRINGEMENT. The Contractor 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.

H. EXECUTION OF EXHIBITS

It is contemplated by the Parties that certain exhibits hereto shall not be accomplished or finalized at the time this Agreement is executed as such exhibits must, by the nature of the provisions relative thereto, be executed by the Parties subsequent to the execution of this Agreement. The Parties shall be diligent in accomplishing such exhibits at the earliest appropriate time in accordance with the provisions hereof.

I. MODIFICATION OF ARTICLE 6. TIME OF COMMENCEMENT AND COMPLETION

- i. If an amount is indicated immediately below, liquidated damages shall be applicable to any LLTP as, and to, the extent shown below. Where an amount is indicated below, liquidated damages shall be assessed in accordance with and pursuant to the terms of Article 6, Time of Commencement and Completion, in the amounts and as here indicated. The election of liquidated damages shall limit and control the Parties' right to damages only to the extent noted.
 - a) For the inability to use the deliverables from any LLTP, for each day after the number of calendar days specified in the Contractor's LLTP CAP and the Agreement for achievement of Substantial Completion, until the day that the applicable LLTP has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Contractor agrees that an amount equal to seven thousand dollars (\$7,000.00) shall be assessed against Contractor from amounts due and payable to the Contractor under the Agreement, or the Contractor and the Contractor's surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.
 - b) For damages related to or arising from additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period, for each day in excess of the number of calendar days specified in the Contractor's LLTP CAP proposal for the applicable LLTP and the Agreement to Finally Complete the applicable LLTP (as defined by the issuance of a CDOT Acceptance Letter) after the

issuance of the final Notice of Substantial Completion, the Contractor agrees that an amount equal to one thousand, six hundred dollars (\$1,600.00) shall be assessed against Contractor from amounts due and payable to the Contractor under the Agreement, or the Contractor and the Contractor's surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due but amounts remaining are insufficient to cover the entire assessment.

J. STATEWIDE CONTRACT MANAGEMENT SYSTEM

- i. If the maximum amount payable to Contractor under this Agreement is \$500,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply.

Contractor agrees to be governed, and to abide, by the provisions of C.R.S. §24-102-205, §24-102-206, §24-103-601, §24-103.5-101, §24-105-101, §24-105-102, and §24-105-201 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor understands that if the maximum amount payable to Contractor under this Agreement is \$500,000 or greater, either on the Effective Date or at any time thereafter, the State shall have the additional responsibility to prepare a Contractor Performance Evaluation Report. This report shall be maintained as part of the Contractor's file and remain part of CMS for at least 5-years following the report date.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including C.R.S §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures

established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Principal Representative, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

K. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et. seq., CRS, as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, et. seq., CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, et. seq., CRS, as now or hereafter amended.

L. LEGAL AUTHORITY

The Contractor warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Contractor to its terms. The person(s) executing this Agreement on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this Agreement.

M. ASSIGNMENTS AND SUBCONTRACTS

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by Contractor or the State are subject to all of the provisions hereof.

N. BINDING EFFECT

Except as otherwise provided in Section 17.13, Assignments and Subcontracts, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

O. CAPTIONS

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

P. COUNTERPARTS

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

Q. ENTIRE UNDERSTANDING

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

R. JURISDICTION AND VENUE

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

S. MODIFICATION

- i. By the Parties: Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both Parties in an Amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules. Modifications permitted under this Agreement, other than Amendments, shall conform to the policies of the Office of the State Controller, including, but not limited to, the policy, MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.
- ii. By Operation of Law: This Agreement is subject to such modifications as may be required by changes in federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

T. SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

U. 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 CRS §§39-26-101 and 201 et seq. 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. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

V. THIRD PARTY BENEFICIARIES

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties

receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

W. WAIVER

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

X. CORA DISCLOSURE

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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18. FHWA Special Provisions

SPECIAL PROVISIONS

Federal Maritime Administration (MARAD) 46 CFR 381

DESCRIPTION

The Federal Highway Administration (FHWA) in partnership with the Federal Maritime Administration (MARAD) has mandated the implementation of 46 CFR 381 making the cargo preference requirements applicable to the Federal Aid Highway Program.

The requirements of this Special Provision apply to items transported by ocean vessel.

CONTRACT REQUIREMENTS

A. General

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.

