Colorado Department of Transportation

&

Contractor

BOOK 1

CONTRACT

I-25 Ilex Design Build

FINAL ADDENDUM REQUEST FOR PROPOSAL

June 20, 2014

PROJECT NO. FBR 025A-019

Code: 19205

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EXHIBITS

Exhibit A	Acronyms and Definitions
Exhibit B	Completion Deadlines
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Exhibit E	VECP Sample Calculation
Exhibit F	Insurance Requirements
Exhibit G	Cost Analysis for Request for Change Order
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Exhibit I	Letter of Vested Interest
Exhibit J	Disadvantaged Business Enterprise
Exhibit K	Form 1378
Exhibit L	OCIP Incentive
	Ilex Project Insurance Manual

THIS Design/Build Contract is entered into this ___ day of _____, 2014, by and between the State of Colorado for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION hereinafter referred to as the "State" or CDOT, and CORPORATION, ADDRESS, a STATE Corporation Licensed to do business in Colorado ("Contractor"), with reference to the definitions contained in Exhibit A hereto and the following facts:

RECITALS

1. The Project involves I-25 in the Pueblo, CO area. Interstate 25 (I-25) is a major commercial corridor for interstate commerce among the states of New Mexico, Colorado, and Wyoming, as well as international commerce among the United States, Mexico, and Canada

2. The purpose of the project is to replace the structurally deficient bridges on I-25 over Ilex Street and the Union Pacific Railroad, reconstruct I-25 from the bridge over Union Pacific Railroad to 1st Steet in Pueblo Colorado. In addition to the bridge replacement the project will reconstruct Stanton Street in a new location and provide continuous acceleration lanes from Ilex to 1st Street, and rehabilitate Structure L-18-M,L-18-W,L-18-AQ,L-18-AU,K-18-AX and K-18-AR.

3. In addition to replacing the structurally deficient bridges, key elements of the Project include improving the Ilex curve, construction phasing, drainage improvements, permanent water quality elements, and temporary erosion control.

4. Local Partners to be determined, if any

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor by CDOT, the foregoing premises and the covenants and agreements set forth herein, the parties hereto agree as follows.

Contract Components; Interpretation of Contract Documents

1.1 Certain Definitions

Exhibit A hereto contains the meaning of various terms used in the Contract Documents.

1.2 Contract Documents

The term "Contract Documents" shall mean the documents listed in Section 1.3, including all exhibits thereto.

1.3 Order of Precedence

Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete Contract. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below:

1. Book 1, as executed by CDOT and the Contractor, including all exhibits (Design/Build Contract).
2. Book 2, Section 1 (Technical Requirements).
3. Book 2, Sections 2 – 18, including all Appendices and Exhibits (Technical Requirements).
4. Book 2, Section 19 – 20 (Technical Requirements)
5. Book 3 (Applicable Standards, Data and Reports)
6. Book 4 (Contract Drawings)
7. The Proposal Documents, to the extent that they meet or exceed the requirements of the other Contract Documents. In other words, if the Proposal Documents include statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents, or to perform services in addition to those otherwise required or otherwise contain terms which are more advantageous to CDOT than the requirements of the other Contract Documents, the Contractor's obligations hereunder shall include compliance with all such statements, offers, and terms.

Notwithstanding the foregoing, in the event of conflicting requirements involving any requirement within a Book or a reference contained within a Book of the Contract Documents, CDOT shall have the right to determine, in its sole discretion, which requirement(s) apply. The Contractor shall request CDOT's determination respecting the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

1.4 Book 5 - Reference Documents

The documents included in the Reference Documents are for information only and are not Contract Documents to be relied upon by the Contractor except to the extent specifically provided by the Contract Documents (excluding the Proposal Documents). **Cross-references in the Contract Documents to the Reference Documents do not incorporate the Reference Documents or portions of the Reference Documents as Contract Documents or requirements, except to the extent that specific Reference Documents have been**

specifically incorporated into the Contract Documents (excluding the Proposal Documents).

1.5 Interpretations

In the Contract Documents, where appropriate:

- The singular includes the plural and vice versa;
- References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to;
- Words such as “herein,” “hereof,” and “hereunder” refer to the entire document in which they are contained and not to any particular provision or section;
- Words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
- References to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and
- Words of any gender used herein include each other gender where appropriate.

Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. The Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the Contract Documents and to bring to CDOT’s attention any conflicts or ambiguities contained therein. The Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the Person that prepared them. CDOT's final answers to the questions posed during the proposal process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

1.6 Referenced Standards, Codes, or Criteria

Except as otherwise specified in the Contract Documents, or otherwise directed by CDOT, references to standards, codes, or criteria, or to the latest version of standards, codes, or criteria, shall mean the latest version in effect on the Proposal Due Date.

1.7 Omission of Details; Clarification by CDOT

Neither the Contractor nor CDOT shall take advantage of any apparent Error in the Contract. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to CDOT in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify CDOT of all Errors which it may discover in the Contract Documents, and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby.

The fact that the Contract Documents omit or mis-describe any details of any Work which are necessary to carry out the intent of the Contract Documents, that are customarily performed under similar circumstances, shall not relieve the Contractor from performing such omitted Work or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 13.

1.8 Computation of Periods

References to “days” or “Days” contained in the Contract Documents shall mean Calendar Days unless otherwise specified, provided that if the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Working Day, such act or notice may be timely performed on the next succeeding day which is a Working Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Section 5.3 and any other requirements for which it is clear that performance is intended to occur on a non-Working Day, shall be required to be performed as specified, even though the date in question may fall on a non-Working Day.

1.9 Standard for Approvals

In all cases where approvals, acceptances or consents are required to be provided by CDOT or the Contractor hereunder, such approvals, acceptances or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified, and shall not be unreasonably delayed if no response time is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution hereunder.

1.10 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. Contractor shall comply with all applicable federal requirements including requirements of FHWA Form 1273 and other requirements outlined in Exhibit C.

2.0 OBLIGATIONS OF CONTRACTOR

2.1 Performance Requirements

2.1.1 Performance of Work

All materials, services and efforts necessary to achieve Project Completion and Final Acceptance on or before the applicable Completion Deadlines shall be the Contractor's sole responsibility, except as otherwise expressly provided in the Contract Documents. Subject to the terms of Section 13, the costs of all such materials, services and efforts are included in the Contract Price.

2.1.2 Performance Standards

The Contractor shall furnish the design of the Project and all engineering services required therefore in accordance with the skill, prudence, judgment and diligence as like situated members of the engineering profession commonly possess and exercise (but at least meeting the terms, conditions and requirements of the Contract Documents), and shall construct the Project as designed, in a good and workmanlike manner, free from defects, and in accordance with the terms and conditions set forth in the Contract Documents.

2.1.3 Performance as Directed

At all times during the term hereof, including during the course of and notwithstanding the existence of any dispute, the Contractor shall perform as directed by CDOT in a diligent manner and without delay, shall abide by CDOT's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Section 19.

2.2 General Obligations of Contractor

The Contractor, in addition to performing all other requirements of the Contract Documents, shall:

1. Furnish all design and other services, provide all materials and labor and undertake all efforts necessary or appropriate (excluding only those services, materials and efforts which the Contract Documents specify will be undertaken by other Persons): (i) to construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, including the Contract Schedule, all Legal Requirements, all Governmental Approvals, the Quality Management Plan, the Traffic Management Plan, the Safety Management Plan, the Public Information Plan, Approved Alternative Technical Concept (ATC) and Alternative Configuration Concept (ACC) Conditions, and all other applicable safety, environmental, licensing and other requirements, taking into account the Right-of-Way (ROW) Plans and other constraints affecting the Project, so as to achieve Project Completion and Final Acceptance by the applicable Completion Deadlines; and (ii) otherwise to do everything required by and in accordance with the Contract Documents.
2. At all times provide a Contractor Project Manager, Approved by CDOT, who: (i) will have full responsibility for the prosecution of the Work; (ii) will act as agent and be a single point of contact in all matters on behalf of the Contractor; (iii) will be present (or his

Approved designee will be present) at the Site at all times that Work is performed; and (iv) will have authority to bind the Contractor on all matters relating to the Project.

3. Provide a Key Personnel who is a registered licensed professional engineer in the State of Colorado who is in responsible charge of the construction Work
4. Obtain all Governmental Approvals (other than Approvals agreed to be obtained by CDOT), and specifically including any Governmental Approvals required to implement any Approved ATCs, and ACCs incorporated into the Contract Documents.
5. In addition to the ATCs and ACCs, comply with all ATC and ACC Conditions specified by CDOT in its Approval.
6. Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect, all Governmental Approvals, including implementation of all environmental mitigation measures required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person.
7. Provide such assistance as is reasonably requested by CDOT in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, but which shall in no event be deemed to require the Contractor to provide legal services.
8. Comply with all requirements of all applicable Legal Requirements, including: (i) the Environmental Laws, including all environmental mitigation and monitoring measures required for the Project, including those set forth in Book 2, Section 5, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Substances; (ii) the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., including any amendments, as well as all applicable regulations and guidelines; and (iii) the Federal Requirements.
9. Cooperate with CDOT and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other matters relating to the Work.
10. Pay third parties as required by the Contract Documents, including but not limited to, payments to Utility Owners or payments to Railroad companies, if any.
11. Supervise and be responsible to CDOT for acts and omissions of all Contractor-Related Entities, as though the Contractor directly employed all such Persons.
12. Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by resequencing, reallocating or redeploying the Contractor's forces to other elements of the Project or to other work, as appropriate.
13. Pay all applicable federal, State, and local sales, consumer, use, and similar taxes, property taxes and any other taxes, fees, charges, or levies imposed by a Governmental Person, whether direct or indirect, relating to or incurred in connection with the performance of the Work if required.

2.3 Representations, Warranties, and Covenants

The Contractor represents, warrants, and covenants for the benefit of CDOT as follows:

2.3.1 Maintenance of Professional Qualifications

The Contractor and any design Subcontractor(s) have maintained, and throughout the term of the Contract and any design Subcontract(s) shall maintain, all required authority, license status, professional ability, skills and capacity to perform the Work, and shall perform them in accordance with the requirements of the Contract Documents.

2.3.2 Evaluation of Constraints

The Contractor has evaluated the constraints affecting delivery of the Project, including the ROW Plans and the Basic Configuration, as well as the conditions of the Environmental Approvals, and the Project can be delivered within such constraints. This Section is subject to the terms of Section 2.4.3.

2.3.3 Feasibility of Performance

The Contractor has evaluated the feasibility of performing the Work within the time specified herein and for the Contract Price, such performance (including achievement of Project Completion and Final Acceptance by the applicable Completion Deadlines, for the Contract Price) is feasible and practicable.

2.3.4 Review of Site Information

The Contractor has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed the boring logs provided by CDOT in the reference documents at http://www.coloradodot.info/project/Ilexbridges, inspected and examined the Site and surrounding locations, and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project, to the extent the Contractor deemed necessary or advisable for submittal of a Proposal. As a result of such review, inspection, examination and other activities, the Contractor is familiar with and accepts the physical requirements of the Work. The Contractor acknowledges and agrees that changes in conditions at the Site may occur after the Proposal Due Date, and that the Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under Section 13. Before commencing any Work on a particular aspect of the Project, the Contractor shall verify all governing dimensions and conditions at the Site and shall examine all adjoining work, which may have an impact on such Work. The Contractor shall be responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

2.3.5 Governmental Approvals

The Contractor has no reason to believe that any Governmental Approval required to be obtained by the Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. If any Governmental Approvals required to be obtained by the Contractor must formally be issued in the name of CDOT, the Contractor shall undertake all efforts to obtain such approvals, subject to CDOT's reasonable and timely cooperation with the Contractor, including execution and delivery of appropriate applications and other documentation in forms Approved by CDOT. The Contractor shall assist CDOT in obtaining any Governmental Approvals which CDOT may be obligated to obtain, including providing information requested by CDOT and participating in meetings regarding such approvals.

2.3.6 Progression of Work

The Contractor shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Completions and Final Acceptance by the applicable Completion Deadlines and in accordance with the Contract Schedule, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts, overtime operations, Sundays and Holidays) as may be necessary to achieve such goals, all at the Contractor's own expense, except as otherwise specifically provided in Section 13.

2.3.7 Employee Performance Requirements

All employees shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If CDOT determines in its sole discretion that any Person employed by the Contractor or by any Subcontractor is not performing the Work properly and skillfully, then, at the written request of CDOT, the Contractor or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior written approval of CDOT. If the Contractor or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then CDOT may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order.

2.3.8 Design and Engineering Personnel

All design and engineering Work furnished by the Contractor shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the State, and by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Released for Construction Documents, Field Design Change Documents and As-Built Documents prepared or checked by them.

2.3.9 Organization

The Contractor is a _____Corporation duly organized and validly existing under the laws of the State of_____, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted in the State of Colorado. The Contractor is duly qualified to do business, and is in good standing, in the State of Colorado, and will remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

2.3.10 Authorization

The execution, delivery, and performance of the Contract have been duly authorized by all necessary actions of the Contractor, and, if applicable, the Contractor's members, and will not result in a breach or a default under the organizational documents of any such Person or any indenture, loan, credit agreement, or other material agreement or instrument to which any such Person is a party or by which its properties and assets may be bound or affected.

2.3.11 Legal, Valid, and Binding Obligation

The Contract constitutes the legal, valid, and binding obligation of the Contractor and, if applicable, of each member of the Contractor.

2.3.12 False or Fraudulent Statements and Claims

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and the USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions hereunder. Accordingly, by signing the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate.

2.4 Requirements Regarding Basic Configuration and Contract Drawings

2.4.1 Obligation to Review Contract Drawings

Before commencing any design or construction Work in an area, the Contractor shall review the design contained in the Contract Drawings for constructability and shall notify CDOT in writing of any errors, omissions, inconsistencies or other defects in such design affecting constructability. If, after the start of any design or construction Work, the Contractor becomes aware of any such error, omission, inconsistency or other defect in the Contract Drawings, the Contractor shall immediately notify CDOT of the same.

2.4.2 Required Approvals

If it is necessary to modify the Basic Configuration, any Contract Drawings/ROW Plans in order to correct any errors, omissions, inconsistencies or other defects, the Contractor shall first obtain CDOT's and any third party's written Approvals, where applicable, prior to commencing any related Work.

2.4.3 Necessary Design Change

If it is necessary, in CDOT's sole determination to modify the Basic Configuration, any Contract Drawings/ROW Plans in order to correct an error, omission, inconsistency or other defect therein, and such modification increases the cost and/or time to perform the Work, the Contractor shall be entitled to an increase in the Contract Price and/or an extension of the Completion Deadlines, excluding any costs and/or time that could have been avoided by the Contractor and subject to the requirements and limitations of Section 13; provided, however, the Contractor shall not be entitled to an increase in the Contract Price or an extension of the Completion Deadlines in connection with errors, omissions, inconsistencies or other defects related to modifications of the Contract Drawings/ROW Plans as the result of Approved ATCs or ACCs. If it is necessary to modify the Basic Configuration, the Contract Drawings/ROW Plans in order to correct an error, omission, inconsistency or other defect therein, and such modification decreases the cost and/or time to perform the Work, the Contract Price and/or Completion Deadlines shall be decreased accordingly. Any such change described in this Section 2.4.3, as Approved under Section 2.4.2, shall be referred to herein as a "Necessary

Design Change" (with the understanding that a change shall be deemed "necessary" only if the error, omission, inconsistency or other defect creates a problem which cannot reasonably be corrected without a change in the Basic Configuration, the Contract Drawings/ROW Plans, as appropriate).

2.5 Design Documents

The Contractor shall furnish the Design Documents to CDOT and shall obtain CDOT's Acceptance of the Final Design Documents as specified in Book 2, Section 3 – Quality Management. The Contractor shall construct the Project in accordance with the Final Design Documents. The Final Design Documents may be changed only with CDOT Approval of Field Design Change Documents or through CDOT-Directed Changes. Such Approval(s) shall be timely considered and shall not be unreasonably withheld.

3.0 INFORMATION SUPPLIED TO CONTRACTOR; RESPONSIBILITY FOR DESIGN; DISCLAIMER

3.1 Information Supplied

CDOT has made available to the Contractor information, which is described in the Contract Documents and certain Reference Documents regarding the Project, and has allowed the Contractor access to the Site for purposes of inspection and testing.

3.2 Responsibility for Design

The Contractor agrees that it has full responsibility for the design of the Project and that the Contractor shall furnish the design of the Project, regardless of the fact that certain conceptual design work occurred and was provided to the Contractor prior to the date of execution of the Contract. The Contractor specifically acknowledges and agrees that:

1. Approved ATCs and ACCs (including conditions specified by CDOT in its Approval) are incorporated into and are a part of the Basic Configuration.
2. The Basic Configuration is preliminary and conceptual in nature.
3. The Contractor is not entitled to rely on and has not relied on: (i) the Reference Documents; or (ii) any other documents or information provided by CDOT, except to the extent specifically permitted in the Contract Documents.
4. The Contractor is responsible for correcting any Errors in the Basic Configuration through the design and/or construction process as set forth in Book 2 without any increase in the Contract Price or extension of a Completion Deadline, subject only to the right to a Change Order for a Necessary Design Change.
5. The Contractor's Warranties and indemnities hereunder cover Errors in the Project even though they may be related to Errors in the Basic Configuration or Reference Documents, subject to the terms of Section 2.4.3.

3.3 Disclaimer

3.3.1 No Liability Regarding Reference Documents

The Contractor understands and agrees that CDOT shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by any Contractor-Related Entity by reason of any use of any information contained in the Reference Documents or any action or forbearance in reliance thereon, except to the extent that CDOT has specifically provided in the Contract Documents that the Contractor shall be entitled to an increase in the Contract Price and/or extension of a Completion Deadline with respect to such matter. The Contractor further acknowledges and agrees that: (i) if and to the extent the Contractor or anyone on the Contractor's behalf uses any of said information in any way, such use is made on the basis that the Contractor, not CDOT, has approved and is responsible for said information; and (ii) the Contractor is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to change, recreate, verify or supplement said information, and that any use of said information is entirely at the Contractor's own risk and at its own discretion.

3.3.2 No Representation or Warranty Regarding Basic Configuration and Reference Documents

CDOT DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE BASIC CONFIGURATION AND REFERENCE DOCUMENTS IS EITHER COMPLETE OR ACCURATE OR THAT SUCH INFORMATION CONFORMS TO THE REQUIREMENTS OF THE CONTRACT DOCUMENTS. THE FOREGOING SHALL IN NO WAY AFFECT CDOT'S AGREEMENT HEREIN TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH SECTION 13.

3.4 Professional Licensing Laws

CDOT does not intend to contract for, pay for, or receive any design services that are in violation of any professional licensing laws, and by execution of the Contract, the Contractor acknowledges that CDOT has no such intent. It is the intent of the parties that the Contractor is fully responsible for furnishing the design of the Project, although the fully licensed design firm(s) or individuals designated herein will perform the design services required by the Contract Documents. Any references in the Contract Documents to the Contractor's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that the Contractor shall "furnish" the design for the Project. The terms and provisions of this Section 3.4 shall control and supersede every other provision of the Contract Documents.

4.0 TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; SCHEDULING

4.1 Time of Essence

Time is of the essence of the Contract.

4.2 Notices to Proceed

4.2.1 Issuance of Notice-to-Proceed 1

The Contractor shall begin performance of certain limited Work as directed and described in Notice-to-Proceed 1 (NTP1) issued by CDOT. NTP1 Work that may be performed includes all Work and activities consistent with CDOT's Approval of Quality Control Document in accordance with Book 2, including survey and geotechnical. The amount to be paid to the Contractor for Work performed pursuant to NTP1 shall not exceed the NTP1 Payment Cap. If CDOT issues NTP1 after 30 days from executed contract, through no fault, negligence, act or failure to act of Contractor, Contractor shall be entitled to an extension of the Completion Deadlines to the extent of the delay between 30 days after the contract was executed and the date CDOT issues NTP1.

4.2.2 Issuance of Notice-to-Proceed 2

The Contractor shall begin performance of the remainder of the Work as directed and described in Notice-to-Proceed 2 (NTP2) issued by CDOT. CDOT shall issue NTP2 upon Acceptance of the Original Initial Schedule in accordance with Book 2, Section 2 and Approved Quality Control Document and Accepted Environmental Compliance Work Plan. Within ten Working Days after Contractor's submittal of the Original Initial Schedule to CDOT, CDOT shall either Accept the Original Initial Schedule and issue NTP2 or provide Contractor with reasons why it is unable to Accept the Original Initial Schedule. In the event that CDOT fails to either Accept the Original Initial Schedule and issue NTP2 or provide reasons why it is unable to Accept the Original Initial

Schedule within ten Working Days after Contractor's submittal of the Original Initial Schedule to CDOT, such delay thereafter shall constitute a CDOT-Caused Delay.

4.3 Completion Deadlines

4.3.1 Project Completion Deadline

The Contractor shall achieve Project Completion within the deadline therefore set on Exhibit B. Said Deadline, as it may be extended hereunder, is referred to as the "Project Completion Deadline."

4.3.2 Final Acceptance Deadline

The Contractor shall achieve Final Acceptance within 90 days after Project Completion Deadline. Said deadline for Final Acceptance, as it may be extended hereunder, is referred to as the "Final Acceptance Deadline."