Furnish a legible, English language copy of a rated 'on-board' commercial ocean bill-of-lading for each shipment of cargo described in the previous paragraph. Furnish the bill-of-lading within 20 days following the date of loading for shipments originating in the United States and within 30 working days following the date of loading from shipments originating outside the United States.

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

Division of National Cargo
Office of Market Development
Maritime Administration
Washington, DC 20590

B. Subcontracts

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

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19. COLORADO SPECIAL PROVISIONS

COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

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

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

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

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

C. **GOVERNMENTAL IMMUNITY.**

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

D. **INDEPENDENT CONTRACTOR**

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

E. **COMPLIANCE WITH LAW.**

Contractor 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 Contractor harmless; requires the State to agree to binding arbitration; limits Contractor'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. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor 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. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor 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.

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

this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A - PRECONSTRUCTION ROLES AND RESPONSIBILITIES MATRIX

EXHIBIT B.1 - CONTRACTOR'S CERTIFICATE OF LIABILITY INSURANCE

EXHIBIT B.2 - CONTRACTOR'S CERTIFICATION

I hereby certify:

- a. That I am Name , Title , and a duly authorized representative of the firm of: Contractor ; and
- b. That the wage rates and other factual unit costs supporting the compensation to be paid by the State for these professional services are accurate, complete, and current; and
- c. That I understand the original contract price and any additions shall be adjusted to exclude any significant sums by which the State determines the contract price had been increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs; and
- d. That all such contract adjustments shall be made within one year following the end of this contract.

CONTRACTOR

Signature

EXHIBIT D - SAMPLE CONTRACT AMENDMENT

SAMPLE CONTRACT AMENDMENT

Amendment #	Original Contract # _____	AMD # _____
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PO # _____	Project # _____	Routing # _____
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1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter referred to as the “Contract”) dated _____ Contract Routing # _____ is entered into by and between the STATE OF COLORADO (hereinafter referred to as the “Principal Representative”), and Colorado Bridge Enterprise acting by and through the Department of Transportation, (hereinafter referred to as “CDOT”), and __Name_____, _____Address_____, _____City_____, _____State_____, _____Zip____ (hereinafter called “Contractor”), collectively referred to herein as the “Parties.”

2) EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee CDOT Controller (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3) FACTUAL RECITALS

The Parties entered into the Original Contract # _____ dated _____ for the _____ Project Number, hereinafter referred to as “the work”.

CONSIDERATION

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment.

a. LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

4) MODIFICATIONS

The Amendment and all prior amendments thereto, if any, are modified as follows:

a. The parties now wish to amend the contract to increase the Contract Price, as contained in the original basic contract in Section 10., Changes in the Work. The subject _____ Agreement contained provisions for Contract Modification by formal amendment only. Contract Not to Exceed Amount of \$_____.

As full compensation for the Work and all other obligations to be performed by the Contractor under the Contract Documents, **CDOT shall pay to the Contractor Price of \$_____**, (herein referred to as the “Contract Price”).

5) START DATE

This Amendment shall take effect upon the date of the State Controller’s Signature.

6) AVAILABLE FUNDS

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

CONTRACTOR ____Name____	STATE OF COLORADO JARED POLIS, GOVERNOR
----------------------------	--

By: ___ Name of Authorized Individual ___ Title: _____ Title _____ _____ *Signature	Colorado Department of Transportation For the Executive Director By: _____ Signature - CDOT Chief Engineer
COLORADO BRIDGE ENTERPRISE Colorado Department of Transportation For the Executive Director _____ By: Director of Project Support	LEGAL REVIEW Phil Weiser, Attorney General By: _____ Signature - First Assistant Attorney General

*Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER ROBERT JAROS, CPA, MBA, JD By: _____ Colorado Department of Transportation Date: _____

EXHIBIT E - Appendix A & E - THE UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) STANDARD TITLE VI/NON-DISCRIMINATION ASSURANCE

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Colorado Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Colorado Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Colorado Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Colorado Department of Transportation may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Colorado Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Exhibit F - Disadvantaged Business Enterprise (DBE) Requirements for CDOT Construction Manager/General Contractor (CM/GC) Contracts

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS FOR CDOT CONSTRUCTION
MANAGER/GENERAL CONTRACTOR (CM/GC) CONTRACTS**

All parties included in the performance of work on the Contract shall comply with the terms of the CM/GC contract and the project's CM/GC Request for Proposal.

I. DEFINITIONS

B2GNow. Web based platform utilized by CDOT to track Civil Rights compliance (DBE/ESB participation) and prompt payment requirements on its contracts. The Contractor will use this platform to submit Utilization Plan(s), Subcontractor and Supplier/Vendor information on B2GNow's Master Contract for the CM/GC project and subsequent Change Orders.

B2GNow Master Contract. Overarching agreement in B2GNow between CDOT and the Contractor, whereby the Contractor will be compensated in exchange for providing Professional Services and ancillary services.

Civil Rights. The CDOT Civil Rights office handling the contract. This can be either in the region or headquarters.

Civil Rights and Business Resource Center. CDOT's Civil Rights office at Headquarters.

Commercially Useful Function (CUF). Responsibility for the execution of work by actually performing, managing, and supervising the work, as described in 49 CFR 26.55(c).

Commitment. A portion of B2GNow's Master Contract for the CM/GC project designated by the Contractor for participation by DBE firms. The DBE firm(s) are included in the proposal team for participation to meet the Contract Goal. Commitments must identify the work to be performed by the DBE and include the percentage of the contract committed to each DBE firm. Commitments are measured at the end of the contract and are calculated by the actual payments to a DBE firm divided by the total payments made under B2GNow's Master Contract for the CM/GC project.

Contract Goal Percentage. The percentage of B2GNow's Master Contract for the CM/GC project established by CDOT for reasonable participation by DBEs and stated in the CM/GC Request for Proposal for Contractor services.

Contractor. An individual, firm, corporation, or other legal entity with a direct contractual relationship with CDOT to render CM/GC Services and ancillary services.

Construction Manager/General Contract (CM/GC). The Alternative Delivery agreement between CDOT and the Contractor, whereby the Contractor will be compensated in exchange for providing CM/GC services.

Disadvantaged Business Enterprise (DBE). A Colorado certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org.

Emerging Small Business (ESB). A CDOT certified Emerging Small Business firm listed on the ESB Directory at www.coloradoesb.org.

Good Faith Efforts (GFE). All necessary and reasonable steps to secure the necessary Commitments to meet the Contract Goal or other requirements of this contract, which by their scope, intensity, and appropriateness to the objective could reasonably be expected to fulfill the contract requirement. Guidance on Good Faith Efforts to meet the Contract Goal is provided in 49 CFR Part 26, Appendix A.

Professional Services. The practice of architecture, engineering, professional land surveying, landscape architecture, and industrial hygiene as defined in Colo. Rev. Stat. 24-30-1402.

Reduction. Reduction occurs when the Contractor reduces a Commitment to a DBE. A reduction is a partial Termination.

Subcontractor. An individual, firm, corporation or other legal entity to whom the Contractor sublets part of the contract. For purposes of these requirements, the term Subcontractor includes Suppliers/Vendors.

Substitution. Substitution occurs when a Contractor seeks to find another certified DBE firm to perform work on the contract as a result of a Reduction or Termination.

Termination. Termination occurs when a Contractor no longer intends to use a DBE firm for fulfillment of a Commitment. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE Subcontractor with its own forces or those of an affiliate, a nonDBE firm, or with another DBE firm.

Utilization Plan (UP). If using the B2GNow system, documentation of Subcontractor and Supplier/Vendor participation on the B2GNow Master Contract and in the CM/GC contract. The Utilization Plan details all Subcontractor and Suppliers/Vendors included as part of the proposal team and Commitments by percentage made by the Contractor. The Utilization Plan must be submitted by the Contractor in B2GNow within five (5) calendar days of receiving notice from CDOT to complete the Utilization Plan.

Vendor. Participant on a CDOT contract that is providing services not considered to be a Professional Services as defined in Colo. Rev. Stat. 24-30-1402.

Work Code. A code to identify the work that a DBE is certified to perform. A work code includes a six (6) digit North American Industry Classifications System (NAICS) code plus a descriptor. Work codes are listed on a firm's profile on the Colorado UCP DBE Directory. The Contractor may contact the Civil Rights and Business Resource Center (CRBRC) to receive guidance on whether a work code covers the work to be performed.