4.3.3 No Time Extensions

Except as otherwise specifically provided in this Section and Section 13, CDOT shall have no obligation to extend the Completion Deadline and the Contractor shall not be relieved of its obligation to comply with the Contract Schedule and Final Acceptance Deadline by the applicable Completion Deadline for any reason.

4.4 Contract Schedules

The Contractor shall deliver the Work in accordance with the Contract Schedules, as described in Book 2, Section 2. Such schedules shall also be the basis for determining the amount of monthly progress payments to be made to the Contractor.

4.5 Reserved

4.6 Prerequisites for Start of Construction

The Contractor shall not start construction (or recommence construction following any suspension) of any portion of the Project until all the following events have been fully satisfied with respect to the Work proposed to be constructed.

1. CDOT has issued NTP1 and NTP2.
2. All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction have been performed.
3. All insurance policies and bonds required to be delivered to CDOT hereunder have been received and Accepted or Approved by CDOT as applicable and remain in full force and effect.
4. All necessary rights of access for such portion of the Project have been obtained.

5.0 CONTROL OF WORK

5.1 Control and Coordination of Work

The Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures, and Site safety, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.

5.2 Safety

The Contractor shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of CDOT and its consultants, visitors to the Site and members of the public who may be affected by the Work. The Contractor shall at all times comply with its Safety Management Plan. The Contractor shall immediately notify CDOT if the Contractor believes that any Contract requirement creates a safety risk.

5.3 Process to be Followed for Discovery of Certain Site Conditions

5.3.1 Notification to CDOT

If the Contractor becomes aware of: (i) any on-Site material that the Contractor believes may contain Hazardous Substances that is required to be removed or treated; (ii) any paleontological, cultural or biological resources; or (iii) any Differing Site Conditions, as a condition precedent to the Contractor's right to a Change Order, the Contractor shall immediately notify CDOT thereof by telephone or in person, to be followed by written notification as soon as practicable. The Contractor shall immediately stop Work in and secure the area. In such event, CDOT will view the location within two Working Days of receipt of notification, and will advise the Contractor at that time whether to resume Work or whether further investigation is required. Any delay resulting from CDOT viewing the location up to two Working Days shall not be considered a CDOT-Caused Delay.

5.3.2 Further Investigation

The Contractor shall promptly conduct such further investigations as CDOT deems appropriate. Within five Working Days after its initial notice to CDOT, the Contractor shall advise CDOT of any action recommended to be taken regarding the situation in writing. If Hazardous Substances are involved, the notice shall describe the type of Remediation Work, if any, which the Contractor proposes to undertake with respect thereto. If paleontological, cultural, or biological resources are present, the notice shall advise CDOT what course of action the Contractor intends to take with respect thereto and whether the location should be fenced off or whether Work can resume. CDOT then will determine whether the Contractor's findings and proposed actions are acceptable and, in writing, either Approve, or require modification of, the Contractor's proposed actions.

5.3.3 Recommence Work

CDOT shall have the right to require the Contractor to recommence Work in the area at any time, even though an investigation may still be ongoing (so long as such Work is not in violation

of any Legal Requirements or Governmental Approvals). The Contractor shall promptly recommence Work in the area upon receipt of notification from CDOT to do so. On recommencing Work, the Contractor shall follow all applicable procedures contained in the Contract Documents and all other Legal Requirements with respect to such Work, consistent with CDOT's determination or preliminary determination regarding the nature of the material, resources, species or condition.

5.4 Obligation to Minimize Impacts

The Contractor shall ensure that all of its Activities and the Activities of all Contractor-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable.

5.5 Quality Management

5.5.1 Contractor Quality Management

The Contractor shall perform the quality management necessary for the Contractor to comply with its obligations under the Contract Documents.

5.5.2 Oversight, Verification, Inspection, and Testing by CDOT and Others

All materials and each part or detail of the Work shall also be subject to oversight, verification and testing by CDOT and other Persons designated by CDOT. Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its Warranty obligations, by oversight, spot checks, audits, verifications, reviews, tests, inspections, acceptances or approvals performed by any Persons, or by any failure of any Person to take such action. The Contractor hereby consents to such oversight, inspection and testing. Upon request from CDOT, the Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work. Oversight, verification, audit, inspection and/or testing do not make any Person who performs such oversight, verification, audit, inspection and/or testing a party to the Contract nor will it change the rights of the parties hereto.

When any Utility Owner is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, verify, audit, inspect and test the Work.

5.5.3 Obligation to Uncover Finished Work

At all times before Final Acceptance, the Contractor shall remove or uncover such portions of the finished construction Work as directed by CDOT. After examination by CDOT, the Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Work and recovery of any delay to the Critical Path occasioned thereby shall be at the Contractor's expense and the Contract Price shall not be increased as a result. If Work exposed or examined under this Section 5.5.3 is in conformance with the requirements of the Contract Documents, then any delay in the Critical Path from uncovering, removing and restoring Work shall be considered a CDOT-Caused Delay, and the Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to the Critical Path occasioned thereby, subject to the provisions of Section 13. Refer to Section 5.7 for provisions regarding payments owing by the

Contractor to CDOT, if CDOT agrees (in its sole discretion) to Accept certain Nonconforming Work.

5.6 Effect of Oversight, Spot Checks, Verifications, Tests, Acceptances, and Approvals

5.6.1 Oversight and Acceptance

The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, verifications, reviews, tests, inspections, Acceptances, or Approvals by any Persons, or by any failure of any Person to take such action. The oversight, spot checks, verifications, audits, reviews, tests, inspections, Acceptances, and Approvals by any Person do not constitute Final Acceptance of the particular material or Work, or waiver of any legal or equitable right with respect thereto. CDOT may reject or require the Contractor to remedy any Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with Contract requirements at any time prior to Final Acceptance, whether or not previous oversight, spot checks, verifications, audits, reviews, tests, inspections, Acceptances, or Approvals were conducted by any Person.

5.6.2 No Estoppel

CDOT shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefore, from making a determination that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the work performed and materials furnished by the Contractor, or from making a determination that the work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, CDOT shall not be precluded or estopped from recovering from the Contractor and its Surety(ies) such damages as CDOT may sustain by reason of the Contractor's failure to comply or to have complied with the terms of the Contract Documents.

5.7 Nonconforming Work

5.7.1 Rejection, Removal, and Replacement of Work

Subject to CDOT's right, in its sole discretion, to Accept or reject Nonconforming Work, the Contractor shall remove and replace rejected Nonconforming Work so as to conform with the requirements of the Contract Documents, at the Contractor's expense and without any time extension; and the Contractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that CDOT may not have discovered the Nonconforming Work shall not constitute an Acceptance of such Nonconforming Work. If the Contractor fails to correct any Nonconforming Work within five days of receipt of notice from CDOT requesting correction (or, for Nonconforming Work which cannot be corrected within five days, if the Contractor fails to provide to CDOT a schedule for correcting any such Nonconforming Work Approved by CDOT within such five-day period, begin correction within such five-day period and thereafter diligently prosecute such correction in accordance with such Approved schedule to completion), then CDOT may cause the Nonconforming Work to be remedied or removed and replaced, and may deduct the cost of doing so from any moneys due

or to become due the Contractor and/or obtain reimbursement from the Contractor for such cost.

5.7.2 Nonconforming Work Pay Adjustment

CDOT may, in its sole discretion, Accept any Nonconforming Work without requiring it to be fully corrected, and shall be entitled to a pay adjustment (or reimbursement of a portion of the Contract Price, if applicable). In such event, CDOT shall be entitled to reimbursement of a portion of the Contract Price as set forth in CDOT Standard Specifications for Road and Bridge Construction, No. 105.03. In certain events, however, it may not be possible for the Nonconforming Work to be made to conform to the requirements of the Contract Documents, including, but not limited to, the Contractor's failure to perform required items during a required time period. In general, the pay adjustment (or reimbursement) shall equal, at CDOT's election: (i) the amount allocated to such Work in the Contract Schedule; (ii) the Contractor's cost savings associated with its failure to perform the Work in accordance with the Contract requirements; or (iii) the amount deemed appropriate by CDOT to provide compensation for impacts to affected parties such as future maintenance and/or other costs relating to the Nonconforming Work. In certain events, CDOT shall be entitled to a pay adjustment (or reimbursement) as expressly set forth elsewhere in the Contract Documents. Such reimbursement shall be deducted from future payments or, if future payments are insufficient to cover the amount owing, shall be payable to CDOT within 30 days after Contractor's receipt of an invoice therefore.

6.0 Access to Site, Utility Relocations, Environmental Mitigation

6.1 Access to Site

6.1.1 Access to Right-of-Way Identified on Right-of-Way Plans

6.1.1.1 Obligation to Provide Access to Right-of-Way

CDOT has identified certain ROW to be used for permanent improvements included in the Project (the "ROW Plans"), which are depicted in Reference Documents. CDOT will provide access to the ROW identified on the ROW Plans in accordance with Book 2, Section 8.

6.1.1.2 Right-of-Way Access Requirements

Concurrently with review of the Original Initial Schedule, the Contractor and CDOT shall discuss the access requirements for the ROW identified on the ROW Plans associated with the scheduled Activities. The Contractor and CDOT may agree to revise the ROW schedule set forth in Book 2, Section 8, in writing and enter into a no-cost Change Order. The Contractor shall be provided access to those parcels identified on the ROW Plans in accordance with the ROW schedule or as modified by the parties.

6.1.1.3 Delay in Providing Access

If CDOT at any time determines it will be unable to provide access to a particular parcel in accordance with the ROW schedule, CDOT shall notify the Contractor regarding the revised projected date for delivery of access. The Contractor shall take appropriate action to minimize any cost and time impact and shall work around such parcel until access can be provided, including rescheduling and re-sequencing Work so as to avoid any delay to the Project. Subject to Section 6.1.1.4, to the extent that a delay to the Critical Path cannot be avoided due to not

providing access to a parcel(s) in accordance with the ROW schedule, such delay shall be considered a CDOT-Caused Delay.

6.1.1.4 Obligation to Provide Written Notice

In addition to the requirements of Section 6.1.1.3, and as a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Deadline related to CDOT's delivery of access to the parcels identified on the ROW Plans, the Contractor shall provide CDOT written notice within three Working Days after receipt of a revised projected date if the lack of availability will result in an impact to the cost or schedule.

6.1.2 Access to Right-of-Way Not Identified on Right-of-Way Plans

6.1.2.1 Unidentified Right-of-Way as Result of a CDOT-Directed Change

Any ROW not identified on the ROW Plans that is required as the result of a Necessary Design Change shall be the responsibility of CDOT and shall result in a CDOT-Directed Change.

6.1.2.2 Right-of-Way Associated with Value Engineering Change Proposal

The cost of obtaining any ROW not identified on the ROW Plans associated with a Value Engineering Change Proposal (VECP) will be included in determining the Contract Price adjustment under Section 12.

6.1.2.3 Preparation of Documents

Contractor shall prepare all documents described in Book 2, Section 8 and shall deliver them to CDOT in sufficient time to allow review and Approval prior to the date the transfer is scheduled to occur. Additional requirements applicable to Contractor are set forth in Book 2, Section 8.

6.1.2.4 Reimbursement of CDOT Costs

The Contractor shall reimburse CDOT for any costs (including reasonable attorneys', accountants' and expert witness fees and costs) of acquiring any real property that is not CDOT's responsibility under Sections 6.1.1.1, 6.1.2.1 or 6.1.2.2 which the Contractor determines is necessary or advisable in order to complete the Project, including obtaining any Temporary Easements. CDOT may deduct such amounts from payments otherwise owing hereunder, or may invoice the Contractor. The Contractor shall reimburse CDOT for any such amounts paid by CDOT within ten days after receipt of an invoice from CDOT therefore.

6.1.2.5 Additional Requirements

Additional requirements applicable to the Contractor are set forth in Book 2, Section 8.

6.1.3 Failure to Have Necessary Rights of Access

If the Contractor enters any property in connection with the Project without having all necessary rights of access, CDOT may, in its sole discretion, obtain consent from the landowner. The Contractor shall be responsible for all costs incurred by CDOT as a result thereof, and for Liquidated Damages as described in Section 17.1.

6.2 Utility Relocations

This Section 6.2 describes how the risk of increased costs and delays associated with the Utility Work is allocated between CDOT and the Contractor through the Change Order process, and

contains certain additional terms relating to Utility Work to supplement those set forth in Book 2, Section 7.0. The Contractor agrees that: (i) the Contract Price covers all of the Utility Work to be furnished or performed by the Contractor described in Book 2, Section 7.0 and in this Section 6.2; and (ii) it is feasible to obtain and/or perform all necessary Utility Work (for both Public Utilities and Private Utilities) within the time deadlines of the Contract Documents. Accordingly, the Contractor shall be entitled to receive a Change Order for additional costs and delays associated with the Utility Work only as permitted by this Section 6.2 or in circumstances for which such a Change Order is otherwise permitted under Section 13 (such as for CDOT-Directed Changes which increase the Utility Work to be furnished or performed by the Contractor). A deductive Change Order for reductions in the Utility Work to be furnished or performed by the Contractor shall be issued only in circumstances for which a deductive Change Order is otherwise permitted under Section 13. Notwithstanding the foregoing, the Contractor's entitlement to any Change Orders pursuant to Section 13 relating to the Utility Work shall be subject to any applicable limitations and restrictions set forth in this Section 6.2, and the Contractor's entitlement to any Change Orders pursuant to this Section 6.2 shall be subject to the limitations, restrictions and procedures set forth in Section 13. At CDOT's election any Utility Work Order will also function as a Change Order for purposes of Sections 6.2.1.2, 6.2.1.3, or 6.2.4.2.1, respectively, when the Utility Work Order form specified pursuant to the applicable Utility Relocation Agreements (URAs) is completed and/or modified by CDOT to reflect such dual function, and in that event the term "Change Order" shall include any such Utility Work Order.

6.2.1 Accuracy of Design and Data

6.2.1.1 "Reasonable Accuracy" Defined

For purposes of Sections 6.2.1.2 and 6.2.1.3, a Utility shall be deemed indicated with reasonable accuracy if both of the following criteria are met:

1. The Utility's actual centerline location is within 20 feet of the horizontal centerline location indicated on the Utility Plans, included with the Reference Documents (with no limitation on vertical location).

The Utility's actual size is within 12 inches of the size indicated in the Utility Data included with the Reference Documents.

6.2.1.2 Inaccuracy Increasing the Work

In general, if any existing Utility (or any portion of such Utility) identified in the Utility Data included with the Reference Documents is not indicated with Reasonable Accuracy therein, or is not indicated at all, then CDOT shall be responsible for, and agrees to issue a Change Order to compensate the Contractor for additional costs of the Utility Work (other than Betterments added to the Work pursuant to Section 6.2.3) to be furnished or performed by the Contractor which are directly attributable to such lacking or incorrect information (excluding Delay and Disruption Damages); however, no extension of any Completion Deadline will be allowed on account of such lacking or inaccurate information. The amount of any such Change Order shall be determined in accordance with Section 13.6.3. Notwithstanding the foregoing, the Contractor shall be responsible for, and no Change Order shall be issued under this Section 6.2.1.2 with respect to, any Utility (or any portion thereof) to which any one or more of the following applies:

1. A surface inspection of the area would have shown the existence or the likelihood of existence of such Utility (or portion thereof) in the correct location and/or size, as applicable, by reason of above-ground facilities such as buildings, meters or junction boxes or identifying markers; or
2. Such Utility is a Service Line (or the portions of a Utility that are Service Lines); or
3. Any costs or delays associated with the performance of Incidental Utility Work by the Contractor.

6.2.1.3 Inaccuracy Decreasing the Work

If any existing Utility (or any portion of such Utility) identified in the Utility Data included with the Reference Documents is not indicated with "reasonable accuracy" therein, then CDOT shall have the right to issue a Change Order reducing the Contract Price to reflect the value of any reduction in the costs of the Utility Work (other than Betterments added to the Work pursuant to Section 6.2.3) to be furnished or performed by the Contractor which is directly attributable to the correction of such information. The amount of any such Change Order shall be determined in accordance with Section 13.6.3.

6.2.1.4 Inconsistency within Utility Data

If there is any inconsistency within the Utility Data included with the Reference Documents cited in Section 6.2.1.2 and Section 6.2.1.3, the most accurate of the indications will be used for purposes of Section 6.2.1.1.

6.2.1.5 Partial Inaccuracy

If only a portion of an existing Utility identified in the Utility Data included with the Reference Documents is not indicated with "reasonable accuracy" therein, or is not indicated at all, then a Change Order pursuant to Section 6.2.1 shall be allowed only for the resulting increased or decreased costs (respectively) of the Utility Work incurred by the Contractor with respect to that portion of such Utility (subject, in the case of any increase in the Contract Price, to the restrictions set forth in clauses 1 and 2 of Section 6.2.1.2).

6.2.2 Reserved

6.2.3 Betterments and Requested Relocations

Utility Betterments and Requested Relocations may be added to the Work pursuant to this Section 6.2.3 and Book 2, Section 7.

6.2.3.1 Procedure

Any Utility Owners may request CDOT to permit the Contractor to perform work relating to Betterments or Requested Relocations as a part of the Work, at the Utility Owner's expense. If CDOT Approves any such request, the Contractor will have the obligation to perform such work, with the right to receive additional payment and, if applicable, an extension of the Completion Deadline as provided in Section 6.2.4.2. The price charged by the Contractor for such Betterment or Requested Relocation shall be either a lump sum amount negotiated with the Utility Owner or determined on a time and materials cost basis as specified below. Any extension of the Completion Deadline or Contract Price increase requested for any Betterment or Requested Relocation shall be subject to the requirements of Sections 6 and 13, as applicable.

CDOT will Approve the addition of a Betterment or Requested Relocation to the scope of the Work under this Section 6 only if: (i) the Utility Owner has agreed to the addition of such Betterment or Requested Relocation to the Work; (ii) such Betterment is compatible with the Project; (iii) the Utility Owner has agreed to reimburse the Contractor for all the costs thereof; (iv) the Utility Owner has agreed as to the method (negotiated lump sum amount, or time and materials cost basis) of pricing such Work; and (v) it is feasible to separate the cost/pricing of the Betterment or Requested Relocation work from that for any related Utility Work being furnished or performed by the Contractor. The Contractor shall provide CDOT with such information, analyses and certificates as may be requested by CDOT in connection with its Approval.

Any change in the scope of the Work pursuant to this Section 6.2.3 shall not be considered a CDOT-Directed Change.

6.2.4 Utility Delays

6.2.4.1 Allocation of Risk

If aggregate Utility Delays caused by an individual Utility Owner exceed 5 days, and the Completion Deadline is affected thereby, the Contractor may be entitled to an extension of the Completion Deadline as provided in Section 6.2.4.2.

6.2.4.2 Conditions to Extensions for Utility Delays

With respect to each Utility Delay claimed by the Contractor, the Contractor shall not be entitled to any extension of the Completion Deadline unless all of the following conditions are satisfied:

1. The Contractor has provided evidence reasonably satisfactory to CDOT that: (i) the Contractor has fulfilled its obligation under the applicable Utility Relocation Agreement(s) to coordinate with the Utility Owner to prevent or reduce such delays; and (ii) the Contractor has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation.
2. If the Contractor is responsible for the Relocation, the Contractor has provided a reasonable Relocation plan to the Utility Owner and the Contractor has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or rulings required by or with any Governmental Person in order to design and construct such Relocations.
3. No circumstances exist which have delayed or are delaying the affected Relocation, other than those which fit within the definition of a Utility Delay.

6.2.4.2.1 Delay Damages

The Contractor shall be entitled to delay and/or disruption damages for Utility Delays only in the circumstances described in, and to the extent provided, in Section 13.5.2.

6.2.5 Certain Obligations of Contractor

6.2.5.1 Multiple Relocations of the Same Utility

The Contractor shall avoid multiple relocations of the same Utility, whether by the Utility Owner or by the Contractor. Accordingly, after a Utility has been relocated once in order to

accommodate the Project based on the Contractor's design, the Contractor shall be responsible for all costs incurred by either the Contractor or the Utility Owner in order to subsequently relocate such Utility to accommodate the Project. If the Utility Owner performs such subsequent Relocation, then the Contractor shall reimburse the Utility Owner for such subsequent relocation. If the Contractor performs such subsequent Relocation, then the Contractor shall not receive any extension of the Completion Deadline or increase in the Contract Price on account of the performance of such subsequent Relocation.

6.2.5.2 Minimizing CDOT's Reimbursement Obligation

In designing and constructing the Project, the Contractor shall take all reasonable steps to minimize costs to the Utility Owners under the Utility Relocation Agreements, to the extent practicable and otherwise consistent with other requirements of the Contract Documents.

6.2.6 Additional Restrictions on Change Orders

In addition to all of the other requirements and limitations contained in Section 13, the entitlement of the Contractor to any Change Order under this Section 6.2 shall be subject to the restrictions and limitations set forth in this Section 6.2.

6.2.6.1 Burden of Proof

For Relocations, the Contractor shall bear the burden of proving that the Relocation cannot reasonably be avoided.

6.2.6.2 Coordination Costs

The Contractor shall not be entitled to an increase in the Contract Price for any costs of coordinating with Utility Owners or for assisting CDOT in coordinating with Utility Owners.