II. NONDISCRIMINATION AND SUBCONTRACTING REQUIREMENTS

The following requirements apply to all contracts and subcontracts.

A. Contractor Assurance. By submitting a proposal for this contract, the Contractor agrees to the following assurance: The Contractor, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CM/GC Contract. The Contractor 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 CM/GC 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 4) disqualifying the Contractor from future bidding as non-responsible.

B. *Prompt Payment.* Payments to all Subcontractors shall be made within seven (7) calendar days of receipt of payment from CDOT or no later than ninety (90) calendar days from the date of the submission of a complete invoice from the Subcontractor, whichever occurs first. If the Contractor has good cause to dispute an amount invoiced by a Subcontractor, the Contractor shall notify CDOT no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Contractor shall maintain records of payment that show amounts paid to all Subcontractors. Good cause does not include failure to timely submit an invoice or to deposit payments made. The Contractor shall electronically submit prompt payment audit reports through B2GNow by the fifteenth (15th) of each month through the B2GNow software. If no payment has been made, the Contractor shall document this in the prompt payment audit report. CDOT will enforce the states Prompt Payment law, CRS 24-91-103(2).

C. *Subcontract Terms.* The assurance provided in subsection “A” and the prompt payment terms outlined in subsection “B” of this section shall be included in all subcontracts or other agreements for the performance of work on the contract.

III. B2GNOW MASTER CONTRACT AND CM/GC COMMITMENT

At the time of initial proposal, the Contractor must make a contractually binding guarantee to meet the Contract Goal in accordance with 49 CFR 26.53.

A. *Affidavit of Small Business Participation.* The Affidavit of Small Business Participation is the Contractor’s contractually binding guarantee to meet the Contract Goal or make Good Faith Efforts to do so. CDOT’s *Affidavit of Small Business Participation* form must be submitted with the Contractor’s statement of interest proposal.

B. *B2GNow Master Contract Utilization Plan (UP).* Within five (5) calendar days of selection as the “most qualified” proposer, the Contractor will receive a notice from CDOT to complete and submit a Utilization Plan via B2GNow. In order to complete the Utilization Plan, the Contractor shall list all DBE, ESB, and nonDBE/ESB Subcontractors and Suppliers/Vendors included as part of its “most qualified” team. The Utilization Plan shall also include all Commitments by percentage. Requests for Change Orders under the Master Contract will not be submitted until there is a Master Contract Utilization Plan approved by CDOT in the B2GNow system.

C. *Contractor Responsibility.* The Contractor is solely responsible for ensuring that the Contract Goal is achieved upon completion of the work, expenditure of funds, and/or expiration of the Master and CM/GC Contract, whichever occurs first.

D. *Master and CM/GC Contract Good Faith Effort Requirement.* The Master and CM/GC Contract will not be approved by CDOT until the Contractor documents sufficient Commitments to meet the Contract Goal or demonstrates Good Faith Efforts to meet the Contract Goal even though it did not succeed in obtaining sufficient Commitments to do so.

1. Good Faith Efforts mean that the Contractor:
 - a. Documents it has obtained enough DBE participation to meet the Contract Goal, or
 - b. Documents that it made adequate good faith efforts to meet the Contract Goal, even though it did not succeed in obtaining enough DBE participation to do so

2. If the Contractor has not documented sufficient Commitments to meet the Contract Goal, the Contractor shall provide an explanation of its efforts to obtain Commitments by submitting the CDOT *Professional Services Good Faith Efforts Report* form and supporting documentation.
 - a. The Civil Rights and Business Resource Center will conduct a review to determine whether the Contractor has demonstrated Good Faith Efforts to meet the Contract Goal
 - b. The Civil Rights and Business Resource Center will approve B2GNow's Master Contract for the CM/GC project's Utilization Plan if it determines that the Contractor has made Good Faith Efforts to meet the Contract Goal

3. In conducting Good Faith Effort reviews, the Civil Rights and Business Resource Center will utilize the guidance found in Appendix A to 49 CFR Part 26, where applicable. The Civil Rights and Business Resource Center may also consider, but is not limited to, the following factors in evaluating the Contractor's Good Faith Efforts:
 - a. Performance of other contractors in meeting DBE goals on contracts that have a similar scope of work, contract amount, location, and time frame
 - b. Reason(s) for choosing a nonDBE subcontractor over an interested DBE
 - c. Documentation of DBEs solicited by the Contractor and verification from the DBEs that they were actually contacted by the Contractor, including DBE firms outside of the "most qualified" team in the event that DBE team members are unavailable or unwilling to participate
 - d. Past performance by the Contractor, including on prior Change Orders under the specific B2GNow Master Contract for the CM/GC project and other CDOT contracts
 - e. Any other factors that may be pertinent to the factual circumstances

4. If the Civil Rights and Business Resource Center determines that the Contractor has made Good Faith Efforts to meet the Contract Goal, the B2GNow's Master Contract for the CM/GC project's Utilization Plan will be approved.