6.2.6.3 Voluntary Action by Contractor

If the Contractor elects to make payments to Utility Owners or to undertake any other efforts which are not required by the terms of the Contract Documents, the Contractor shall not be entitled to a Change Order in connection therewith. The Contractor shall promptly notify CDOT of the terms of any such arrangements.

6.3 Environmental Compliance

In performance of the Work, the Contractor shall comply with all requirements of all applicable Environmental Laws and Governmental Approvals issued there under, whether obtained by CDOT or the Contractor. The Contractor acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with any failure to comply with such requirements.

6.3.1 Mitigation Requirements

The Contractor shall perform all environmental mitigation measures (which term shall be deemed to include all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project except the environmental mitigation measures CDOT has agreed to perform or provide. The Contract Price includes compensation for the Contractor's performance of all such mitigation measures and for performance of all mitigation measures arising from New Environmental Approvals which Section 6.3 designates as the Contractor's

responsibility as well as the cost of all Activities to be performed by the Contractor as described in Book 2, Section 5.

6.3.2 New Environmental Approvals

6.3.2.1 Approvals to be Obtained by CDOT

CDOT shall be responsible for obtaining any New Environmental Approvals necessitated by a Necessary Design Change or Force Majeure event. The Contractor shall provide support services to CDOT with respect to obtaining any such New Environmental Approval. Any Change Order covering a Necessary Design Change shall include compensation to the Contractor for any changes in the Work (including performance of additional mitigation measures but excluding performance of such support services) resulting from such New Environmental Approvals, as well as any time extension necessitated by the Necessary Design Change, subject to the conditions and limitations contained in Section 13.

6.3.2.2 Approvals to be Obtained by Contractor

If a New Environmental Approval becomes necessary for any reason other than those specified in Section 6.3.2.1 then refer to Book 2 -Section 5.2. The Contractor shall be fully responsible for obtaining any New Environmental Approvals and any other environmental approvals not referenced in Book 2 – Section 5.2 that may be necessary, and for all requirements resulting there from, as well as for any litigation arising in connection therewith. CDOT will reasonably assist the Contractor in obtaining any New Environmental Approvals. If the New Environmental Approval is associated with a VECP or Negotiated Change, the costs of obtaining and complying with the terms of the New Environmental Approval shall be considered in determining the Contract Price adjustment under Section 12.

If the contracting agency proceeds to award a design-build contract prior to the conclusion of the NEPA process, then:

(1) The contracting agency may permit the design-builder to proceed with preliminary design;
(2) The contracting agency may permit any design and engineering activities to be undertaken for the purposes of defining the project alternatives and completing the NEPA alternatives analysis and review process; complying with other related environmental laws and regulations; supporting agency coordination, public involvement, permit applications, or development of mitigation plans; or developing the design of the preferred alternative to a higher level of detail when the lead agencies agree that it is warranted in accordance with 23 U.S.C. 139(f)(4)(D);
(3) The design-build contract must include appropriate provisions preventing the design-builder from proceeding with final design activities and physical construction prior to the completion of the NEPA process (contract hold points or another method of issuing multi-step approvals must be used);
(4) The design-build contract must include appropriate provisions ensuring that no commitments are made to any alternative being evaluated in the NEPA process and that the comparative merits of all alternatives presented in the NEPA document, including the no-build alternative, will be evaluated and fairly considered;
(5) The design-build contract must include appropriate provisions ensuring that all environmental and mitigation measures identified in the NEPA document will be implemented;
(6) The design-builder must not prepare the NEPA document or have any decision making responsibility with respect to the NEPA process;
(7) Any consultants who prepare the NEPA document must be selected by and subject to the exclusive direction and control of the contracting agency;

(8) The design-builder may be requested to provide information about the project and possible mitigation actions, and its work product may be considered in the NEPA analysis and included in the record; and
(9) The design-build contract must include termination provisions in the event that the no-build alternative is selected.

7.0 EQUAL EMPLOYMENT OPPORTUNITY; SUBCONTRACTS; LABOR

7.1 Equal Employment Opportunity

7.1.1 Equal Employment Opportunity Policy

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. The Contractor shall comply with CDOT's standard special provisions for "Affirmative Action Requirements – Equal Employment Opportunity" and "U.S. Dept. of Labor, Davis Bacon Minimum Wages, Colorado General Decision Numbers CO 100016, CO 100017, CO 100018, CO 100019, CO 100020, CO 100021, CO 100022, CO 100023, and CO 100024 Highway Construction," FHWA Form 1273 and all other applicable state and federal laws, *see also* Section 1.10 and Exhibit C, Federal Requirements. This confirmation will also be required for every Subcontractor for a Subcontract over $10,000.

7.1.2 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.

7.1.3 Inclusion in Subcontracts

The Contractor shall include Sections 7.1.1 and 7.1.2 in every Subcontract over $10,000 (including purchase orders), and shall require that they be included in all Subcontracts over $10,000 at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.2 Disadvantaged Business Enterprises (DBE)

7.2.1 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 Special Provision set forth in Exhibit J. The Contractor shall either meet DBE goal of 2% for design work and 7% for construction work established for the Project, and more fully described in Exhibit J, or shall make a good faith effort to meet the DBE goal.

7.2.2 Inclusion in Subcontracts

The Contractor shall include Section 7.2.1 and the DBE Special Provision in every Subcontract (including purchase orders), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.3 Limitation on Subcontracted Work

The Submitter shall perform at least 30 percent of the construction Work, and the Major Participant responsible for design shall perform at least 30 percent of the design Work. The percentage of construction Work sublet shall be determined by dividing the total dollar value of the Subcontracts for construction Work, excluding any Subcontracts with Major Participants but including any lower tier Subcontracts through Major Participants, by the portion of the Contract Price allocable to construction Work (as determined by CDOT). The percentage of design Work sublet shall be determined by dividing the total dollar value of the lower tier design Subcontracts by the total dollar value of the prime design Subcontract(s); (i.e. the Subcontract(s) between the Contractor and the Major Participant(s) responsible for design).

7.4 Subcontracting Requirements

The Contractor shall comply with all applicable requirements of the Contract Documents relating to Subcontracts, and shall ensure that its Subcontractors (at all tiers) comply with all applicable requirements of the Contract Documents relating to subcontracting. The Contractor shall not add, delete, or change the role of, any Major Participant without the prior written Approval of CDOT.

7.5 Assignment of Subcontract Rights

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

7.6 Subcontract Terms

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:

1. The Subcontract shall provide for retainage to be withheld and released in accordance with CDOT Standard Specifications for Road and Bridge Construction, No. 109.06– Partial Payments.
2. Each Subcontract shall include terms that are substantially similar to those terms required by Sections 5.1, 5.2, 5.3, 5.4, 7.1, 7.2, 7.4, 9.2.1, 11.7.1, 13.7, 14, 15, 19, 22, 23, 24.6, and the DBE Special Provision, specifically including an agreement by the Subcontractor to be joined in any dispute resolution proceeding pursuant to Section 19 if such joiner is reasonably necessary to resolve the dispute; and each Subcontract other than Subcontracts with Suppliers shall include terms that are substantially similar to those contained in Sections 2.2(5), 2.2(6), 2.2(9), 10.4, 21.2 (as appropriate), 21.3, 21.4, and 23.

7.7 Subcontract Data

The Contractor shall notify CDOT, 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. The Contractor shall provide CDOT with a list of its Subcontractors (including Suppliers) from time to time upon request by CDOT; shall allow CDOT access to all Subcontracts and records regarding Subcontracts; and shall deliver to CDOT, within ten days after execution, copies of all Subcontracts with Major Subcontractors and, within ten days after receipt of a request from CDOT, copies of all other Subcontracts.

7.8 Responsibility for Work by Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, the Contractor shall be fully responsible for all of the Work. CDOT shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind CDOT.

7.9 Key Personnel

7.9.1 Key Personnel

Exhibit D hereto identifies certain key positions for the Project. CDOT may, with the Contractor's approval, add key positions at no cost to CDOT. CDOT shall have the right to review the qualifications and character of each individual to be assigned to a key position (including personnel employed by Subcontractors) and to Approve or disapprove use of such key person in such key position prior to the commencement of any Work by such individual or during the prosecution of the Work. The Contractor shall notify CDOT in writing of any proposed changes in any Key Personnel, and shall include a resume of proposed Key Personnel. The Contractor shall not change any Key Personnel without the prior written Approval of CDOT.

7.9.2 Representations, Warranties, and Covenants

The Contractor acknowledges and agrees that the award of the Contract by CDOT to the Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Statement of Qualifications and the Proposal, and the Contractor's commitment that such individuals would be available to undertake and perform the Work. The Contractor represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Statement of Qualifications and the Proposal in connection with the Work.

Unless otherwise agreed to by CDOT in writing, individuals filling Key Personnel roles shall devote a sufficient amount of their time for the applicable role with respect to the prosecution and performance of the Work and the Contractor shall document such commitment to CDOT's satisfaction upon CDOT's request.

7.10 Character of Workers

All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If CDOT determines in its sole discretion that any Person employed by the Contractor or by any Subcontractor is not performing the Work properly and skillfully, or who is intemperate or disorderly, then, at the written request of CDOT, the Contractor or such Subcontractor shall remove such Person from the Project and such Person shall not be re-employed on the Project without the prior Approval of CDOT in its sole discretion. If the Contractor or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then CDOT may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order. Once compliance is achieved, the Contractor shall be entitled to and shall promptly resume the Work.

8.0 SURETY BONDS

The Contractor shall provide to CDOT and maintain at all times during the term of the Contract Security for performance of the Work as described below (or other assurance satisfactory to CDOT in its sole discretion). Each bond required hereunder shall be provided by a Surety licensed as surety and qualified to do business in the State. The Contractor shall obtain the bonds from a surety with an investment grade rating to ensure the completion of the Contract or shall be required to obtain a letter of credit from a bank or other financial institution with an investment grade rating of A or better to ensue completion of the Contract upon terms acceptable to the TIFIA Lender, the U.S. DOT.

8.1 Proposal Bond

The Contractor has provided the Proposal Bond in the form attached to the ITP as Form L in the amount of five percent of the Contract price.

8.2 Performance Bond

The Contractor has provided the Performance Bond in the form attached to the ITP as Form O in the amount of the Guaranteed Maximum Price**.**

8.3 Payment Bond

The Contractor has provided the Payment Bond in the form attached to the ITP as Form N in the amount of the Guaranteed Maximum Price. The Payment Bond shall be released one year after the later to occur of Final Acceptance or CDOT's receipt of satisfactory evidence that all Persons performing any of the Work of the type described in C.R.S. § 38-26-105 and § 38-26-106 have been fully paid.

8.4 Utility Work

The Utility Work furnished or performed by the Contractor hereunder may have bond requirements separate from the bond required pursuant to Section 8.0. All cost estimates required to be provided under the Contract Documents with respect to Utility Work furnished or performed by the Contractor shall include the cost of bond premiums.

8.5 No Relief of Liability

Notwithstanding any other requirements of the Contract Documents, performance by a Surety of any of the obligations of the Contractor shall not relieve the Contractor of any of its obligations hereunder.

9.0 INSURANCE

Insurance requirements and provisions are set forth in Exhibit F. Provisions regarding the OCIP Incentive are set forth in Exhibit L.

10.0 RISK OF LOSS

10.1 Site Security

The Contractor shall provide appropriate Security for the Site, including securing any buildings from entry, and shall take all reasonable precautions and provide protection to prevent damage, injury or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at the Site, whether owned by the Contractor, CDOT, or any other Person. The Contractor shall at all times keep the Site in a neat and clean condition, including performing litter removal, removal of graffiti, and weed control.

10.2 Maintenance and Repair of Work and On-Site Property

10.2.1 Responsibility of Contractor

The Contractor shall maintain, rebuild, repair, restore, or replace all Work (including Design Documents, Released for Construction Documents, As-Built Documents, materials, equipment, supplies, and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether CDOT has title thereto under the Contract Documents) that is injured or damaged prior to the date of acceptance of maintenance liability by CDOT or third parties as specified in Section 10.2.2. All such work shall be at no additional cost to CDOT except to the extent that CDOT is responsible for such costs as provided in Section 13. The Contractor shall also have full responsibility during such period for rebuilding, repairing and restoring all other property at the Site, whether owned by the Contractor, CDOT or any other Person. Additional requirements regarding maintenance of highways during construction are set forth in Book 2, Section 18.

10.2.2 Relief from Liability for Maintenance

Effective as of the date on which Project Completion occurs, CDOT shall be considered to have Accepted maintenance liability for all elements of the Project, which have been Accepted. All remaining elements of the Project shall be considered Accepted for maintenance purposes as of the date on which Final Acceptance occurs. Notwithstanding the foregoing, all elements of the Work, which will be owned by Persons other than CDOT (such as Utility facilities) will be considered accepted for purposes of maintenance responsibility only as of the date of acceptance of maintenance responsibilities by such Persons.

10.2.3 Landscape

Notwithstanding anything to the contrary in Sections 10.2.1. or 10.2.2, requirements regarding landscape establishment are set forth in Book 2, Section 17.

10.2.4 Wetland Maintenance

Notwithstanding anything to the contrary in Sections 10.2.1. or 10.2.2, requirements regarding maintenance, if any, of wetlands are set forth in Book 2 – Section 5 Environmental

10.3 Damage to Off-Site Property

The Contractor shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. The Contractor shall restore damaged, injured or lost property caused by an act or omission of any Contractor-Related Entity to a condition similar or equal to that existing before the damage, injury or loss occurred.

10.4 Third Party Agreements

The Contractor shall construct the Project in accordance with the third party agreements listed in Book 2, Section 6.

10.5 Title

The Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for CDOT for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to the Site shall pass to CDOT, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by CDOT to the Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, and subject to Section 10.1, the Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until the Contractor is removed from the Project.

11.0 PAYMENT

11.1 Contract Price

11.1.1 Contract Price

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** _____ (the lesser of the Guarantted Maximum Price of $56.83. million ($33.00 million will be Bridge Enterprise funding and $23.83 is non-Bridge Enterprise Funding) or the Proposer's amounts listed on Form J of the ITP if less than $56.83 million) (hereinafter referred to as "Contract Price"). The Contract Price may be increased or decreased only by a Change Order issued in accordance with Section 13 or by a Contract amendment.

11.1.2 Items Included in Contract Price

The Contractor acknowledges and agrees that, subject only to the Contractor's rights under Section 13, the Contract Price includes:

1. Performance of each and every portion of the Work included as part of the Contractor's Proposal.
2. All designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to the Contractor's performance of its obligations under the Contract Documents (including all Work, Warranties, equipment, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work).
3. The cost of obtaining all Governmental Approvals (except for approvals which are the responsibility of CDOT, as specifically provided elsewhere in the Contract Documents).
4. All costs of compliance with and maintenance of the Governmental Approvals and compliance with Legal Requirements.
5. Payment of any taxes, duties, and permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor, or services included therein.
6. All Utility Work associated with Public and Private Utilities as required by Section 6.2 and Book 2, Section 7.
7. All fines, penalties and damage payments to others as Contractor is obligated to pay herein.

11.1.3 Delay in Issuance of Notice-to-Proceed 1

CDOT anticipates that it will issue NTP1 concurrently with or shortly after execution and delivery of the Contract. If CDOT has not issued NTP1 as described in Section 4.2.1, the Contractor may seek to negotiate a Change Order including an extension in the time allowed to CDOT for issuance of NTP1 and an increase in the Contract Price mutually acceptable to the Contractor and CDOT. If the Contractor does not wish to seek a Change Order as provided above or CDOT fails to issue a Change Order acceptable to the Contractor, then the Contractor's sole remedy shall be to terminate the Contract by delivery of notice of termination to CDOT, with the

right to receive payment as specified in Section 15. The Contractor is not obligated to perform any work that would result in payments exceeding the NTP1 payment cap.

Any price increase under this Section 11.1.3 shall be amortized proportionally over all Work remaining to be performed, and shall be evidenced by a Change Order.

11.2 Invoices and Payment

Requirements relating to invoicing are set forth in Book 2, Section 2. . CDOT shall pay the Contractor the amount of the invoice Approved for payment less any amounts that CDOT is entitled to withhold.

11.3 Limitations on Payment

In no event shall CDOT have any obligation to pay the Contractor any amount which would result in: (i) payment for any Activity in excess of the value of the Activity times the completion percentage of such Activity; or (ii) aggregate payments hereunder in excess of: (i) the overall completion percentage for the Project times the Contract Price; or (ii) the payment caps described herein. CDOT does not have the obligation to pay the Contractor for any Nonconforming Work.

11.3.1 Requirement to Provide Corrected Monthly Update

After Approval of the Original Initial Schedule, no payment will be processed or owing to the Contractor for Work performed during any period not covered by the Accepted current Monthly Progress Schedule.

11.3.2 Notice-to-Proceed 1 Payment Cap

The amount of funds available to pay the Contractor prior to issuance of NTP2 is limited to the amount of the NTP1 Payment Cap. CDOT has no obligation to make any payment to the Contractor in excess of this amount until such time (if any) as NTP2 is issued. If the Contractor performs any Work in excess of the NTP1 Payment Cap, it does so at its own risk. The NTP1 Payment Cap does not apply to termination costs under Section 15.5.1.

11.3.3 Unincorporated Materials

CDOT will not pay for materials associated with a progressed WBS Activity prior to their incorporation into the Project, except under the circumstances described in Section 11.3.3.

11.3.3.1 Exeptions-Stockpiled Structural Steel/Delivery to Site/ Materials Produced for Project

Materials submitted for Stockpile payment shall be delivered to the Site or delivered to the Contractor and promptly stored by the Contractor in storage Approved by CDOT. In addition, payment for stockpiled structural steel is subject to the provisions of Book 2, Section 19, No. 109.07. Girders, sign structures, wall panels and structural steel that have not been delivered to or adjacent to the Site will be eligible for payment only if they were specifically manufactured or produced for the Project, and then only after being irrevocably assigned to CDOT. As a condition to inclusion of such materials in any invoice, the Contractor shall submit certified bills using the form attached hereto as Exhibit H. Payment will not be made when the invoice value of such materials, as determined by CDOT, amounts to less than $25,000 or if materials are to be stored less than 30 days.

11.3.3.2 Title to Materials

Materials that meet the requirements in Section 11.3.4.1 and for which payment is made shall become the property of CDOT upon CDOT making payment thereof. Payment for such materials will not constitute final acceptance of such materials. The Contractor shall submit with its invoice for such materials a letter of vested interest in the form attached hereto as Exhibit I. At CDOT's request, the Contractor at its own expense shall promptly execute, acknowledge and deliver to CDOT actual bills of sale or other instruments in a form acceptable to CDOT, conveying and assuring to CDOT title to such materials included in any invoice, free and clear of all Liens. The Contractor at its own expense shall conspicuously mark such materials as the property of CDOT, shall not permit such materials to become commingled with non-CDOT-owned property and shall take such other steps, if any, as CDOT may require or regard as necessary to vest title to such materials in CDOT free and clear of Liens. The required invoice, billing, title, or assignment documents, furnished by the Contractor, shall contain complete material description and identification data.

11.3.3.3 Deductions

The amount shown in an invoice for material, which is subsequently lost, damaged or unsatisfactory will be deducted from succeeding invoices until the material is repaired or replaced (at the Contractor's expense). In case any Supplier claims against the Contractor remain (for materials so paid for) unsatisfied for more than 30 days following issuance of payment to the Contractor, the applicable payment may be canceled on the next invoice.

11.3.3.4 Not to Exceed Amount

Payment for material furnished and delivered as indicated in this Section 11.3.3 will not exceed the amount paid by the Contractor as evidenced by a bill of sale supported by paid invoice, or 75 percent of the in-place price, whichever is less.

11.3.4 Materials Ineligible for Payment

11.3.4.1 Equipment

CDOT will not pay directly for equipment costs. Payment for equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 11.4, will be allocated to and paid for as part of the Activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 13.7.

11.3.4.2 Perishable Materials

CDOT will make no partial payment on living or perishable materials until incorporated as specified in the Contract.

11.3.4.3 Contractor Election

CDOT will make no payment for materials brought onto the Site at the Contractor's election that may be incorporated into the Project such as fuels, supplies, metal decking forms, ties or supplies used to improve efficiency of operations.

11.3.5 Nonconforming Work

CDOT will make no payment for Nonconforming Work, except as provided under Section 5.7.

11.4 Mobilization

11.4.1 Mobilization Amount

The actual amount of premiums paid by the Contractor for the Payment and Performance Bonds and for insurance required to be provided by the Contractor under Section 9 may be invoiced at any time after issuance of NTP1. In addition, the Contractor shall be entitled to mobilization payments in accordance with CDOT Standard Specifications for Road and Bridge Construction, No. 626 - Mobilization.

11.5 Retainage; Deductions

11.5.1 Retainage

CDOT shall withhold funds (the "Retainage") from each payment to be made to the Contractor under this Section 11 in accordance with CDOT Standard Specifications for Road and Bridge Construction, No. 109.06. The amount retained will be in effect until such time as Final Acceptance is made by CDOT.

11.5.2 Substitution of Acceptable Securities

The Contractor shall have the right to substitute acceptable securities pursuant to C.R.S. § 24-91-105 for the Retainage, provided that no such substitution shall be accepted until the form of such securities and the surety therefore have been Approved by CDOT.