E. *Administrative Reconsideration.* If the Civil Rights and Business Resource Center determines that the Contractor did not demonstrate Good Faith Efforts to meet the Contract Goal, the Contractor will be provided a written notice of its determination and an opportunity for administrative reconsideration by the Chief Engineer or a designee.

1. Administrative reconsideration will be conducted by the Chief Engineer or a designee.
 - a. The Contractor will have five (5) calendar days from the written notice to request administrative reconsideration of an adverse Good Faith Efforts determination
 - b. The request shall include the basis for reconsideration and any supporting documentation that the Contractor would like to be considered as part of the reconsideration
 - c. The reconsideration should also specify whether the Contractor is requesting an informal, in person or telephonic hearing with CDOT to address the issues in the Civil Rights and Business Resource Center's Good Faith Efforts determination
 - d. If a request for an informal hearing is not made, the Contractor will be deemed to have waived this opportunity

2. Upon a hearing request, the Civil Rights and Business Resource Center will establish a date and time for the hearing and send written notice via email to the Contractor at least two (2) business days in

advance of the hearing.

- a. If schedules permit, the parties may waive the two (2) business day requirement
 - b. The Chief Engineer or designee may request additional documentation from the Contractor and/or the Civil Rights and Business Resource Center
 - c. A copy of all requests and responses should be provided to the other party and the other party shall be given an opportunity to respond
3. The Chief Engineer or a designee shall issue the final determination as to whether the Contractor made Good Faith Efforts to meet the Contract Goal.
- a. The determination will be in writing and explain the basis for the Chief Engineer's or designee's decision regarding whether or not the Contractor demonstrated Good Faith Efforts to meet the Contract Goal
 - b. The Good Faith Efforts determination of the Chief Engineer or designee is not appealable

IV. ELIGIBLE DBE PARTICIPATION

In order to count towards the Contract Goal, (1) the work performed by the DBE Contractor, Subcontractor, or Supplier/Vendor must be identified in an approved Commitment, and (2) the Contractor, Subcontractor, or Supplier/Vendor must be DBE certified in the committed work upon submission of the Commitment and approval of B2Now's Master Contract or Change Order. CDOT will evaluate whether the work it is committed to perform can reasonably be construed to fall within the work areas for which the DBE Contractor, Subcontractor, or Supplier/Vendor is certified.

A. If a Contractor, Subcontractor, or Supplier/Vendor is decertified as a DBE following the approval of the CM/GC Contract or a Change Order, its participation may continue to count as DBE participation. The Contractor, Subcontractor, or Supplier/Vendor may not continue to count as a DBE participant on any new Change Orders approved after it has been decertified as a DBE.

B. Only work actually performed by the DBE will count towards the Contract Goal.

1. The Contractor may count the entire amount of fees or commissions charged by a DBE firm for:
 - a. Providing a bona fide service, such as professional, technical, contractor, or managerial services
 - b. Providing assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance on the CM/GC Contract or Change Order, provided that the fee or commission is determined by CDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services
2. When a DBE subcontracts part of the work of its contract to another firm, individual, or entity, the value of the subcontracted work may only be counted if the subcontractor is also a DBE certified firm.
 - a. Work that a DBE subcontracts out to a non-certified firm will not count toward the goal
 - b. DBE firms may use an employee leasing company for the work
 - i. The participation of the leased employees will count only if the certified DBE firm maintains an employer-employee relationship with the leased employees
 - ii. This includes being responsible for hiring, firing, training, assigning, and otherwise

controlling the on the job activities of the leased employees, as well as ultimate responsibility for wage and tax obligations related to the employees

- c. Unless certified in the work to be performed, staffing agencies only count toward the Contract Goal for placement fees and any hourly fee beyond the temporary employee's actual rate of pay

3. When a DBE performs as a participant in a joint venture:

- a. Only the portion of the total dollar value of the CM/GC Contract or Change Order equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces may count toward the Contract Goal
- b. In order to receive credit, the joint venture agreement must be submitted as an attachment in the Utilization Plan submitted through B2GNow for review and approval by CDOT

C. A DBE must be performing a Commercially Useful Function, as defined by 49 CFR 26.55(c), in order for its participation to count towards the Contract Goal.