11.5.3 Deductions

In addition to the Retainage, CDOT may deduct from any amounts otherwise owing to Contractor, including each monthly progress payment and the final payment, the following:

1. Any accrued losses, liability, Liquidated Damages or other damages for which Contractor is responsible hereunder.
2. The estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of contract by Contractor.
3. The amount of any outstanding claim under C.R.S. § 38-26-107 or 24-91-103 relating to the Work.
4. The estimated value of the amount for Work that the Contractor is obligated to perform under the Contract, which the Contractor has failed to perform.
5. Any other sums which CDOT is entitled to recover from the Contractor under the terms of the Contract.

CDOT's failure to deduct from a progress payment any amount, which CDOT is entitled to recover from the Contractor under the Contract, shall not constitute a waiver of CDOT's right to such amounts.

11.6 Final Payment

Final payment will be made in accordance with this Section 11.6.

11.6.1 Application for Final Payment

On or about the date of delivery of its Affidavit of Final Completion, the Contractor shall prepare and submit a proposed Application for Final Payment to CDOT showing the proposed total amount due the Contractor. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall list all outstanding or pending Potential Change Order (PCO) Notices and all existing or threatened claims by CDOT, Subcontractors, laborers, Suppliers, Utility Owners or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Completion, stating the amount at issue associated with each such notice. The Application for Final Payment shall be accompanied by: (i) complete and legally effective releases or waivers of Liens and stop notices satisfactory to CDOT, from all Persons legally eligible to file Liens and stop notices in connection with the Work; (ii) consent of Surety(ies) to final payment; (iii) the release and affidavit required by Section 11.6.2; and (iv) such other documentation as CDOT may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. PCO Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Sections 13 and 19. If a Subcontractor or Supplier refuses to furnish a release or waiver required by CDOT, the Contractor may furnish a bond satisfactory to CDOT to indemnify CDOT against such claim. If such claim remains unsatisfied after payments are made, and is not bonded over as provided in the previous sentence, Contractor shall promptly pay to CDOT all money that CDOT may be compelled to pay in discharging such claim, including all costs and attorneys' fees.

CDOT will review the Contractor's proposed Application for Final Payment, and changes or corrections will be forwarded to the Contractor for correction. If no changes or corrections are required, CDOT will Approve the Application for Final Payment.

11.6.2 Payment

11.6.2.1 Release and Affidavit as Condition to Final Payment

As a condition to its obligation to make payment to the Contractor based on the Application for Final Payment, CDOT shall have received an executed release from the Contractor for any and all claims arising from the Work, releasing and waiving any claims against the Indemnified Parties, excluding only the retention amounts set forth in Section 11.5, and those matters identified in any PCO Notices listed as outstanding in the Application for Final Payment, and otherwise satisfactory in form and content to CDOT.

The release shall be accompanied by an affidavit from the Contractor certifying:

1. That it has resolved any claims made by Subcontractors, Utility Owners, and others against the Contractor or the Project.
2. That it has no reason to believe that any Person has a valid claim against the Contractor or the Project which has not been communicated in writing by the Contractor to CDOT as of the date of the certificate.
3. That all guarantees and warranties are in full force and effect.

The release and the affidavit shall survive final payment. The payment amount will be reduced by any amounts deductible under Section 11.5.

11.6.2.2 Partial Estimates and Payments Subject to Correction

All prior partial estimates and payments shall be subject to correction in the final payment.

11.6.2.3 Waiver of Claims

Contractor's acceptance of final payment shall constitute a waiver of affirmative Claims by Contractor except those previously made in writing and identified by Contractor in accordance with Section 11.6.1 as unsettled at the time of final payment.

11.7 Payments to Subcontractors

11.7.1 Prompt Payment

The Contractor is responsible for ensuring that all subcontractors and suppliers at every tier are promptly paid. All subcontractors and suppliers must be paid in accordance with CDOT Standard Specifications for Road and Bridge Construction, No. 109.06.

11.7.2 Release of Retainage

The Contractor shall release retainage in accordance with CDOT Standard Specifications for Road and Bridge Construction, No. 109.06.

11.8 Disputes

Subject to CDOT's right to withhold from progress payments any amounts in dispute, and except as expressly stated otherwise in this Section, any disagreement between CDOT and the Contractor relating to this Section 11 shall be subject to Section 20. 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 Section is intended to affect the Contractor's rights pursuant to Section 15.16.1.

12.0 VALUE ENGINEERING AND NEGOTIATED CHANGES

The parties desire for the Contractor to have significant flexibility in determining how best to deliver the Project within the parameters established by the Contract Documents. Notwithstanding the foregoing, CDOT's Approval is required with respect to any proposed changes in the Contract Requirements. This Section 12 sets forth the requirements applicable to requests for modifications in Contract Requirements submitted by the Contractor. Changes in Contract Requirements may be submitted as VECPs provided the request qualifies as a VECP as provided herein. The parties may agree upon the use of a Negotiated Change Order, however, whether the proposed change is a VECP or other change. Any Change Order that amounts in $100,000 or more in savings shall be considered a Value Engineering Change Proposal as per Section 13.0 – Changes in the Work.

12.1 Value Engineering Change Proposals

The Contractor is encouraged to submit VECPs whenever it identifies potential savings. CDOT may also request the Contractor to develop and submit a specific VECP. The Contractor has the right to refuse to consider such CDOT-initiated VECPs.

12.1.1 Definition of Value Engineering Change Proposal

A VECP is a proposal developed and documented by the Contractor which:

1. Would modify or require a change in any of the Contract Requirements in order to be implemented (including any changes to the Basic Configuration); and
2. Reduces the cost of the Project without impairing essential functions or characteristics of the Project (including service life, economy of operation, ease of maintenance, desirability and safety) as determined by CDOT in its sole discretion, and provided that it is not based solely upon a change in quantities, performance or reliability or a relaxation of the Contract requirements.

12.1.2 Required Information

At a minimum, the following information shall be submitted by the Contractor with each VECP:

1. A statement that the submission is a VECP, a narrative description of the proposed change, the advantages and disadvantages of the proposed change and the justification for changes in function or characteristics and the effect the proposed change has on performance.
2. Description of the existing Contract requirements, which are involved in the proposed change.
3. Identification of the Contract requirements (with reference to specific Sections), which must be changed if the VECP is Approved.
4. A description of any previous use or tests of the proposal and the conditions and results. If the proposal was previously submitted on another CDOT project, indicate the date, contract number and the action taken by CDOT.
5. Date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on the Contract Schedule.

6. A complete cost analysis including current pricing for the existing Contract requirements compared to the Contractor's cost estimate of the proposed changes.

The Contractor shall provide any additional information requested by CDOT in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

12.1.3 CDOT Review and Approval or Rejection

12.1.3.1 Review of Value Engineering Change Proposals

Upon receipt of a VECP, CDOT will process it, but will not be liable for any delay in acting upon any proposal submitted pursuant to this Section 12.1. The Contractor may withdraw all or part of any VECP at any time prior to Approval by CDOT.

12.1.3.2 Approval/Rejection of Value Engineering Change Proposals

CDOT may Approve, in its sole discretion, in whole or in part, by Change Order, any VECP submitted. Until a Change Order is issued on a VECP, the Contractor shall remain obligated to perform in accordance with the Contract Documents. The decision of CDOT as to rejection or Approval of any VECP shall be at the sole discretion of CDOT and shall be final and not subject to partnering, dispute resolution, or appeal. The Contractor shall have no claim for any additional costs or delays resulting from the delayed processing or rejection of a VECP, including development costs, loss of anticipated profits, or increased material or labor costs.

12.1.4 Disputes Regarding Applicability of Value Engineering Change Proposals

Within 30 days following a request from CDOT for a VECP regarding any Work that CDOT believes should have properly been submitted as a VECP, the Contractor shall deliver a VECP to CDOT meeting all of the requirements of this Section 12.1, but may specify that the VECP is delivered under protest. In such case, either party shall have the right to submit the question of the Contractor's entitlement to proceed without an Approved VECP to dispute resolution. If a determination is ultimately made that the Contractor is not entitled to proceed without an Approved VECP, CDOT shall be entitled to a credit against the Contract Price as provided in Section 12.1.5. If a determination is ultimately made that the Contractor is entitled to proceed without an Approved VECP, the VECP shall be deemed withdrawn and have no effect.

12.1.5 Contract Price Adjustment

If CDOT Approves a VECP submitted by the Contractor pursuant to this Section 12, the Contract Price shall be adjusted in accordance with the following:

12.1.5.1 Estimated Net Savings

The term "estimated net savings", as used in this Section 12.1, shall mean: (i) the difference between the cost of performing the Work according to the Contract Documents using current estimates and the actual cost to perform it according to the proposed change; less (ii) the costs of studying and preparing the VECP as proven by the Contractor and Approved by CDOT in accordance with the Change Order procedures set forth herein; less (iii) any additional costs incurred by CDOT (including costs relating to any Relocations and ROW and implementation costs) resulting from the VECP. The Contractor's profit shall not be considered part of the cost.

12.1.5.2 Collateral and Future Savings

Except as specified in Section 12.1.5.4, the Contractor is not entitled to share in either collateral or future contract savings. The term "collateral savings" means those measurable net reductions in CDOT's costs resulting from the VECP, including costs of maintenance by CDOT, logistics, and CDOT-furnished property. The term "future contract savings" shall mean reductions in the cost of performance of future construction contracts resulting from a VECP submitted by the Contractor.

12.1.5.3 Price Adjustment

Subject to Sections 12.1.5.4 and 12.1.5.5, the Contract Price shall be reduced by an amount equal to the sum of: (i) 100 percent of any additional costs incurred by CDOT resulting from the VECP; plus (ii) 50 percent of the estimated net savings.

12.1.5.4 Value Engineering Change Proposals Affecting Right-of-Way Plans

In a case where a VECP involves an adjustment to the ROW Plans (such as a proposal that additional real property be purchased to reduce construction costs), the VECP shall compare:

1. The incremental reduction in costs (such as for not designing and building a wall); and
2. The costs involved in adjusting the ROW Plans or environmental approvals (which shall be based on the Contractor's additional costs, such as for providing real property acquisition support services, including profit, plus CDOT's additional costs, including land acquisition, appraisals, negotiation, relocation, condemnation, closing, property management, and environmental permitting, specifically including allocated costs of CDOT personnel involved in the acquisition);

or (as appropriate) shall compare:

3. The incremental reduction in costs (if any) for not acquiring the unnecessary real property; and
4. The additional construction costs to be incurred.

The estimated net savings shall be shared 50-50 between CDOT and the Contractor. The Contractor shall include in its VECP an analysis of any impacts on Utility Owners for consideration by CDOT.

Refer to Exhibit E for a sample calculation.

12.2 Negotiated Changes

CDOT may, in its sole discretion, Approve any changes in the Contract Requirements that do not qualify as VECPs. Such changes shall be referred to as "Negotiated Changes." CDOT may agree to any share of the cost savings in the Contract Price for Negotiated Changes.

12.3 Use of Value Engineering Change Proposals and Negotiated Changes by CDOT

All Approved or disapproved VECPs and Negotiated Changes will become the property of CDOT, and shall contain no restrictions imposed by the Contractor on their use or disclosure. CDOT retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the proposal on any other or subsequent projects without any obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

13.0 CHANGES IN THE WORK

This Section 13 sets forth the requirements for obtaining all Change Orders under the Contract. The Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section 13, and that CDOT is subject to constraints which limit its ability to increase the Contract Price or extend the Completion Deadlines. Contractor hereby waives the right to make any claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in the Contract, except as set forth in this Section 13 or dispute resulting in a change order under Book 1 Section 19. The Contractor and CDOT shall negotiate overhead rates and profit for all Design and Construction related Change Orders prior to NTP2 and these overhead rates and profits for Design and Construction Change Orders can only be renegotiated once a year on or around the anniversary of NTP2. Any Change order that amounts in $100,000 or more in savings shall be considered a Value Engineering Change Proposal.

13.1 Circumstances Under Which Change Orders may be Issued

13.1.1 Definition of and Requirements Relating to Change Orders

13.1.1.1 Change Orders

The term “Change Order” shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. CDOT may issue unilateral Change Orders as specified in Section 13.2. A Change Order shall not be effective for any purpose unless executed by CDOT. Execution of a Change Order by CDOT shall mean that the Change Order has been fully executed by CDOT and any other necessary parties of the State. The term “Change Order” shall also include any Utility Work Order that has been completed by CDOT to also function as a Change Order, as described in Section 6.2. Except for Utility Work Orders functioning as Change Orders, Change Orders may be requested by the Contractor only pursuant to Section 13.3 and to adopt a VECP or Negotiated Change under Section 12. Change Orders may be issued for the following purposes (or combination thereof):

1. To modify the Work.
2. To revise a Completion Deadline.
3. To revise the Contract Price.
4. To revise other terms and conditions of the Contract Documents.

Upon CDOT’s Approval of the Change Order form, CDOT will execute the Change Order form indicating Approval thereof. A Change Order may, at the sole discretion of CDOT, direct the Contractor to proceed with the Work with the amount of any adjustment of a Completion Deadline or the Contract Price to be determined in the future.

13.1.1.2 Issuance of Directive Letter

CDOT may at any time issue a Directive Letter to the Contractor in the event of any desired change in the Work or of any Dispute regarding the Work. The Directive Letter will state that it is issued under this Section 13.1.1.2, will describe the Work in question and will state the basis for determining compensation, if any. The Contractor shall proceed immediately with the Work as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that

the Work is within the original scope of the Work, the Contractor shall proceed with the Work as directed but shall have the right pursuant to Section 13.3 to request that CDOT issue a Change Order with respect thereto).

13.1.1.3 Performance of Changed or Extra Work

As a condition precedent to the Contractor's right to receive additional payment or an extension of a Completion Deadline for changed or extra work, the Contractor shall have received either a Directive Letter from CDOT stating that it is issued pursuant to Section 13.1.1.2 or a Change Order for such work executed by CDOT. To the extent that the Contractor undertakes any such work without receiving a Directive Letter or Change Order executed by CDOT, the Contractor shall be deemed to have performed such work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, the Contractor may be required to remove or otherwise undo any such work, at its sole cost.

13.1.2 Directive Letter as Condition Precedent to Claim that CDOT-Directed Change Occurred

In addition to provision of a PCO Notice and subsequent Change Order request pursuant to Section 13.3, receipt of a Directive Letter from CDOT is a condition precedent to the Contractor's right to claim that a CDOT-Directed Change has occurred, provided that no Directive Letter shall be required for alleged CDOT-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by CDOT. The fact that a Directive Letter was issued by CDOT shall not be considered evidence that in fact a CDOT-Directed Change occurred. The determination whether a CDOT-Directed Change in fact occurred shall be based on an analysis of the original Contract Document requirements and a determination whether the Directive Letter in fact constituted a change in those requirements. The foregoing requirements shall not imply that a Directive Letter would be required in order for the Contractor to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13 (such as for Relocation of previously misidentified underground Utilities, if a Change Order is allowed therefore pursuant to Section 6.2).

13.1.3 Changes in Law

Contractor shall be entitled to an increase in the Contract Price for any change in a Legal Requirement, change in the judicial interpretation of a Legal Requirement, or adoption of any new Legal Requirement, which is materially inconsistent with Legal Requirements in effect on the Proposal Due Date (excluding any such change or new Legal Requirement which was passed or adopted but not yet effective as of the Proposal Due Date), and which: (i) requires a material modification in the Work; (ii) requires the Contractor to obtain a State or federal environmental approval not previously required for the Project; (iii) eliminates existing tax exemptions or increases applicable sales taxes; or (iv) specifically targets the Project or the Contractor. CDOT shall be entitled to a decrease in the Contract Price for any change in Legal Requirements that reduces the cost of the Work, if and to the extent that the change: (i) allows a material modification in the design of the Project resulting in a net cost savings; or (ii) reduces the requirements of complying with environmental approvals.

13.2 Procedure for CDOT Initiated Change Orders

This Section 13.2 concerns Change Orders issued by CDOT following a Request for Change Proposal and Change Orders unilaterally issued by CDOT.

13.2.1 Request for Change Proposal (RCP)

13.2.1.1 Issuance of Request

If CDOT desires to issue a CDOT-Directed Change or to evaluate whether to initiate such a change, then CDOT may, at its discretion, issue a Request for Change Proposal (RCP).

13.2.1.2 Initial Consultation

Within seven days after the Contractor's receipt of an RCP, CDOT and the Contractor shall consult to define the proposed scope of the change. Within seven days after the initial consultation, CDOT and the Contractor shall consult concerning an estimated rough order of magnitude cost (ROM) cost and time impacts, if any. The Contractor shall provide data regarding such matters as requested by CDOT.

13.2.1.3 Notification by CDOT

Within seven days after the ROM consultation meeting and provision of any data as described in Section 13.2.1.2, CDOT shall notify the Contractor whether CDOT:

1. Wishes to issue a Change Order.
2. Wishes to request the Contractor to prepare a Change Order form as discussed at the meeting.
3. No longer wishes to issue a Change Order.

CDOT may at any time, in its sole discretion, require the Contractor to provide two alternative Change Order forms, one of which shall provide for a time extension if applicable and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

13.2.1.4 Submittal of Change Order Form

If requested by CDOT, the Contractor shall, within 21 days after receipt of the notification described in Section 13.2.1.3, prepare and submit to CDOT for Approval a Change Order form for the requested change, complying with all applicable requirements of Section 13.4, and incorporating all requests made by CDOT. The Contractor shall bear the cost of developing the Change Order form, including any modifications thereto requested by CDOT, except that costs of design and engineering work required for preparation of plans or exhibits necessary to the Change Order form and pre-authorized by CDOT shall be included in the Change Order as reimbursable items. If the Change Order is Approved, the design and engineering costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

13.2.1.5 Order To Proceed

If CDOT and the Contractor agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Contract Price or a Completion Deadline, CDOT may, in its sole discretion, order the Contractor to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at CDOT's option, be in the form of:

1. Time and Materials Change Order as provided in Section 13.7; or
2. Directive Letter as described in Section 13.1.1.2.

13.2.2 Unilateral Change Orders

CDOT may issue a Change Order at any time, regardless of whether it has issued a Request for Change Proposal. Any such Change Order shall state that the Contractor shall be entitled to compensation in accordance with Section 13.7 for the additional Work required thereby. For deductive unilateral Change Orders, the Change Order may contain a price deduction deemed appropriate by CDOT, and the Contractor shall have the right to dispute the amount of such price deduction in accordance with Section 19.

13.3 Procedure for Contractor Requested Change Orders

13.3.1 Eligible Changes

The Contractor's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13.

13.3.1.1 Contract Price Increase

The Contractor may request a Change Order to increase the Contract Price, subject to certain limitations with respect to delay and disruption damages as specified in Section 13.5.2, only for increased costs in the Work as follows:

1. Additional costs directly attributable to additional Work resulting from CDOT-Directed Changes.
2. Additional costs directly attributable to CDOT-Caused Delays.
3. Additional costs directly attributable to Necessary Design Changes, to the extent permitted in Section 13.8.
4. Additional costs directly attributable to Differing Site Conditions, to the extent provided in Section 13.9.
5. Certain additional costs relating to Hazardous Substances, as described in Section 13.11, to the extent provided therein.
6. Certain additional costs relating to Utility Work, as described in Section 6.2, to the extent provided therein.
7. Certain additional costs relating to material errors in the ROW Plans, as described in Section 13.12, to the extent provided therein.
8. Additional costs directly attributable to uncovering, removing, and restoring Work, to the extent provided in Section 5.5.3.

9(a). Additional costs directly attributable to Force Majeure events, to the extent provided in Section 13.10. For purposes of Contractor's entitlement to costs directly attributable to Force Majeure events, the term "Force Majeure" shall mean any of the following events (provided such events are beyond the control of Contractor and are not due to an act or omission of Contractor or Contractor-Related Entity) which materially and adversely affects Contractor's obligations hereunder and which event (or the effects of

which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Contractor:

(i) A tornado or an earthquake;

(ii) Any rebellion, war, riot, act of sabotage, terrorism, or civil commotion;

(iii) The discovery at, near, or on the Site of any archaeological, paleontological or cultural resources or any biological resources (which term shall be deemed to mean any threatened or endangered species, raptors or eagles), provided that the existence of such resources was not disclosed in the RFP Documents;

(iv) The suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any Environmental Approval, except as otherwise provided in Section 6.3;

(v) Any change in a Legal Requirement, change in the judicial interpretation of a Legal Requirement, or adoption of any new Legal Requirement, which is materially inconsistent with Legal Requirements in effect on the Proposal Due Date (excluding any such change or new Legal Requirement which was passed or adopted but not yet effective as of the Proposal Due Date), and which: (i) requires a material modification in the Project Work; (ii) requires the Contractor to obtain a State or federal environmental approval not previously required for the Project; or (iii) specifically targets the Project or the Contractor; and

(vi) Any lawsuit seeking to restrain, enjoin, challenge, or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project, except to the extent that: (i) the risk of such lawsuit has been assumed by Contractor under Section 6.3; or (ii) the lawsuit otherwise arises out of any act, omission or breach of obligation of Contractor, a Subcontractor or any person for whom Contractor is contractually or legally liable.

9(b).For purposes of Contractor's entitlement to costs directly attributable to Force Majeure events, the term "Force Majeure" specifically excludes from its definition the following matters, which might otherwise be considered Force Majeure:

(i) Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood not caused by the above-described events, hurricane, storm or action of the elements, or other acts of God;

(ii) Except as provided in Subsection 9(a) above, explosion or malicious or other acts by Contractor or a Contractor-Related Entity intended to cause loss or damage or other similar occurrence;

(iii) Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout, or other similar occurrence;

(iv) The suspension, termination, interruption, denial or failure to obtain, or nonrenewal of any Governmental Approval other than an Environmental Approval, unless such event is the result of a lawsuit as described in Section 9(a)(v) above;

(v) The adoption or repeal of, or change in, a Legal Requirement which was passed but not yet effective as of the Proposal Due Date or which increases Contractor’s costs but does not change the obligations to be performed by Contractor (except to the extent provided in Section 13.1.3);

(vi) Any lawsuit relating to any New Environmental Approval, which is Contractor's risk under Section 6.3;

(vii) Any Force Majeure event under a Utility Agreement unless the claimed Force Majeure event also constitutes Force Majeure as provided in Subsection 9(a) above;

(viii) Any Utility Delays; and

(ix) All other matters not caused by CDOT or beyond the control of CDOT and not listed in Section 9(a) above.

13.3.1.2 Time Extension

The Contractor may request a Change Order to extend a Completion Deadline only for the following delays in the Critical Path:

1. CDOT-Caused Delays.
2. Delays directly attributable to Necessary Design Changes, to the extent permitted by Section 13.8.
3. Delays directly attributable to Differing Site Conditions, to the extent permitted by Section 13.9.
4. Certain delays relating to Utility Work, as described in Section 6.2, to the extent permitted therein.
5. Certain delays relating to Hazardous Substances, as described in Section 13.11, to the extent permitted therein.
6. Certain delays relating to material errors in the ROW Plans, to the extent permitted by Section 13.12.
7. Delays directly attributable to Force Majeure events, to the extent permitted by Section 13.10. For purposes of Contractor's entitlement to a time extension hereunder, the term "Force Majeure" shall mean a loss, injury, or damage to the Work due to unforeseeable causes beyond the control of the Contractor or Contractor-Related Entities, including but not limited to acts of God, such as earthquake, flood, tornado, high winds, or other cataclysmic phenomenon of nature, or acts of the public enemy or of governmental authorities.

13.3.2 Conditions Precedent

The requirements set forth in this Section 13.3.2 constitute conditions precedent to the Contractor's entitlement to request and receive a Change Order in all circumstances except those involving a request for a price increase under Section 11.1.3. The Contractor agrees that the filing of PCO Notices and subsequent filing of requests for Change Orders with CDOT pursuant to this Section 13.3.2 are necessary in order to begin the administrative process for Contractor-requested Change Orders. The Contractor understands that it shall be forever barred from recovering against CDOT under this Section 13 if it fails to give notice of any act, or failure to act, by CDOT or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, and thereafter complies with the remaining requirements of this Section 13.3.

13.3.2.1 Delivery of Potential Change Order (PCO) Notice

The Contractor shall deliver to CDOT written notice ("PCO Notice") stating that an event or situation has occurred within the scope of Section 13.3.1.1 and/or 13.3.1.2 and shall state which subsection thereof is applicable. The first notice shall be labeled "PCO No. 1" and subsequent notices shall be numbered sequentially. Any notice regarding a situation involving a Necessary Design Change shall specifically state that it involves such a change.

13.3.2.1.1 Importance of Prompt Delivery

Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, the Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice, and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in the Critical Path which accrued prior to the date of delivery of the written notice. Furthermore, if any PCO Notice concerns any condition or material described in Section 5.3, the Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that CDOT is not afforded the opportunity to inspect such material or condition before it is disturbed. The Contractor's failure to provide a PCO Notice within 30 days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude the Contractor from any relief, unless the Contractor can show, based on a preponderance of the evidence that: (i) CDOT was not materially prejudiced by the lack of notice; or (ii) CDOT's designated representative specified in accordance with Section 24.10 had actual knowledge (including all items (i) through (v) of Section 13.3.2.1.2), prior to the expiration of the 30-Day period, of the event or situation and that the Contractor believed it was entitled to a Change Order with respect thereto. A PCO Notice shall be deemed delivered only if it fully conforms to the requirements of Section 13.3.2.1.2.

13.3.2.1.2 Contents of PCO Notice

The PCO Notice shall: (i) state in detail the facts underlying the potential Change Order, the reasons why the Contractor believes additional compensation or time will or may be due and the date of occurrence; (ii) state in detail the basis that the work is not required by the Contract, if applicable; (iii) identify particular elements of Contract performance for which additional compensation may be sought under this Section 13; (vi) identify any potential Critical Path impacts; and (v) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance.

13.3.2.1.3 Notices Under Other Contract Provisions

The written notification under Section 5.3 may also serve as a PCO Notice provided it meets the requirements for PCO Notices.

13.3.2.1.4 Failure to Provide Information

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide requested additional information under this Section 13.3.2.1.

13.3.2.2 Delivery of Requests for Change Orders (RCO)

The Contractor shall deliver all requests for Change Orders under this Section 13.3 to CDOT within 30 days after delivery of the PCO Notice. CDOT may require design and construction costs to be covered by separate Change Order requests. If the Contractor requests a time extension, then CDOT, in its sole discretion, may require the Contractor to provide two alternative Change Order requests, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

13.3.2.3 Importance of Timely Delivery

The Contractor acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and requests for Change Orders and updates thereto are of vital importance to CDOT. CDOT is relying on the Contractor to evaluate, promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether the Contractor believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may affect the Contract Price or a Completion Deadline, CDOT will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within CDOT's funding and time restraints.

The following matters (among others) shall be considered in determining whether CDOT has been prejudiced by the Contractor's failure to provide timely notice:

1. The effect of the delay on alternatives available to CDOT (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within ten days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence).
2. The impact of the delay on CDOT's ability to obtain and review objective information contemporaneously with the event.

13.3.2.4 Subcontractor Initiated Change Order

Prior to submission by the Contractor of any request for a Change Order to CDOT which is based in whole or in part on a request by a Subcontractor to the Contractor for a price increase or time extension under its Subcontract, the Contractor shall have reviewed all documentation by the Subcontractor which constitute the basis for the request for Change Order and determined in good faith that each such change order is justified hereunder and that the Contractor is justified in requesting an increase in the Contract Price and/or change in Completion Deadlines in the amounts specified in the request for Change Order. Each request for Change Order involving Subcontractor Work shall include a sworn certification in form acceptable to CDOT signed by the Contractor's Project Manager stating that the Contractor has investigated the basis for the Subcontractor's change order and has determined that all such change orders are justified as to entitlement and amount of money and/or time requested and has no reason to believe and does not believe that the factual basis for the Subcontractor's change order is falsely represented. Any request for Change Order involving Subcontractor Work shall be considered incomplete if it is not accompanied by such certification.

13.3.3 Performance of Disputed Work

If CDOT refuses to issue a Change Order based on the Contractor's request, the Contractor shall nevertheless perform all work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to dispute resolution in accordance with Section 19. The Contractor shall maintain and deliver to CDOT, upon request, contemporaneous records, meeting the requirements of Section 13.7.7, for all work performed which the Contractor believes constitutes extra work, until all Disputes regarding entitlement or cost of such work are resolved.

13.4 Contents of Change Orders

13.4.1 Form of Change Order

Each Change Order form and request for Change Order shall meet all applicable requirements of this Section 13 and shall include a Cost Analysis to be prepared in the form attached as Exhibit G. The completed and/or modified Work Order Form described in Section 6.2 shall be considered an appropriate form, where applicable.

13.4.2 Scope of Work, Cost Estimate, Delay Analysis, and Information Regarding Change

The Contractor shall prepare a scope of work, cost estimate, impacted delay analysis, if any and other information as required by this Section 13.4.2 for each Change Order form and request for Change Order.

13.4.2.1 Scope of Work

The scope of work shall describe in detail satisfactory to CDOT all Activities associated with the Change Order, including a description of additions, deletions and modifications to the existing Contract requirements.

13.4.2.2 Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless CDOT agrees otherwise. The estimate shall include costs allowable under Section 13.5.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, the Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for the Contractor's estimate. No mark-up shall be allowed in excess of the amounts allowed under Sections 13.5.2 and 13.7.

13.4.2.3 Impacted Delay Analysis

If the Contractor claims that such event, situation or change affects the Critical Path, it shall provide an impacted delay analysis indicating all Activities represented or affected by the change, with Activity numbers, durations, predecessor and successor Activities, resources and cost, and with a narrative report, in a form satisfactory to CDOT, which compares the proposed new schedule to the Original Initial Schedule, Current Initial Schedule or Revised Initial Schedule, as appropriate. Except as otherwise provided in this Section, the impacted delay analysis shall only modify the Activities, which have been impacted by the event which justifies

the extension. The Contractor may reschedule Activities not otherwise affected by the event, in order to take advantage of additional Float available as a result of the requested time extension. Any such rescheduling shall be reflected in the impacted delay analysis.

13.4.2.4 Other Supporting Documentation

The Contractor shall provide such other supporting documentation as may be required by CDOT.

13.4.3 Justification

All requests for Change Orders shall include a narrative justification therefore, detailing all causes of the proposed change, making specific reference to the applicable provisions of this Section 13 which permit a Change Order to be issued, and describing the data and documents which establish the necessity of such proposed change.

13.4.4 Contractor Representation

Each Change Order (other than Change Orders issued unilaterally by CDOT) shall contain a sworn certification in form acceptable to CDOT by the Contractor that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change and that the Contractor has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

13.4.5 Incomplete Change Orders

Each request for Change Order provided under Section 13.3 shall meet all requirements set forth in this Section 13.4; provided that if any such requirements cannot be met due to the nature of the occurrence, the Contractor shall provide an incomplete request for Change Order, which shall:

1. Comply with all requirements capable of being met.
2. Include a list of requirements, which are not fulfilled together with an explanation reasonably satisfactory to CDOT stating why such requirements cannot be met.
3. Provide such information regarding projected impact on the Critical Path as is requested by CDOT.
4. In all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

The Contractor shall furnish, when requested by CDOT, such further information and details as may be required to determine the facts or contentions involved. The Contractor agrees that it shall give CDOT access to any and all of the Contractor's books, records, and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that CDOT can investigate the basis for such proposed Change Order. The Contractor shall provide CDOT with a monthly update to all outstanding incomplete requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to CDOT, time expenditures to date and time anticipated for completion of the Activities for which the time extension is claimed. CDOT may reject the Contractor's claim at any point in the process. Once a complete request for Change Order is provided, CDOT's

failure to respond thereto within 14 days of delivery of the request shall be deemed a rejection of such request. Although CDOT intends to review incomplete Change Orders for the purposes described in Section 13.3, CDOT shall have no obligation to review the backup associated with any request for Change Order until a complete request for Change Order is provided.

13.5 Certain Limitations

13.5.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude:

1. Costs caused by the breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity.
2. Costs, which could reasonably have been avoided by the Contractor-Related Entity, including by resequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment).
3. Costs for any rejected Work which failed to meet the requirements of the Contract Documents and any necessary remedial Work.

13.5.2 Limitation on Acceleration Costs; Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay, and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by CDOT as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 13.2 and 13.3.2.2. Delay and disruption damages shall be compensable hereunder only in the case of a delay which qualifies as a CDOT-Caused Delay to the extent that it entitles the Contractor to an extension of a Completion Deadline. Costs of rearranging the Contractor's work plan not associated with an extension of a Completion Deadline shall not be compensable hereunder.

13.5.2.2 Other Limitations

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in Section 13.5.2.1 and mark-ups thereon in accordance with Section 13.7 and any additional field office and jobsite overhead costs incurred by the Contractor directly attributable to such delays. In addition, before the Contractor may obtain any increase in the Contract Price to compensate for any delay and disruption damages or Acceleration Costs, the Contractor shall have demonstrated to CDOT's satisfaction that:

1. Its schedule, which defines the affected Critical Path in fact sets forth a reasonable method for completion of the Work.
2. The change in the Work or other event or situation, which is the subject of the requested Change Order, has caused or will result in an identifiable and measurable disruption of the Work, which impacted the Critical Path Activity.
3. The delay or disruption damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by the Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities

unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).

4. The delay for which compensation is sought is not concurrent with any other delay excluding CDOT-Caused Delays.
5. The Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to CDOT.

13.5.3 Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it:

1. Did not impact the Critical Path affecting a Completion Deadline.
2. Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity.
3. Could reasonably have been avoided by the Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves a CDOT-Caused Delay, CDOT shall have agreed, if requested to do so, to reimburse the Contractor for its costs incurred, if any, in resequencing, reallocating, or redeploying its forces).

The Contractor shall be required to demonstrate to CDOT's satisfaction that the change in the Work or other event or situation which is the subject of the request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path Activity affecting a Completion Deadline.

13.6 Pricing of Change Orders

CDOT and the Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order, provided that Change Orders issued under Section 13.2.2 are not subject to negotiations. Subject to the foregoing exceptions, in general the price of a Change Order shall be negotiated in accordance with this Section 13.6 or shall be based on Time and Materials records pursuant to Section 13.7.

13.6.1 Contents

A negotiated Change Order shall specify, as applicable, scheduling requirements, time extensions, if any, and all costs of any nature arising out of the Work covered by the Change Order. Notwithstanding the foregoing, the parties may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated design cost and which provides for another Change Order modifying the first Change Order to be issued after a certain design level has been reached, thus allowing a refinement and definition of the estimated construction cost.

13.6.2 Unit Price Change Orders

CDOT and the Contractor may agree to negotiate unit prices for changed Work. Measurement of unit-priced quantities will be as specified in the Change Order. Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially

include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, CDOT will issue a modified Change Order setting forth the final adjustment to the Contract Price.

13.6.3 Added, Deleted, or Both Added and Deleted Work

When the Change Order adds Work to the Contractor's scope, deletes Work from the Contractor's scope (including deletion of any Work contained in the Contract that is found to be unnecessary), or both adds and deletes Work, the increase or decrease in the Contract Price shall be negotiated based on estimated costs of labor, material and equipment, or shall be based on actual costs in accordance with Section 13.7. For negotiated Change Orders, mark-ups for profit and overhead shall be as provided in Section 13.7, and risk associated with the Work described in the Change Order shall be addressed through an additional amount agreed to by CDOT and the Contractor.

13.7 Time and Materials Change Orders

CDOT may at its discretion issue a Time and Materials Change Order whenever CDOT determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct the Contractor to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total change in the Contract Price anticipated there under. Upon final determination of the allowable costs, CDOT shall issue another Change Order modifying the prior Change Order setting forth the final adjustment to the Contract Price. The following costs and mark-ups (and no others) shall be used for calculating the change in the Contract Price. No direct compensation will be allowed for other miscellaneous costs for which no specific allowance is provided in this Section 13.7.

13.7.1 Labor Costs

The cost of labor shall be separated into construction-related Work and non-construction-related Work as described below. The use of a labor classification that would increase the extra work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. The cost of labor shall be calculated based on straight time for all hours worked, unless the Contractor obtains CDOT's prior Approval for overtime.

13.7.1.1 Construction Labor

The cost of labor for workers used in the actual and direct performance of construction-related Work, whether provided by the Contractor or a Subcontractor, will equal the sum of the following: (i) Actual unburdened wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) a labor surcharge of 67 percent of actual unburdened wages, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, insurance, fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and all other payments made to, or on behalf of, the workers, in excess of actual wages, as well as for overhead.

13.7.1.2 Non-Construction Labor

The cost of labor for non-construction-related Work, whether provided by the Contractor or a Subcontractor, will equal the sum of the following: (i) Actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) Actual direct costs paid to, or on behalf

of, workers (subject to audit under Section 22.3), including all state and federal payroll, unemployment and other taxes, insurance, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and overhead, but not to exceed 140 percent.

13.7.2 Material Costs

Material costs shall be the actual cost of all materials to be used in the performance of construction Work including normal wastage allowance as per industry standards, subject to the requirements set forth in this Section 13.7.2. The material prices shall be supported by valid quotes and invoices from the Suppliers. The cost shall include applicable sales taxes, freight and delivery charges and any allowable discounts (exclusive of machinery rentals). CDOT reserves the right to Approve materials and sources of supply of materials to be furnished by the Contractor or Subcontractors, and shall have the right to furnish such materials as it deems advisable. The price allowed for materials shall be adjusted as follows:

13.7.2.1 Affiliated Source of Supply

If the materials are obtained from a supply or source owned in whole or in part by the Contractor or a Subcontractor, the cost of such materials shall not exceed the lesser of the lowest price charged by the Contractor or such Subcontractor (as applicable) for similar materials furnished to other jobs or the current wholesale price for such materials delivered to the Site.

13.7.2.2 Excessive Cost

If the cost of such materials is, in the opinion of CDOT, excessive, then the cost allowed for such materials shall be the lowest current wholesale price at which such materials were available, in the quantities needed and delivered to the Site.

13.7.2.3 Evidence of Cost

If the Contractor or any Subcontractor (as applicable) does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within 60 days after the date of delivery of the material, CDOT reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials were available, in the quantities needed and delivered to the Site.

13.7.3 Equipment

13.7.3.1 Blue Book

Contractor will be paid for the use of equipment owned or rented by Contractor or any Subcontractor for actual use in construction of the Project at an hourly rate derived from the most recently published *Rental Rate Blue Book for Construction Equipment* by Dataquest, Inc., San Jose, California which is in effect at the time of commencement of the changed Work (the "Blue Book").

The total hourly rates derived from the above publication are computed from equipment costs currently in effect. The rates derived do not include costs for operating personnel. The rates require adjustment by a Regional Factor and a Depreciation Factor found in the front of each chapter in the Blue Book.

13.7.3.2 Rate Categories

Equipment use rates fall in the following two categories:

(a) Operating Rate: This rate applies to those hours the equipment is actually in use, includes ownership and operating costs, and shall equal the Blue Book monthly rate adjusted for year of manufacture divided by 176 times the Regional Factor of 1.06 plus the estimated hourly operating costs from the Blue Book.

(b) Standby Rate: This rate applies to equipment required to be at the Site but not operating, includes ownership costs only, and shall equal the Blue Book monthly rate adjusted for year of manufacture divided by 176 times the Regional Factor of 1.06 times 0.5. The duration of allowable standby time is to be Approved in writing by CDOT with a maximum of eight hours per day or 40 hours in a normal week.

When the "manufacturer's rated capacity" falls between those shown in the Blue Book, the closest rated capacity will be used, without interpolation. All rates shall be agreed upon in writing before work is begun. Payment will not be made for pickup trucks used solely for transportation.

13.7.3.3 Specialized Equipment

In cases where the equipment to be used is specialized in nature and is not available in Contractor's inventory and is rented or leased from an outside agency a 10 percent allowance will be added on the first $5,000 plus 5 percent of the balance in excess of $5,000 for overhead for all rented or leased equipment paid for by invoices. Where the rate charged by the agency exceeds the rate determined by the Blue Book, the rental or lease agreement shall be submitted to CDOT for Approval. The equipment operating costs from the Blue Book will be paid for rented or leased equipment for each hour the equipment was actually used.

13.7.3.4 Rented Equipment

In those cases where the required equipment is in Contractor's or Subcontractor's available inventory but not on the Site, the equipment may be rented from a local source. CDOT may Approve rental rates for equipment obtained from local sources when such rates are within 10 percent of rates in the Blue Book. When the equipment use is of short duration (less than a week) "move-in" and "move-out" costs for equipment owned by Contractor or Subcontractors may be considered when comparing rental costs of equipment obtained from local sources. This option will only be allowed when the cost of locally rented equipment would be less than using owned equipment, including "move-in" and "move-out" charges. Such rentals must be supported by a cost analysis indicating the method used was the least expensive. Should equipment be rented even though it is of a type that is in Contractor's or Subcontractor's inventory and the rental costs exceed that allowed by this paragraph, Contractor will be reimbursed for such equipment based on the rates in the Blue Book.

13.7.3.5 Small Tools

The rates paid as above provided shall be deemed to include compensation for the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance and all incidentals. Individual pieces of equipment or tools not listed in the Blue Book and having an individual replacement value of $1,000 or less, whether or not consumed by use, shall be considered to be small tools. Equipment rental rates

not provided by the Blue Book must be Approved by CDOT before the start of any Change Order Work.

13.7.3.6 Equipment Operators

Equipment operators will be paid for as stipulated in Section 13.7.1.

13.7.3.7 Condition of Equipment

All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

13.7.3.8 Classification of Equipment

Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates.

13.7.3.9 Computation of Time

The time to be paid for use of equipment on the Site shall be the time the equipment is in operation on the Time and Materials Change Order Work being performed. The time shall include the reasonable time required to move the equipment to the location of the Time and Materials Change Order Work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Site other than for Time and Materials Change Order Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment for loading and transporting will be made if the equipment is also used at the Site other than for Time and Materials Change Order Work. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

13.7.4 Permit Fees

The Contractor will be reimbursed for the cost of any additional permit fees payable as the result of the change in the Work. Back-up documentation supporting each cost item for this category shall be provided by the Contractor and Approved by CDOT prior to any payment authorization being granted.