1. To perform a Commercially Useful Function:

- a. The DBE must be responsible for the execution of the work to be performed on the Contract and
- b. Actually performing, managing, and supervising the work

2. In evaluating whether a DBE is performing a Commercially Useful Function, CDOT will consider factors, including but not limited to:

- a. The amount of subcontracted work
- b. Industry practices, and
- c. Whether payment to the DBE is commensurate with the work for which the DBE is claiming credit, and any other relevant factors

3. A DBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant:

- a. In a transaction
- b. Through which funds are passed in order to obtain the appearance of DBE participation

4. A DBE is presumed as not performing a Commercially Useful Function:

- a. When it does not perform or exercise responsibility for at least thirty (30) percent of the total cost of the work it is contracted to perform with its own workforce
- b. When the DBE subcontracts a greater portion of its work than would be expected based on normal industry practice for the type of work involved. In these circumstances, the DBE may present evidence to CDOT in order to rebut the presumption

5. CDOT's determinations regarding Commercially Useful Function matters are not appealable

V. UTILIZATION PLAN MODIFICATIONS

A. Reduction, Substitution, Termination. Reduction, Substitution, or Termination of Commitments during the

life of the B2GNow's Master and CM/GC Contract shall only be permitted at the discretion of CDOT based upon a demonstration of Good Cause by the Contractor. The Contractor may not Reduce, Substitute, Terminate, or add Commitments without CDOT approval. Contractors may request modification approval by submitting to CDOT the *Professional Services DBE Participation Plan Modification Request* form.

1. *Notice to Subcontractor.* Before requesting CDOT approval, the Contractor must give the DBE Subcontractor notice in writing of the Contractor's intent to Reduce, Substitute or Terminate the Subcontractor's work through the CDOT *Professional Services DBE Participation Plan Modification Request* form. Unless otherwise waived in writing by the DBE, the Contractor must give the DBE five (5) calendar days to respond to the Contractor's notice and advise CDOT of the reasons, if any, that it objects to the proposed Reduction, Substitution or Termination and why the Contractor's action should not be approved. If required as a matter of public necessity (e.g., safety), CDOT may waive or reduce the period to respond. The DBE firm may also voluntarily waive the response period.
2. *Good Cause Requirement.* A Contractor must demonstrate Good Cause before a request for Reduction, Substitution or Termination can be approved by CDOT. Good Cause does not exist if Reduction, Substitution or Termination of a DBE is sought solely so that the Contractor can self perform the work for which the DBE was engaged or so that the Contractor can substitute another firm to perform the work. In evaluating whether Good Cause exists, CDOT will consider, but is not limited to, the following factors:
 - a. Changes in the scope of work or scheduling that directly impacts the work committed to the DBE
 - b. Failure or refusal by the DBE to execute a written contract
 - c. Failure or refusal by the DBE to perform the work of its subcontract consistent with normal the industry standards, provided that such failure is not the result of bad faith or discriminatory actions of Contractor or one of its Subcontractors
 - d. The DBE fails to meet reasonable, nondiscriminatory insurance requirement
 - e. The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
 - f. The DBE is ineligible to work because of suspension or debarment proceedings or other state law
 - g. The DBE is not a responsible Contractor
 - h. The listed DBE voluntarily withdraws from the project and provides to you written notice of its withdrawal
 - i. The listed DBE is ineligible to receive credit for its participation
 - j. The DBE owner dies or becomes disabled and the firm is unable to complete the work it is committed to perform
 - k. The DBE ceases business operations or otherwise dissolves
 - l. Other documented good cause reasons determined by CDOT to compel the termination of the DBE Subcontractor

3. *Good Faith Effort Requirement.* When a Commitment is Reduced or Terminated (including when a DBE withdraws), the Contractor shall make Good Faith Efforts to replace the DBE participation that has been Terminated or Reduced up to the Contract Goal. The replacement DBE(s) participation and amount does not have to be in the same type of work that was Terminated or Reduced.