13.7.5 Subcontracted Work

CDOT will pay the Contractor one, and only one, mark-up on Subcontracted Work. This mark-up shall fully compensate the Contractor (and all Subcontractors) for administration, general superintendence, overhead, profit and expenses not otherwise recoverable with respect to subcontracted Work. No mark-up shall be allowed for: (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

13.7.6 Mark-Ups

In addition to the added costs as determined above, Contractor will be paid mark-ups in accordance with CDOT Standard Specifications for Road and Bridge Construction, No. 109.04.

13.7.7 Time and Materials Records

13.7.7.1 Collection and Maintenance of Data

The Contractor shall maintain its records in such a manner as to provide a clear distinction between: (i) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price; and (ii) the costs of other operations. The Contractor shall contemporaneously collect, record in writing, segregate, and preserve: (i) all data necessary to determine the costs described in this Section 13.7 with respect to all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Relocations, but specifically excluding all negotiated Change Orders (except for lump sum Work Orders that are also Change Orders as described in Section 13.1.1.1); and (ii) all data necessary to show the actual impact (if any) of the change on the Critical Path affecting a Completion Deadline with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Critical Path affecting a Completion Deadline is in dispute. Such data shall be provided pursuant to Section 20, on forms Approved by CDOT. The cost of furnishing such reports is included in the Contractor's predetermined overhead and profit mark-ups.

13.7.7.2 Daily Reports

The Contractor shall furnish daily, on forms Approved by CDOT, reports of Time and Materials Change Order Work. The cost of furnishing such reports shall be included in the Contractor's overhead and profit percentages. The reports shall include:

1. Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) and foreman.
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Quantities of materials, prices and extensions.
4. Transportation costs of materials, machinery, and equipment.
5. Invoices for materials used and for transportation charges.

The reports shall also state the total costs to date for the Time and Materials Change Order Work.

13.7.7.3 Materials

If materials used on the Time and Materials Change Order Work are not specifically purchased for the Work but are taken from the Contractor's stock, the Contractor shall furnish an affidavit certifying that such materials were taken from the Contractor's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the Contractor.

13.7.7.4 Reports as Basis for Payment

All Time and Materials Change Order reports shall be signed by the Contractor's Project Manager. CDOT will compare its records with the Contractor's reports, make the necessary adjustments and compile the costs of Time and Materials Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment, but shall not preclude subsequent adjustment based on a later audit. The Contractor's (and each Subcontractor's) cost records pertaining to Work paid for on a time and materials basis shall be

open, during all regular business hours, to inspection or audit by representatives of CDOT during the life of the Contract and for a period of not less than seven years after Final Acceptance, and the Contractor (and each Subcontractor) shall retain such records for that period. If an audit is to be commenced more than 60 days after Final Acceptance, the Contractor will be given a 20-day notice of the time when such audit is to begin.

13.7.8 Compliance with Federal Acquisition Regulation

Reimbursable expenses shall be limited to and comply with the Federal Acquisition Regulation (FAR). Expenses excluded by the FAR shall not be reimbursed. If FHWA asserts that any claimed reimbursable expenses are not reimbursable under FAR, CDOT will allow the Contractor the opportunity to respond to FHWA and defend the allowability of the expenses.

13.8 Necessary Design Changes

13.8.1 Increase in Contract Price and/or Extension of Completion Deadlines

Upon the Contractor's fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, if a Necessary Design Change increases the cost and/or time to perform the Work, the Contractor shall be entitled to an increase in the Contract Price and/or an extension of the Completion Deadlines, excluding any costs and/or time that could have been avoided by the Contractor; provided, however, the Contractor shall not be entitled to an increase in the Contract Price or an extension of the Completion Deadlines in connection with Errors resulting from Approved ATCs and ACCs incorporated in the Contract Documents.

13.8.2 Decrease in Contract Price and/or Extension of Completion Deadlines

If a Necessary Design Change decreases the cost and/or time to perform the Work, the Contract Price and/or Completion Deadlines shall be decreased accordingly.

13.8.3 Change in Basic Configuration or Temporary Configuration Resulting from Value Engineering Change Proposal

If a VECP results in a material change in Basic Configuration or Temporary Configuration, any cost savings from such VECP shall be shared in accordance with Section 12.

13.9 Differing Site Conditions

13.9.1 Responsibilities of CDOT

Upon the Contractor's fulfillment of all applicable requirements of Sections 5.3 and 13, and subject to the limitations contained therein, CDOT shall be responsible for, and agrees to issue Change Orders to: (i) compensate the Contractor for additional costs directly attributable to changes in the Work arising from Differing Site Conditions; and (ii) extend the Completion Deadlines as the result of any delay in the Critical Path caused by any such conditions.

13.9.2 Burden of Proof

The Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional

cost. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by the Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions are eligible for a Change Order under the terms of this Book 1, and stating the efforts undertaken by the Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

13.10 Certain Events

Upon the Contractor's fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, CDOT shall be responsible for, and agrees to issue Change Orders: (i) to compensate the Contractor for additional costs directly attributable to the events set forth in Section 13.3.1.1; and/or (ii) extend the applicable Completion Deadlines as the result of any delay in the Critical Path affecting a Completion Deadline caused by a Force Majeure event as defined in 13.3.1.2.

13.11 Hazardous Substances Management

Except as expressly provided in this Section 13.11, the Contract Price includes the cost of all Activities to be performed by the Contractor as described in Book 2, Section 5. (Accordingly, compensation for certain Activities required under Book 2,Section 5.0, including investigating, monitoring, characterizing and testing, are included in the Contract Price and the Contractor shall not be entitled to additional payment under Section 13.11.1 therefore.)

13.11.1 Price Increase

Subject to Section 13.11.3, the Contractor shall be entitled to payment for Remediation Work (excluding those conditions for which the Contractor has agreed to be responsible as described in Section 18.1.1(7)) through a Change Order priced in accordance with Section 13.6 or 13.7.

13.11.2 Time Extension

The Contractor shall be entitled to an extension of the Completion Deadlines to the extent that any delay in the Critical Path affecting a Completion Deadline is directly attributable to Remediation Work compensable under Section 13.11.1.

13.11.3 Limitations on Change Orders

All Change Orders authorized by this Section 13.11 shall be subject to the restrictions, limitations and procedures set forth in Section 13. Allowable costs shall be limited to the incremental costs associated with the fact that Hazardous Substances subject to Remediation Work compensable under Section 13.11.1 are present (deducting any avoided costs such as re-use and/or disposal of Non-Hazardous Substances) after completion of the testing process to determine whether Hazardous Substances are present. The Contractor shall take all reasonable steps to minimize any such costs. In addition, compensation for Remediation Work compensable under Section 13.11.1 will not be allowed unless the Contractor demonstrates to CDOT's satisfaction that: (i) the Remediation Work could not have been avoided by reasonable design modifications or construction techniques; and (ii) the Contractor's plan for the Remediation Work represents the approach which is most beneficial to the Project and the public. The Contractor shall provide CDOT with such information, analyses and certificates as may be requested by CDOT in order to enable a determination regarding eligibility for payment.

13.12 Material Errors in Right-of-Way Plans

Upon the Contractor's fulfillment of all applicable requirements of this Section 13, and subject to the limitations contained therein, CDOT shall be responsible for, and agrees to issue Change Orders: (i) to compensate the Contractor for additional costs directly attributable to material errors in the right-of-way limits indicated in the ROW Plans; and (ii) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any such errors. The Contractor shall provide written notice to CDOT immediately upon discovery of any such material error. CDOT, in CDOT's sole discretion, shall have the right to cure any such error such as by acquiring additional property.

13.13 Waiver

THE CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CHANGE, DELAY, SUSPENSION OR ACCELERATION WHICH, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) FOR WHICH THE CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY CHANGE REQUEST FOR CHANGE ORDER, AND AGREES THAT THE CONTRACTOR SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT THE CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES. IF A DEADLINE IS MISSED THAT DOES NOT PREJUDICE EITHER PARTY, FURTHER RELIEF SHALL BE ALLOWED.

13.14 Disputes

If CDOT and the Contractor agree that a request to increase the Contract Price and/or extend any Completion Deadline by the Contractor has merit, but are unable to agree as to the amount of such price increase and/or time extension, CDOT agrees to mark up the Change Order request or Change Order form, as applicable, provided by the Contractor to reduce the amount of the price increase and/or time extension as deemed appropriate by CDOT. In such event, CDOT will execute and deliver the marked-up Change Order to the Contractor within a reasonable period after receipt of a request by the Contractor to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of CDOT and the Contractor to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the increase in the Contract Price and/or extension of a Completion Deadline in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 19. Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all claims by the Contractor of any nature arising from or relating to the Work covered by the Change Order. The Contractor's Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by the Contractor with respect to the disputed matter (crediting CDOT for any corresponding reduction in the Contractor's other costs) and shall in no event exceed the amounts allowed by Section 13.7 with respect thereto.

13.15 No Release or Waiver

13.15.1 Extension of Time for Performance

No extension of time granted hereunder shall release the Contractor's Surety from its obligations. CDOT shall not be deemed to have waived any rights under the Contract (including its right to abrogate the Contract for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein) as the result of any grant of an extension of time beyond the date fixed for the completion of any part of the Work, any acceptance of performance of any part of the Work after a Completion Deadline, or the making of any payments to the Contractor after such date.

13.15.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person

No course of conduct or dealings between the parties, or express or implied acceptance of alterations or additions to the Work, and no claim that CDOT has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, the Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a person in excess of that person's authority as provided herein, or included in any oral request. The Contractor shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, CDOT may require the Contractor to remove or otherwise undo any such work, at the Contractor's sole cost.

14.0 SUSPENSION OF WORK

14.1 Suspension for Convenience

CDOT may, at any time and for any reason, by written notice, order the Contractor to suspend all or any part of the Work required under the Contract Documents for the period of time that CDOT deems appropriate for the convenience of CDOT. The Contractor shall promptly comply with any such written suspension order. The Contractor shall promptly recommence the Work upon receipt of written notice from CDOT directing the Contractor to resume Work. Suspensions related to seasonal or climatic conditions, or Force Majeure events shall not be considered a CDOT-Caused Delay.

14.2 Suspension for Cause

CDOT has the authority by written order to suspend the Work without liability to CDOT wholly or in part for the Contractor's failure to:

1. Correct conditions unsafe for the Project personnel or general public.
2. Comply with any Governmental Approval, Legal Requirement, or otherwise carry out the requirements of the Contract.
3. Carry out orders of CDOT.
4. Comply with environmental requirements or requirements for developing and implementing the Quality Management Plan.

The Contractor shall promptly comply with any such written suspension order. The Contractor shall promptly recommence the Work upon receipt of written notice from CDOT directing the Contractor to resume Work.

14.3 Contractor Responsibilities During Suspension

During periods that Work is suspended, the Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project and other facilities in the Project vicinity, provide for drainage, obtain and maintain compliance with all Governmental Approvals, maintain all Contractor-provided insurance and bonds and erect necessary temporary structures, signs or other facilities required to maintain the Project and other facilities in the Project vicinity. During any suspension period, unless otherwise directed by CDOT, the Contractor shall continue to be responsible for maintenance of traffic in accordance with the Traffic Management Plan and Section 16 of Book 2, for plant and landscape maintenance in accordance with Section 17 of Book 2 and for maintenance during construction in accordance with Section 18 of Book 2. If the suspension is for CDOT's convenience, the additional work performed by the Contractor during the suspension period shall be considered CDOT-Directed Changes.

15.0 TERMINATION FOR CONVENIENCE

15.1 Notice of Termination

CDOT may terminate the Contract and the performance of the Work by the Contractor in whole or, from time to time, in part, if CDOT determines, in its sole discretion, that a termination is in the best public, State or national interest to do so. CDOT shall notify the Contractor of its decision to terminate by delivering to the Contractor a written Notice of Termination specifying the extent of termination and its effective date. Termination (or partial termination) of the Contract shall not relieve any Surety of its obligation for any claims arising out of the Work performed.

15.2 Contractor Responsibilities Upon Termination

After receipt of a Notice of Termination, and except as otherwise directed by CDOT, the Contractor shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 15.

1. Stop Work as specified in the notice.
2. Communicate such notice to all affected Subcontractors and that their Subcontracts are not to be further performed unless otherwise authorized in writing by CDOT.
3. Place no further Subcontracts or orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.
4. Terminate all Subcontracts to the extent that they relate to the Work terminated.
5. Assign to CDOT in the manner, at the times, and as and to the extent directed by CDOT, all of the right, title and interest of the Contractor under the Subcontracts so terminated, in which case CDOT will have the right, in its sole discretion, to accept performance, settle or pay any or all claims arising out of the termination of such Subcontracts.
6. Settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the Approval or ratification of CDOT, to the extent it may be required, which Approval or ratification shall be final.
7. Provide CDOT with an inventory list of all materials previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to CDOT, and such other information as CDOT may request; and transfer title and deliver to CDOT, in the manner, at the times, and as and to the extent, if any, directed by CDOT: (i) fabricated or unfabricated parts, the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and (ii) the Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, Sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to CDOT if the Work had been completed.
8. Complete performance in accordance with the Contract Documents of all Work not terminated.
9. Take all action that may be necessary, or that CDOT may direct, for the safety, protection and preservation of: (i) the public, including public and private vehicular

movement; (ii) the Work; and (iii) the equipment, machinery, materials and property related to the Contract Documents that is in the possession of the Contractor and in which CDOT has or may acquire an interest.

10. As authorized by CDOT in writing, use its best efforts to sell, in a manner, at the times, to the extent, and at the price or prices directed or authorized by CDOT, any property of the types referred to in Section 15.2(7); provided, however, that the Contractor: (i) is not required to extend credit to any purchaser; and (ii) may acquire the property under the conditions prescribed and at prices Approved by CDOT. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by CDOT under the Contract Documents or paid in any other manner directed by CDOT.
11. If requested by CDOT, withdraw from the portions of the Site designated by CDOT and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, the Contractor and any Subcontractor in the performance of the Work as CDOT may direct.
12. Take other actions directed by CDOT.

15.3 Responsibility After Notice of Termination

The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

1. The Contractor's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when CDOT certifies that those materials have been stored in the manner and at the locations directed by CDOT.
2. The Contractor's responsibility for damage to materials purchased by CDOT subsequent to the issuance of Notice of Termination shall terminate when title and delivery of those materials has been taken by CDOT.

Immediately after CDOT determines that the Contractor has completed the Work directed to be completed prior to termination and such other work as may have been ordered to secure the Project for termination, the Contractor will not be required to provide for continuing safety, Security and maintenance at the Site.

15.4 Negotiated Termination Settlement

15.4.1 Settlement Proposal

After receipt of a Notice of Termination, the Contractor shall submit a final termination settlement proposal to CDOT in the form and with the certification prescribed by CDOT. The Contractor shall submit the proposal promptly, but no later than 60 days from the effective date of termination, unless the Contractor has requested a time extension in writing within such 60-Day period and CDOT has agreed in writing to allow such an extension. CDOT will then review the Contractor's termination settlement proposal and will act upon it, return it with comments or reject it. If the Contractor fails to submit the proposal within the time allowed, CDOT may determine, on the basis of information available to it, the amount, if any, due the Contractor because of the termination and shall pay the Contractor the amount so determined.

15.4.2 Negotiated Settlement Amount

The Contractor and CDOT may agree, as provided in Section 15.4.1, upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently Accepted by CDOT. Such agreed amount(s), exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Upon determination of the settlement amount the Contract will be amended accordingly, and the Contractor will be paid the agreed amount. Nothing in Section 15.5, prescribing the amount to be paid to the Contractor in the event that the Contractor and CDOT fail to agree upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Section 15, shall be deemed to limit, restrict or otherwise determine or affect the amount(s) which may be agreed upon to be paid to the Contractor pursuant to this Section 15.4. Unless otherwise agreed to by the parties as a part of a negotiated settlement, CDOT's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve the Contractor from its obligations with respect thereto, including Warranties, or affect CDOT's rights under the Payment and Performance Bond as to such completed or non-terminated Work.

15.5 Determination of Settlement Amount if Negotiations Fail

If the Contractor and CDOT fail to agree, as provided in Section 15.4.2, upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Section 15, the amount payable (exclusive of interest charges) shall be determined by CDOT in accordance with the following, but without duplication of any amounts agreed upon in accordance with Section 15.4:

15.5.1 Payment Amount

CDOT will pay the Contractor the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination, as such amounts are determined by CDOT:

1. The Contractor's actual reasonable out-of-pocket cost (without profit, and including equipment costs only to the extent permitted by Section 13) for all Work performed, including mobilization, demobilization and work done to secure the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to CDOT's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials and for other appropriate credits. Deductions will also be made for the cost of damaged materials. When, in the opinion of CDOT, the cost of an item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents and the excessive actual cost will be disallowed.
2. As profit on Clause 1 above, a sum determined by CDOT to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this Section 15.5.1 and an appropriate adjustment shall be made by reducing the amount of the settlement to reflect the indicated rate of loss.

3. The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 15.2(6), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination under the Contract, which amounts shall be included in the cost on account of which payment is made under clause 1 above.
4. The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2(9) and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the Contract, including the reasonable cost to the Contractor of handling material returned to the vendor, delivered to CDOT or otherwise disposed of as directed by CDOT, and including a reasonable allowance for the Contractor's administrative costs in determining the amount due to the Contractor as the result of the termination of Work under the Contract.
5. If the termination occurs prior to issuance of NTP2, the stipend amount of $140,000 will be paid to the Contractor.

15.5.2 Maximum Compensation

The Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 15.5.1) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of the Contract. However, the total amount to be paid to the Contractor, exclusive of costs described in Sections 15.5.1(3), (4) and (5), may not exceed the total Contract Price less the amount of payments previously made and less the Contract Price of any Work not terminated. Furthermore, if any refund is payable with respect to insurance or bond premiums, deposits or similar items which were previously passed through to CDOT by the Contractor, such refund shall be paid directly to CDOT or otherwise credited to CDOT. Notwithstanding anything to the contrary contained herein, if a termination occurs prior to issuance of NTP2, the total amount payable to the Contractor shall in no event exceed the NTP1 Payment Cap.

15.5.3 Excluded Items

Except for normal spoilage, and except to the extent that CDOT will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under Section 15.5.1, the fair value, as determined by CDOT, of equipment, machinery, materials and property which is destroyed, lost, stolen or damaged so as to become undeliverable to CDOT, or to a buyer pursuant to Section 15.2(10). The amount set forth in the Proposal by the Contractor for the Work terminated shall be a factor to be analyzed in determining the value of the Work terminated.

15.5.4 Payment of Termination Amount

Upon determination of the amount of the termination payment, the Contract shall be amended to reflect the agreed termination payment, and the Contractor shall be paid the agreed amount.

15.6 Partial Termination

If a termination hereunder is partial, the Contract Price for the remainder of the Work shall be adjusted as appropriate to account for the change in the overall scope of the Project.

15.7 Reduction in Amount of Claim

The amount otherwise due the Contractor under this Section 15 shall be reduced by: (i) all unliquidated advance or other payments made to or on behalf of the Contractor applicable to the terminated portion of the Contract; (ii) the amount of any claim which CDOT may have against any Contractor-Related Entity in connection with the Contract; (iii) the agreed price for, or the proceeds of the sale of, any property, materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to CDOT; (iv) amounts that CDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners; (v) the cost of repairing any Nonconforming Work, and (vi) any amounts due or payable by the Contractor to CDOT.

15.8 Partial Payments

CDOT may, from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by the Contractor in connection with the terminated portion of the Contract, whenever in the opinion of CDOT the aggregate of such payments shall be within the amount to which the Contractor will be entitled under this Section 15. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by the Contractor to CDOT upon demand together with interest at a rate equal to the average rate at the time being received from the investment of state funds, as determined by the State Treasurer, for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid to CDOT. However, no interest will be charged with respect to any such excess payment attributable to a reduction in Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by CDOT by reason of the circumstances.

15.9 Inclusion in Subcontracts

The Contractor shall insert in all Subcontracts a requirement that the Subcontractor shall stop Work on the date and to the extent specified in a Notice of Termination from CDOT in accordance with this Section 15, and shall require Subcontractors to insert the same provision in each Subcontract at all tiers.

15.10 Limitation on Payments to Subcontractor

For the purposes of Sections 15.4.2 and 15.5, upon termination under Section 15.2(4) of Work under any Subcontract, the Contractor will not be entitled to reimbursement for that portion of the termination settlement with any such Subcontractor which constitutes anticipatory or unearned profit on Work not performed, or which constitutes consequential damages on account of the termination or partial termination.

15.11 No Unearned Profits or Consequential Damages

Under no circumstances shall the Contractor be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 15. The payment to the Contractor determined in accordance with this Section 15 constitutes the Contractor’s sole and exclusive remedy for a termination under this Section 15.

15.12 No Waiver

Anything contained in the Contract to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or claim to damages, which CDOT may have, and CDOT may pursue any cause of action, which it may have at law or in equity or under the Contract.

15.13 Dispute Resolution

The failure of the parties to agree on amounts due under this Section 15 shall be a Dispute to be resolved in accordance with Section 20.

15.14 Allowability of Costs

All costs claimed by the Contractor under this Section 15 shall, at a minimum, be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

15.15 Suspension of Work

In the event of any suspension of Work by CDOT, after issuance of NTP1, for more than 180 consecutive days, the Contractor shall have the right to consider the Contract to have been terminated for convenience under this Section 15. The Contractor shall notify CDOT of such election by delivering to CDOT a written notice of termination due to such suspension specifying its effective date. Upon delivery by the Contractor to CDOT of a notice of termination due to suspension, the provisions of this Section 15 shall apply.