- a. Prior to making a DBE substitution, the Contractor must submit a CDOT *Professional Services DBE Participation Plan Modification Request* form and receive CDOT's approval for the substitution
- b. An approval of the modification constitutes a modification of the Utilization Plan. A Project Cost

Worksheet, or a Letter of Intent for Supplier/Vendor Subcontractor, must be submitted for each substitute DBE approved by CDOT.

B. *Change Orders*. Civil Rights will be notified when Change Orders change the scope of the CM/GC Contract. Contractors must obtain prior CDOT approval for the addition of Subcontractors and Suppliers/Vendors not previously included as part of the selected team. If the CM/GC Contract requires additional funds or needs a time extension a Change Order will be submitted to CDOT for approval. Civil Rights will input the Change Order information into the B2GNow system.

VI. ENFORCEMENT

It is the sole responsibility of the Contractor to ensure that Commitments are fulfilled or to request Utilization Plan modifications in a timely manner as described in Section V. Approval of Change Orders under the Master Contract is not an explicit or implicit approval by CDOT of any Commitment Terminations, Reductions, Substitutions, or any other waiver of B2GNow's Master Contract for the CM/GC project's DBE requirements.

A. CDOT may conduct reviews or investigations of participants as necessary. All participants on B2GNow's Master Contract for the CM/GC project and all subsequent Change Orders under that Master Contract, including, but not limited to, DBE Subcontractors or Suppliers/Vendors and applicants for DBE certification, ESB Subcontractors and applicants for ESB certification, complainants, and Contractors using Subcontractors to meet the Contract Goal are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information.

B. If CDOT determines that a Contractor, Subcontractor or Supplier/Vendor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by CDOT to be unallowable, or if the Contractor engages in repeated violations, falsification or misrepresentation, CDOT may:

1. Refuse to count any fraudulent or misrepresented DBE/ESB participation
2. Withhold progress payments to the Contractor commensurate with the violation
3. Reduce the Contractor's prequalification status
4. Refer the matter to the Office of Inspector General of the US Department of Transportation for investigation
5. Seek any other available contractual remedy

C. CDOT may seek reimbursement from the Contractor at project closing for failure to comply with these requirements.

D. If the Contractor fails to fulfill any Commitments at the conclusion of the B2GNow's Master and CM/GC Contract, CDOT may seek reimbursement from the Contractor. The reimbursement will equal the difference between the total dollar amount of the Commitment and the total dollar amount of actual payments made to the committed DBE firm(s). The total dollar amount of a Commitment will be calculated by multiplying the percentage identified in the Commitment with the total dollar value of the actual payments made by CDOT to the Contractor on the Master Contract.

E. CDOT will adjust the total reimbursement amount if the Contractor demonstrates that its failure to meet Commitments was approved by CDOT through the modification process described in Section V.

F. For the purposes of evaluating the reimbursement amounts that CDOT will be seeking from the Contractor

for unfulfilled Commitments, CDOT shall consider, but is not limited to, the following:

1. The difference between the total of B2GNow's Master Contract for the CM/GC project amount awarded and the actual payments made by CDOT to the Contractor
2. Any material changes to the Master Contract, including the scope of the work, total amount, location, and scheduling
3. Whether any of the work types associated with a Commitment was self performed by the Contractor or performed by another firm
4. Whether the Contractor was aware of any circumstances that would materially affect its ability to meet its Commitments and took timely and reasonable steps to address it
5. Circumstances outside of the Contractor's control
6. Any other relevant considerations

G. CDOT will provide written notice to the Contractor of any amounts for which it is seeking reimbursement. Contractors must reimburse CDOT within thirty (30) calendar business days of the written notice.

IV. CHANGE ORDER AND MASTER CONTRACT CLOSEOUT

CDOT will collect a completed CDOT *Professional Services Closeout Report* form upon completion of the work, expenditure of funds, and/or expiration of each Change Order and B2GNow's Master Contract for the CM/GC project. This form will report the final actual DBE participation on the Master Contract and any amounts for which CDOT will be seeking reimbursement due to the Contractor not meeting Commitments.