15.16 Termination Due to Non-Appropriation of Funds

15.16.1 Availability of Funds

The obligation of CDOT to make any payments to the Contractor hereunder is contingent upon funds being appropriated, budgeted, allocated and otherwise made available by CDOT in amounts to meet its funding obligations for the Contract. The Contractor is not obligated to perform Work, and correspondingly is not entitled to any compensation for Work performed, in any fiscal year beyond the amount, if any, appropriated and made available by CDOT in amounts to meet its funding obligations for the Contract.

15.16.2 Anticipated Appropriations

CDOT anticipates that:

1. Prior to issuance of NTP1, an amount will be appropriated sufficient to allow CDOT to make estimated payments under the Contract for Work to be performed through the end of the fiscal year in which NTP1 is issued.
2. Prior to issuance of NTP2, an amount will be appropriated sufficient to allow CDOT to make estimated payments under the Contract for Work to be performed through the end of the fiscal year in which NTP2 is issued.
3. In each succeeding fiscal year during the life of the Contract, an amount will be appropriated sufficient to allow CDOT to make estimated payments under the Contract for Work to be performed through the end of such fiscal year.

15.16.3 Remedy for Failure to Appropriate

If funds are not budgeted, allocated or otherwise made available by CDOT or the State or federal Legislature fails to make an appropriation, resulting in stoppage of Work, the Contractor agrees to resume performance of the Work without any modification to the terms and conditions hereof, provided that an appropriation therefore is approved or funds are made available within 60 days after the Contractor stops Work under Section 15.16.1. Any such Work stoppage shall be considered a suspension for convenience under Section 14.1. If funds are not appropriated or made available before expiration of such 60-Day period, either party may terminate the Contract.

16.0 DEFAULT

16.1 Default by Contractor

16.1.1 Events of Default

The Contractor shall be in breach under the Contract upon the occurrence of any one or more of the following events or conditions:

1. The Contractor fails to promptly begin the Work under the Contract Documents following issuance of NTP1.
2. The Contractor fails to perform the Work with sufficient resources to ensure the prompt completion thereof; (i.e., the Contractor fails to execute remedial action in accordance with the Quality Management Plan and Book 2, Section 3.0).
3. The Contractor fails to perform the Work in accordance with the Contract Documents, refuses to remove and replace rejected materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by CDOT under Section 7.4.3.
4. The Contractor discontinues or suspends the prosecution of the Work (exclusive of Work stoppage due to: (i) termination by CDOT; (ii) a Force Majeure event or suspension by CDOT; or (iii) nonpayment by CDOT not related to a breach by the Contractor).
5. The Contractor fails to resume performance of Work, which has been suspended or stopped, within a reasonable time after receipt of notice from CDOT to do so or (if applicable) after cessation of the event preventing performance.
6. The Contractor breaches any other agreement, representation or warranty contained in the Contract Documents, or the Contractor fails to perform any other obligation under the Contract Documents, including EEO and DBE requirements.
7. The Contractor fails to provide and maintain the required insurance and payment and performance bond.
8. The Contractor assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted under Section 24.3.2.
9. The Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, fails to comply with any Legal Requirement or Governmental Approval; or fails reasonably to comply with the instructions of CDOT consistent with the Contract Documents.

10. The Contractor fails to discharge or obtain a stay within ten days of any final judgment(s) or order for the payment of money against it in excess of $100,000 in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of 125 percent of such judgment or order shall be deemed an effective stay).
11. The Contractor or any partner, joint venture member or other member of the Contractor shall have become insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors.
12. Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against the Contractor or any partner, joint venture member or other member of the Contractor and not dismissed within 60 days.
13. Any representation or warranty made by the Contractor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents shall have been false or materially misleading when made.
14. The Contractor is a party to fraud.

16.1.2 Right to Cure

CDOT agrees to allow the Contractor and Surety 15 days notice and opportunity to cure any breach before declaring an Event of Default, provided that no such notice and opportunity to cure is required for any breach, which by its nature cannot be cured. If a breach is curable but by its nature cannot be cured within 15 days, as determined by CDOT, CDOT agrees not to declare an Event of Default provided that the Contractor commences such cure within such 15-Day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event will such cure period exceed 60 days in total. The Contractor hereby acknowledges and agrees that the events described in Section 16.1.1(7) through (8) and (11) through (14) are not curable. Notwithstanding the foregoing, if CDOT believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, CDOT may, without notice and without awaiting lapse of any cure period, rectify the condition at the Contractor's cost, and so long as CDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose CDOT to liability to the Contractor and shall not entitle the Contractor to any other remedy, it being acknowledged that CDOT has a paramount public interest in providing and maintaining safe public use of and access to the Project. CDOT's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

16.2 Remedies

16.2.1 Rights of CDOT

If an Event of Default occurs, then, in addition to all other rights and remedies provided by law or equity or available under the Contract or otherwise, including the rights to recover Liquidated Damages and to seek recourse against the surety bonds required hereby and/or other performance Security, CDOT shall have the following rights and remedies, without further notice, and without prejudice to any of its other rights or remedies and without waiving or releasing the Contractor from any obligations, and the Contractor shall have the following obligations (as applicable):

1. CDOT may order the Contractor to suspend or discontinue the Work or any portion of the Work.
2. CDOT may terminate the Contract or a portion thereof, in which case, the provisions of Sections 15.2 and 15.3 shall apply.
3. If and as directed by CDOT, the Contractor shall withdraw from the Site; and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Contractor-Related Entity in the performance of the Work.
4. The Contractor shall deliver to CDOT possession of any or all facilities of the Contractor located on the Site as well as any or all Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, details and diagrams), specifications, records, information, schedules, samples, Shop Drawings and other documents, that CDOT deems necessary for completion of the Work.
5. The Contractor shall confirm the assignment to CDOT of the Subcontracts requested by CDOT, and the Contractor shall terminate, at its cost, all other Subcontracts.
6. CDOT may deduct from any amounts payable by CDOT to the Contractor such amounts payable by the Contractor to CDOT, including Liquidated Damages or other damages payable to CDOT under the Contract Documents.
7. CDOT shall have the right, but not the obligation, to pay such amount and/or perform such act as may then be required.
8. CDOT, without incurring any liability to the Contractor, shall have the rights to: (i) take the performance of all or a portion of the Work from the Contractor (either with or without the use of the Contractor's materials, equipment, tools and instruments) and enter into an agreement with another Person for the completion of such Work; or (ii) use such other methods, as in the opinion of CDOT, will be required for the completion of the Project.
9. If CDOT exercises any right to perform any obligations of the Contractor, in the exercise of such right CDOT may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as CDOT deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for the purpose of completing such work; (iii) execute all applications, certificates and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole discretion consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

16.2.2 Liability of Contractor

16.2.2.1 Occurrence of an Event of Default

If an Event of Default has occurred, the Contractor and Surety shall be jointly and severally liable to CDOT (in addition to any damages specifically provided for under the Contract Documents including the Liquidated Damages payable hereunder) for all costs reasonably incurred by CDOT or any party acting on CDOT's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work and increased financing costs). Upon the occurrence of

an Event of Default, CDOT shall be entitled to withhold all or any portion of further payments to the Contractor until such time as CDOT is able to determine how much (if any) remains owing to the Contractor. Promptly upon such determination, CDOT shall notify the Contractor in writing of the amount, if any, that the Contractor shall pay CDOT or that CDOT shall pay the Contractor with respect thereto. All costs and charges incurred by CDOT, including attorneys', accountants' and expert witness fees and costs, together with the cost of completing the Work under the Contract Documents, will be deducted from any moneys due or which may become due to the Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and its Surety(ies) shall be liable and shall pay to CDOT the amount of such excess.

16.2.2.2 Assurance of Future Performance

It is recognized that if a default under Section 16.1.1(11) or (12) occurs, such event could impair or frustrate the Contractor's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, CDOT shall be entitled to request of the Contractor, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten days of delivery of the request shall entitle CDOT to terminate the Contract and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, CDOT shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from CDOT's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract and Payment and Performance Bond.

16.2.2.3 Alternative to Terminating Contract and Completing Work

In lieu of the provisions of this Section 16.2 for terminating the Contract and completing the Work, CDOT may pay the Contractor for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by the Contract. No claim under this provision will be allowed the Contractor for prospective profits on, or any other compensation relating to, Work uncompleted by the Contractor.

16.2.2.4 Termination Deemed to Constitute Termination for Convenience

If the Contract is terminated for grounds, which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 15.

16.2.2.5 Damages Resulting from Contractor's Breach or Failure to Perform

If CDOT suffers damages as a result of the Contractor's breach or failure to perform an obligation under the Contract Documents, then CDOT shall be entitled to recovery of such damages from the Contractor regardless of whether the breach or failure that gives rise to the damages ripens into an Event of Default.

16.2.2.6 Cumulative Remedies

The exercise or beginning of the exercise by CDOT of any one or more rights or remedies under this Section 16.2 shall not preclude the simultaneous or later exercise by CDOT of any or all other rights or remedies, each of which shall be cumulative.

16.2.2.7 Continued Liability of Contractor and Surety

The Contractor and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a default by the Contractor hereunder or by CDOT's declaration of an Event of Default, or by actions taken by CDOT under this Section 16.2.

16.3 Right to Stop Work if Undisputed Payment is Not Made

The Contractor shall have the right to stop Work if CDOT fails to make an undisputed payment due hereunder within seven days after receipt of notice of nonpayment. Any such Work stoppage shall be considered a suspension under Section 14.1. The Contractor shall not have the right to terminate the Contract for default as the result of any failure by CDOT to make an undisputed payment due hereunder, but the Contractor shall have the right to declare a termination for convenience under Section 15 upon meeting the requirements of Section 15.15.

16.4 Notice and Opportunity to Cure Other Types of CDOT Breaches

In the event of any breach of the Contract by CDOT other than a failure to make payments to the Contractor, the Contractor shall provide to CDOT a written notice describing the breach and the opportunity to cure such breach. CDOT shall be entitled to 30 days notice and opportunity to cure any such breach; provided that if such breach is capable of cure but by its nature cannot be cured within 30 days, CDOT shall have such additional period of time as may be reasonably necessary to cure the breach so long as CDOT commences such cure within such 30-day period, and thereafter diligently prosecutes such cure to completion. The Contractor shall have no right to exercise any remedies to which it may be entitled at law or in equity until the foregoing notice is delivered and the foregoing cure period lapses without cure of the breach.

17.0 DAMAGES

17.1 Liquidated Damages

17.1.1 Failure to Meet Contract Requirements

The Contractor understands and agrees that if the Contractor fails to complete the Work in accordance with the Contract Documents, CDOT will suffer substantial losses and damages. The Contractor agrees that it shall be liable for all such losses and damages. The Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the I25 New Pueblo Freeway and the fact that inconvenience to the traveling public will be one of the significant impacts of any completion delay, certain closure duration delays or failure to obtain access, it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to CDOT and the public in the event of the Contractor's failure to achieve Project Completion or Final Acceptance by the applicable Completion Deadlines, or to obtain necessary rights of access to encroach upon private property. Therefore, the Contractor and CDOT have agreed to stipulate the amount payable by the Contractor in the event of its failure to meet a Completion Deadline or to obtain necessary

rights of access. The Contractor acknowledges and agrees that such Liquidated Damages are intended to compensate CDOT solely for the Contractor's failure to meet these Contract Document requirements, and shall not excuse the Contractor from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements.

17.1.1.1 Failure to Meet Contract Deadlines and Access Requirements

If the Contractor fails to achieve Project Completion and/or Final Acceptance by the applicable Completion Deadline, the Contractor agrees to pay CDOT Liquidated Damages in the following amounts:

1. $19,200 per Day (or portion of a Day) for the Contractor's failure to achieve final completion by the Project Completion Deadline as established in Exhibit B. .
2. After a warning for the first occurrence from CDOT, $5,000 per Day (or portion of a Day) for failure to obtain necessary rights of access to encroach upon private property.

17.1.1.2 Multiple Assessments of Liquidated Damages

Liquidated Damages may be assessed simultaneously under more than one subsection under Section 17.1.1.1.

17.1.1.3 Maximum Damage Amounts

Cumulative Liquidated Damages under Section 17.1.1.1 shall not exceed $10,000,000.

17.1.2 Reasonableness of Liquidated Damage Amounts

The Contractor acknowledges and agrees that the foregoing damages have been set based on an evaluation by CDOT of damages, which it will incur in each of the above events, including additional interest expense as well as administrative costs. The Contractor and CDOT agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix the Contractor's costs and to avoid later disputes over which items are properly chargeable to the Contractor. The Contractor understands and agrees that any Liquidated Damages payable in accordance with this Section 17.1 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of the Contract. The Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

17.2 Waiver

17.2.1 No Waiver

Permitting or requiring the Contractor to continue and finish the Work or any part thereof after a Completion Deadline shall not act as a waiver of CDOT's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to CDOT.

17.3 Payment of Liquidated Damages

To the extent Liquidated Damages are not deducted from any amount owed by CDOT to the Contractor, CDOT may send Contractor an invoice and the Liquidated Damages shall be payable by the Contractor to CDOT within ten days after the Contractor's receipt of the invoice therefore.

18.0 INDEMNIFICATION

18.1 Indemnifications by Contractor

18.1.1 General Indemnities

Subject to Section 18.1.3, the Contractor shall release, defend, indemnify and hold harmless CDOT and its agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents and employees (collectively referred to as the "Indemnified Parties") from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from:

1. The breach or alleged breach of the Contract by any Contractor-Related Entity.
2. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable Environmental Laws or other Legal Requirements (including Legal Requirements regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Substances) or Governmental Approvals in performing the Work.
3. Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information or other items furnished or communicated to CDOT or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from CDOT's failure to comply with specific written instructions regarding use provided to CDOT by the Contractor.
4. The alleged negligent act or omission or willful misconduct of any Contractor-Related Entity.
5. Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of the Contractor or any of its Subcontractors or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by any Contractor-Related Entity.
6. Any and all claims filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any claim, provided that CDOT is not in default in payments owing to the Contractor with respect to such Work.
7. Any spill or release or threatened spill or release of Hazardous Substances: (i) attributable to the negligence, willful misconduct or breach of contract by any Contractor-Related Entity; or (ii) which was brought onto the Site by any Contractor-Related Entity.
8. The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Contractor-Related Entity with or hindering the progress or completion of work being performed by other contractors as described in Section 23.1, or failure of any Contractor-Related Entity to cooperate reasonably with other contractors in accordance therewith.

18.1.2 Design Defects

Subject to Section 18.1.3, the Contractor shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from Errors in the Design Documents, regardless of whether such Errors were also included in the Basic Configuration or Reference Documents. The Contractor agrees that, because the Basic Configuration and Reference Documents are subject to review and modification by the Contractor, it is appropriate for the Contractor to assume liability for Errors in the completed Project even though they may be related to Errors in the Basic Configuration or Reference Documents.

18.1.3 Losses Due to Negligence of Indemnified Parties

The Contractor's indemnity obligation under Sections 18.1.1 and 18.1.2 shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by the negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party (in other words, a comparative negligence standard shall apply).

18.1.4 Claims by Employees

In claims by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

18.1.5 Reliance on Contractor's Performance

The Contractor hereby acknowledges and agrees that it is the Contractor's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on the Contractor's performance of such obligation. The Contractor further agrees that any review, acceptance and/or approval by CDOT and/or others hereunder shall not relieve the Contractor of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.

18.1.6 Indemnities in Connection with Utilities

18.1.6.1 The Contractor is advised that each Utility Agreement contains provisions for the Contractor to indemnify, save and hold harmless the Utility Owner, its employees and agents as a result of any act or omission by the indemnifying Contractor. The Contractor hereby agrees to and shall perform and comply with such provisions of the Utility Agreements for the benefit of the Utility Owners, their employees and agents.

18.1.6.2 The Contractor is also advised that the Utility Agreements may include certain agreements by CDOT to indemnify, defend and hold harmless the Utility Owners with respect to certain matters. The Contractor's obligation under this Section 18.1 shall automatically apply to

require it to release, indemnify, defend and hold harmless the Utility Owners, in addition to the Indemnified Parties, with respect to all such matters.

18.2 Responsibility of CDOT for Certain Hazardous Substances

18.2.1 Pre-Existing Site Contamination

It is recognized that CDOT may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Substances, which may currently be present on the Site. It is further recognized that certain state and federal statutes provide that individuals and firms may be held liable for damages and claims related to Hazardous Substances under such doctrines as joint and several liability and/or strict liability. It is not the intention of the parties that the Contractor be exposed to any such liability arising solely out of: (i) pre-existing Site contamination, whether known or unknown, except as otherwise provided in Section 18.1.1(7); (ii) the non-negligent performance by the Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom the Contractor may be contractually or legally responsible, in the handling of such Hazardous Substances; and/or (iii) the activities of any Persons not described in (ii) above, including CDOT.

Accordingly, for the purposes of the Contract only, CDOT shall reimburse the Contractor for Remediation Work (through payment of the Contract Price, as it may be increased by Change Order pursuant to Section 13), and will be responsible for, any and all claims, damages, losses, liabilities, costs and expenses, including the Contractor's attorneys' fees, arising out of, or in connection with, bodily injury (including death) to persons, damage to property or environmental removal or response costs arising out of the presence, release or threatened release of Hazardous Substances on or from the Site, irrespective of whether such substances were generated or introduced on the Site before or after execution of the Contract and irrespective of whether CDOT was aware of, or directly involved in, the generation or introduction of such materials, but specifically excluding from any obligation of responsibility for those conditions for which the Contractor has agreed to be responsible as described in Section 18.1.1(7).

18.2.2 Generator Number for Hazardous Waste Remediation

Except for Hazardous Substances for which the Contractor is responsible as described in Section 18.1.1(7), without contradiction of any assertion by CDOT of third-party liability, and for purposes of the Contract only:

1. The Contractor shall not be required to execute any hazardous waste manifests as a "generator."
2. Hazardous Substances encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA Identification Number or other appropriate legal device obtained by, and carried in the name of, CDOT or another Person designated by CDOT.

18.3 No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge or reduce other rights or obligations, which would otherwise exist in favor of a party hereunder.

18.4 Comprehensive Environmental Response, Compensation, and Liability Act Agreement

Without limiting their generality, the indemnities set forth in Section 18.1.1(7) are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the parties indemnified in said Section 18.1.1.

18.5 Intent of Indemnity for Breach of Contract

The requirement to provide an indemnity for breach of contract set forth in Section 18.1.1(1) is intended to provide protection to CDOT with respect to third party claims associated with such breach. It is not intended to provide CDOT with an alternative cause of action for damages incurred directly by CDOT with respect to such breach.

19.0 PARTNERING, CLAIMS FOR ADJUSTMENT AND DISPUTES

19.1 Partnering

CDOT intends to encourage the use of an extensive partnering program among CDOT, the Contractor, its Subcontractors and other stakeholders, where appropriate. Contractor shall follow partnering process as set forth in Book 2, Section 19.

It is the intent of the parties that the dispute resolution provisions contained in this Section shall apply only in the event that the normal CDOT-Contractor issue resolution efforts through partnering are not successful. The dispute resolution provisions set forth in Section 19.2 shall apply to all Disputes arising out of the Work that are not resolved by the parties through the partnering process, except as expressly provided to the contrary in the Contract Documents.

19.2 Dispute Resolution; General Provisions

19.2.1 Mandatory Nature of Process

All Disputes between the Contractor and CDOT that have not been resolved by the parties through the partnering process shall be resolved as provided by this Section. There shall be a Standing Disputes Review Board for this Project.

19.2.2 Disputes; Disputes Governed by this Section; Priorities; Disputes Involving Utility Owners

19.2.2.1 Disputes include, but are not limited to:

1. Any disagreement resulting from a change, delay, change order, another written order, or an oral order from the Project Director or his designee, including any direction, instruction, interpretation, or determination by the Project Director or his designee concerning extra work, increased costs, delay, or any other issue including, but not limited to, an assertion by the Contractor seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating the this Contract.

2. Any unsatisfied request for additional compensation or time based on: (a) Work or materials not clearly defined in the Contract; (b) extra work not ordered by CDOT; (c) extensions of time made pursuant to subsection 13; or (d) any other cause.

19.2.2.2 Participation in and completion of this dispute resolution process is a condition precedent to either de novo litigation or merit binding arbitration.

19.2.2.3 Hereafter, all references to Disputes brought by the Contractor refer also to Disputes brought by the Contractor on behalf of any of its Subcontractors, provided all the requirements of this Section are complied with.

19.2.2.4 If a Dispute arises relating to a Utility Agreement or the Utility Work there under, and the Utility Owner is a necessary or appropriate party to such Dispute, then such Dispute shall be resolved in the manner set forth in the applicable Utility Agreement, and the Contractor shall participate in such Dispute resolution process as appropriate to resolve such Dispute.

19.2.3 Overview of Process

In the event of any Dispute, the Contractor shall follow the processes and requirements set forth in CDOT Standard Specifications for Road and Bridge Construction, No. 105.22, No 105.23, and No 105.24 and as amended by Revision of Section 105 *Disputes and claims for Contract Adjustments* included in Book 2, Section 19. Any and all Dispute Resolution Boards shall be On Demand.

19.2.4 Continuation of Work

At all times during this Dispute resolution process or any subsequent administrative or court proceeding, and at all times during the pendency of any Dispute with any other project contractor, the Contractor and all Subcontractors shall proceed with the Project Work diligently, without delay, in accordance with all provisions of the Contract Documents. Continued performance by the Contractor shall not prejudice the right to bring any claim.

19.2.5 Notice and Record Keeping for Disputes

In the event of any Dispute, Contractor shall comply with all notice and record keeping requirements contained in CDOT Standard Specifications for Road and Bridge Construction, No. 105.22, No 105.23, and No 105.24, which are incorporated herein by this reference.

19.2.6 Monthly Settlement Negotiations

Throughout protested work, the Contractor and the Project Director shall discuss the Dispute on a monthly basis and attempt to negotiate a resolution in good faith. The content of the monthly discussions shall be inadmissible in any legal, equitable, arbitration, or administrative proceedings.

19.2.7 Claim Requirements

19.2.7.1 Definition

Claim(s) are all Disputes that remain unsettled and/or unresolved after Contractor has complied with all of the processes and requirements of Section 19.2.3 through 19.2.6 of this Contract.

19.2.7.2 Process

The Contractor shall follow the processes and requirements from Claim(s) set forth in CDOT Standard Specifications for Road and Bridge Construction, No. 105.24, which is incorporated herein by this reference. Contractor shall select de novo litigation or merit binding arbitration to finally resolve a Claim and shall include its selection on Form 1378 attached as Exhibit K . Exhibit K (Form 1378) shall be completed and submitted with Contractor's Proposal.

19.2.7.3 Record Keeping

The record keeping requirements for Disputes shall apply to Claims and any additional record keeping requirements contained in CDOT Standard Specifications for Road and Bridge Construction, No. 105.24 shall also apply.

19.2.7.4 Complete and Final Claim Package

The Contractor shall provide the Project Director with six (6) copies of a complete and final claim package. The claim package shall follow the processes and requirements contained in CDOT Standard Specifications for Road and Bridge Construction, No. 105.24.

19.2.7.5 Multiple Claims

If more than one Claim has been filed by the Contractor on the Project, CDOT will have the right to consolidate all related claims and issue one decision on all such claims. Consolidation on unrelated Claims will not be made.

19.2.7.6 Total Cost Claims

For the purpose of this Contract, "total cost claim" or "modified total cost claim" shall be deemed to include all work required by the contract or any portion, unit part or parts of the work required by the contract however such portion, unit, part or parts of the work may be identified, categorized or isolated from remaining work and any claims for compensation for all work on the contract or any portion, unit, part or parts of the work of the contract using any form, technique, method or mode which results in a "total cost" figure, sum or result from cost computation. All disputes and claims seeking damages calculated on a total cost or modified total cost basis will not be considered unless the party asserting such damages established all legal requirements thereof.

20.0 ACCEPTANCE OF PROJECT

20.1 Project Completion

20.1.1 Notice by Contractor

As a pre-requisite to Project completion, the Contractor shall provide written notice to CDOT when all of the following have occurred with respect to the Project:

1. The Contractor has completed all Work (except for Punch List items, final cleanup and other items only included in the requirements for Final Acceptance).
2. The Contractor has ensured that the Work has been performed in accordance with the requirements of the Contract Documents.
3. The Contractor has received all applicable Governmental Approvals required for the Project.
4. The Contractor has furnished to CDOT certifications from the Contractor's Design Manager, in form and substance satisfactory to CDOT, certifying that the Design Documents meet the requirements of the Contract Documents.
5. The Contractor has furnished to CDOT certifications from the Contractor's Project Manager, in form and substance satisfactory to CDOT, certifying that the construction meets the requirements of the Contract Documents.
6. The Contractor has furnished to CDOT certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to CDOT, certifying that there are no outstanding non-conformances other than those identified on the Punch List.
7. The Contractor has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person.
8. The Contractor has obtained all applicable third party approvals relating to the Work and all third parties have completed all work that involves obligations by the Contractor.
9. The Contractor has ensured that the Project is ready to be opened for traffic and that no further work is required which would involve any lane or shoulder closure.

20.1.2 Correction of Defects

Upon receipt of the Contractor's notice under Section 20.1.1, CDOT will conduct such inspections, surveys, and/or testing as CDOT deems desirable. If such inspections, surveys, and/or tests disclose that any Work does not meet the requirements of the Contract Documents, CDOT will promptly advise the Contractor as to Nonconforming Work (including incomplete Work) necessary to be corrected as a condition to Project Completion, Nonconforming Work (including incomplete Work) which may be corrected as Punch List items and/or whether the Contractor shall reassess the accuracy and completeness of its notice. Upon correction of the Nonconforming Work (including incomplete Work) identified as a prerequisite to Project Completion, the Contractor shall provide written notification to CDOT and CDOT will conduct additional inspections, surveys and/or tests as CDOT deems desirable. This procedure shall be repeated until CDOT finds that all prerequisites to Project Completion have been met.

20.1.3 Conditions to Affidavit of Final Completion

The Contractor shall provide to CDOT an executed sworn Affidavit of Final Completion in accordance with Section 20.1.3.1 when all of the following have occurred:

1. CDOT has received all Released for Construction Documents, Design Documents, As-Built Documents, ROW record maps, surveys, test data, and other deliverables required under the Contract Documents for the Project.
2. All special tools, equipment, furnishings, and supplies purchased by and/or used by the Contractor, as provided in the Contract Documents, have been delivered to CDOT and all replacement spare parts have been purchased and delivered to CDOT free and clear of Liens.
3. All of the Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish, and temporary facilities have been removed from the Site, the Contractor has restored and repaired all damage or injury arising from such removal to the satisfaction of CDOT and the Site is in good working order and condition.
4. The Contractor has furnished to CDOT certifications from the Contractor's Design Manager, in form and substance satisfactory to CDOT, certifying that the Design Documents meet the requirements of the Contract Documents.
5. The Contractor has furnished to CDOT certifications from the Contractor's Project Manager, in form and substance satisfactory to CDOT, certifying that the construction is in accordance with the Contract Documents.
6. The Contractor has furnished to CDOT certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to CDOT, certifying that there are no outstanding non-conformances.
7. The Contractor has delivered to CDOT a notice of completion for the Project in recordable form and meeting all statutory requirements.
8. The Punch List items have been completed to the satisfaction of CDOT; and
9. All of the Contractor's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by CDOT) have been satisfied in full or waived in writing by CDOT.
10. The Designer and the Contractor agree to assign all warranties and obligations under this Contract to be the person who has contracted with CDOT or any division thereof for the operation, maintenance, and/or repair of the Project.

20.1.3.1 Requirements of Affidavit of Final Completion

The Affidavit of Final Completion shall include the following statement:

> *To the best of the Contractor's knowledge and belief, the Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed work under the Contract, including changes in the Work, and under all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the Contract or under any adjustment issued there under for said*

undisputed work; there are no outstanding claims, Liens or stop notices relating to the Project, including claims by Utility Owners; there is no existing default by the Contractor under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or event of default under any Utility Agreement; and upon receipt of final payment, the Contractor and Subcontractors acknowledge that CDOT and any and all employees of CDOT and their authorized representatives will thereby be released, discharged and acquitted from any and all claims or liability for additional sums on account of undisputed work performed under the Contract.

If the Contractor is unable to provide the affidavit in the above form, the affidavit shall certify that all such outstanding matters are set forth in an attached list which shall describe the outstanding matters in such detail as may be requested by CDOT. The affidavit shall include a representation of the Contractor that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide a status report regarding the same including an estimate of the maximum payable with respect to each such matter.

20.1.4 Inspection and Issuance of Notice of Final Acceptance

Upon CDOT's receipt of the Affidavit of Final Completion, CDOT will make final inspection and CDOT will either issue a Notice of Final Acceptance or notify the Contractor regarding any Work remaining to be performed. If CDOT fails to issue a Notice of Final Acceptance, the Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, the Contractor shall provide to CDOT a revised Affidavit of Final Completion with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure shall apply successively thereafter until CDOT has issued a Notice of Final Acceptance.

20.2 Overpayments; No Relief from Continuing Obligations

Final Acceptance will not prevent CDOT from correcting any measurement, estimate or certificate made before or after completion of the Work, or from recovering from the Contractor, the Surety(ies) or both, the amount of any overpayment sustained due to failure of the Contractor to fulfill the obligations under the Contract. A waiver on the part of CDOT of any breach by the Contractor shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve the Contractor from any of its continuing obligations hereunder, or constitute any assumption of liability by CDOT.

20.3 Opening of Sections of Project to Traffic

20.3.1 Plan for Opening to Traffic

The Contract Schedule shall set forth the Contractor's plan for completing Sections of the Project and opening them to traffic. CDOT may request that the Contractor expedite certain Sections of the Project, and the Contractor shall accommodate such requests to the extent that it can do so without significant disruption to its schedule or a significant increase in its costs. Notwithstanding the foregoing, if CDOT orders the Contractor to open portions of the Project which cannot be accommodated without significant disruption to the Contractor's schedule or a significant increase in the Contractor's costs, such direction shall be considered a CDOT-Directed Change.

20.3.2 Direction to Open Following Contractor Failure to Perform

If the Contractor is delinquent in completing shoulders, drainage structures or other features of the Work, CDOT may, but is not obligated to, order all or a portion of the Project opened to traffic notwithstanding such incomplete elements. The Contractor shall then conduct the remainder of the construction operations, minimizing obstruction to traffic. The Contractor shall not receive any added compensation due to the added costs attributable to the opening of the Project to traffic.

20.3.3 No Waiver

Opening of portions of the Project prior to Final Acceptance does not constitute Acceptance of the Work or a waiver of any provisions of the Contract Documents.

20.3.4 Replacement of Performance Bond

Provided that all conditions to Final Acceptance have occurred, the Contractor shall have the right to replace the Performance Bond with a replacement performance bond in an amount and in a form satisfactory to CDOT in its sole discretion (provided that it shall not be required to exceed 10 percent of the Contract Price) or with such other security as is Approved by CDOT in its sole discretion, guaranteeing due and punctual performance of all obligation of the Contractor under the Contract Documents which survive Final Acceptance.

20.4 Landscape Acceptance

CDOT will not give notice of Landscape Acceptance for plants until the end of the Landscape Establishment Period specified in Book 2, Section 17.

20.5 Assignment of Causes of Action

The Contractor hereby offers and agrees to assign to CDOT all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), arising from purchases of goods, services or materials pursuant to the Contract or any Subcontract. This assignment shall be made and become effective at the time CDOT tenders final payment to the Contractor, without further acknowledgment by the parties.

21.0 WARRANTIES

21.1 Warranties by Contractor

21.1.1 Project Warranties

The Contractor warrants that:

1. All design Work furnished pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State.
2. The completed Project shall be free of defects (including design Errors except to the extent that such defects are inherent in prescriptive specifications included in the Basic Configuration, unless: (i) the Contractor has actual or constructive knowledge of such defects; and (ii) the Contractor fails to request a change thereto by CDOT).
3. Materials and equipment furnished under the Contract Documents shall be of good quality and, when installed, shall be new.
4. The Work shall meet all of the requirements of the Contract Documents.
5. The specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use.
6. The Project shall be fit for use for the intended function.
7. It shall be a condition to achieving Final Acceptance that the Contractor shall assign all warranties to the person who has contracted with CDOT or any division thereof for the operation, maintenance, and/or repair of the Project.

21.1.2 Transfer of Title

Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for CDOT for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to the Site shall pass to CDOT, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by CDOT to Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until Contractor is removed from the Project.

21.1.3 Project Warranty Term

The Warranty term for each element of the Project shall commence upon Acceptance thereof by CDOT or acceptance thereof by the appropriate Person who will own such element. Subject to extension under Section 21.2, the Warranties regarding all elements of the Project shall remain in effect until one year after Final Acceptance, whichever is applicable, provided that the Warranty term for elements of the Project that will be owned by Persons other than CDOT (such as Utility Owners) shall remain in effect for such longer term as may be required under the applicable agreement. If CDOT determines that any of the Work has not met the standards set forth in this Section 21.1 at any time within the Warranty period, then the Contractor shall

correct such Work as specified below, even if the performance of such corrective work extends beyond the stated warranty period.

21.1.4 Corrective Work

Within seven days of receipt by the Contractor of notice from CDOT specifying a failure of any of the Work to satisfy the Contractor's Warranties, or of any Subcontractor representation, warranty, guarantee, or obligation which the Contractor is responsible to enforce, the Contractor and CDOT shall mutually agree when and how the Contractor shall remedy such violation; provided, however, that in case of an emergency as indicated by CDOT in its notice requiring immediate curative action, the Contractor and CDOT shall agree on a remedy immediately upon notice by CDOT of such emergency. If the Contractor does not use its best efforts to proceed to effectuate such remedy within the agreed time, or if the Contractor and CDOT fail to reach such an agreement within such 7 Day period (or immediately, in the case of emergency conditions), then CDOT, after notice to the Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by the Contractor. CDOT may agree to Accept Nonconforming Work in accordance with Section 5.7.2.
CDOT and the Contractor shall conduct a walkthrough of the Site prior to expiration of the Warranty period and shall produce a Punch List of those items requiring Warranty Work.

21.1.5 Costs of Correction of Work

All costs of correcting such rejected Work, including additional testing and inspections, shall be deemed included in the Contract Price. The Contractor shall reimburse CDOT and pay CDOT's expenses made necessary thereby within ten days after the Contractor's receipt of invoice therefore. The Contractor shall be responsible for obtaining any required Governmental Approvals or other consents from any other Person in connection with the Warranty Work.

21.2 Warranty of Corrected Work

The Warranties shall apply to all Work redone, repaired, corrected or replaced pursuant to the terms of the Contract. The Warranties as to each redone, repaired, corrected or replaced element of the Work shall extend beyond the original warranty period if necessary to provide at least a 1-year warranty period following Acceptance thereof by CDOT or acceptance thereof by the appropriate Person who will own such element.

21.3 Subcontractor Warranties

21.3.1 Assignment

Without in any way derogating the Contractor's own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, the Contractor shall obtain from all Subcontractors and cause to be extended to CDOT, appropriate representations, warranties, guarantees and obligations with respect to the design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors, including all such representations, warranties, guarantees, and obligations required to be furnished by Subcontractors under Book 2. All representations, warranties, guarantees, and obligations of Subcontractors shall: (i) be written so as to survive all CDOT and the Contractor inspections, tests, and approvals; and (ii) run directly to and be enforceable by the Contractor and/or CDOT and their respective successors and assigns. The Contractor hereby assigns to CDOT all of the Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by the Contractor from any of its Subcontractors.

21.3.2 Enforcement

Upon receipt from CDOT of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee, or obligation, the Contractor shall enforce or perform any such representation, warranty, guarantee, or obligation, in addition to the Contractor's other obligations hereunder. CDOT's rights under this Section 21.3.2 shall commence at the time such representation, warranty, guarantee, or obligation is furnished, and shall continue until the expiration of the Contractor's relevant Warranty (including extensions thereof under Section 21.2). Until such expiration, the Contractor shall be responsible for the cost of any equipment, material, labor (including re-engineering) or shipping, and the Contractor shall be required to replace or repair defective equipment, material or workmanship furnished by any Subcontractor.

21.4 No Limitation of Liability

The foregoing warranties are in addition to all rights and remedies available under the Contract Documents or applicable law, and shall not limit the Contractor's liability or responsibility imposed by the Contract Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud; provided, however, that, upon expiration of the Warranties, the Contractor shall have no further liability to CDOT hereunder for patent construction defects.

21.5 Warranty Beneficiaries

In addition to benefiting CDOT and its successors and assigns, the Warranties and Subcontractor warranties provided under this Section 21 shall inure to the benefit of, and shall be directly enforceable by, any local agencies and Utility Owners with respect to those portions of the Work owned or controlled by each such Person.

21.6 Remedies for Breach of Warranty

In addition to CDOT's other rights and remedies hereunder, at law or in equity, the Contractor shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work.

21.7 Disputes

Any disagreement between CDOT and the Contractor relating to this Section 21 shall be subject to the dispute resolution provisions contained in Section 20, provided that the Contractor shall proceed as directed by CDOT pending resolution of the dispute.

22.0 DOCUMENTS AND RECORDS

22.1 Escrowed Proposal Documents

Within three days after the Proposal Due Date, the Contractor shall have delivered its Escrowed Proposal Documents (EPD) to CDOT in a manner agreed to between CDOT and the Contractor. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to the Contract and concurrently with Approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation or Change Order shall be added to the EPD. The EPD will be held in such cabinet or otherwise maintained subject to Section 22.1.1 until all of the following have occurred: (i) 180 days have elapsed after expiration or earlier termination of the Warranties; (ii) all Disputes regarding the Contract have been settled, and (iii) final payment on the Contract has been made by CDOT and accepted by the Contractor.

22.1.1 Review of Escrowed Proposal Documents

The EPD shall be available during business hours for joint review by the Contractor and CDOT in connection with the resolution of Disputes, an audit under Section 22.3.5 (if the EPD are the subject of an audit) and as described in Section 22.1.6. CDOT shall be entitled to review all or any part of the EPD in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. CDOT shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that CDOT has executed and delivered to the Contractor a confidentiality agreement specifying that all proprietary information contained in such documents will be kept confidential, that copies of such documents will not be distributed to any third parties other than CDOT's agents, attorneys, and experts, the DRB, and that all copies of such documents will be either destroyed or returned to the depository (or to the Contractor if the EPD have been returned to it) upon final resolution of the Disputes. The foregoing shall in no way be deemed a limitation on CDOT's discovery rights with respect to such documents.

22.1.2 Property of Contractor

The EPD are, and shall always remain, the property of the Contractor, and shall be considered to be in the Contractor's possession, subject to CDOT's right to review the EPD as provided herein. CDOT acknowledges that the Contractor considers that the EPD constitute trade secrets or proprietary information. This acknowledgment is based upon CDOT's understanding that the information contained in the EPD are not known outside the Contractor's business, is known only to a limited extent and by a limited number of employees of the Contractor, is safeguarded while in the Contractor's possession, and may be valuable to the Contractor's business strategies, assumptions, and intended means, methods, and techniques. CDOT further acknowledges that the Contractor expended money in developing the information included in the EPD and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. CDOT acknowledges that the EPD and the information contained therein are being provided to CDOT only because it is an express prerequisite to award of the Contract.

22.1.3 Representation and Warranty

The Contractor represents and warrants that the EPD provided concurrently with the Proposal constitute all of the information used in the preparation of its Proposal and agrees that no other Proposal preparation information will be considered in resolving Disputes or Claims.

The Contractor also agrees that the EPD are not part of the Contract and that nothing in the EPD shall change or modify the Contract.

22.1.4 Contents of Escrowed Proposal Documents

The EPD provided with the Proposal shall, at a minimum, clearly detail how the components of the Guaranteed Maximum Price were determined and shall be adequate to enable a complete understanding and interpretation of how the Contractor arrived at the Guaranteed Maximum Price. The EPD provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined and shall be adequate to enable a complete understanding and interpretation of how the Contractor arrives at its quotation and/or Change Order price. All Work shall be separated into subitems as required to present a complete and detailed estimate of all costs. Crews, equipment, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into the Contractor's usual cost categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in the Contractor's usual format. The Contractor's allocation of plant and equipment, indirect costs, contingencies, mark-up, and other items to each direct cost item shall be clearly identified. The EPD shall itemize the estimated costs of the Payment and Performance Bond and the insurance premiums for each coverage required to be provided by the Contractor under Section 9. The EPD shall include all assumptions, quantity takeoffs, rates of production, the Contractor internal equipment rental rates and progress calculations, quotes from Subcontractors (including Suppliers), memoranda, narratives, and all other information used by the Contractor to arrive at the Guaranteed Maximum Price or Change Order price, as applicable. For each item of Work, the EPD shall itemize any related amounts not included in the stated price for such item such as any amount allocated for contingency.

22.1.5 Format of Escrowed Proposal Documents

The Contractor shall submit the EPD in the format actually used by the Contractor in preparing its Proposal. It is not intended that the Contractor perform any significant extra work in the preparation of these documents. However, the Contractor represents and warrants that the EPD related to the Proposal have been personally examined prior to delivery to CDOT by an authorized officer of the Contractor and that they meet the requirements of Section 22.1.4 and are adequate to enable a complete understanding and interpretation of how the Contractor arrived at its Guaranteed Maximum Price. The Contractor further represents, warrants, and covenants that the EPD related to each Change Order will be personally examined prior to delivery to escrow by an authorized officer of the Contractor and that they meet the requirements of Section 22.1.4 and will be adequate to enable a complete understanding and interpretation of how the Contractor arrived at its Change Order price.

22.1.6 Review by CDOT

CDOT may, at any time, conduct a review of the EPD to determine whether it is complete. If CDOT determines that the EPD are incomplete, CDOT may request the Contractor to supply data to make the EPD complete. The Contractor shall provide all such data within three Working Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. The Contractor shall have no right to add documents to the EPD except upon CDOT's request. At CDOT's option, which may be exercised at any time, the EPD associated with any Change Order or contract amendment shall be reviewed, organized, and indexed as described in the ITP, Section 5.12.

22.1.7 Confidentiality

The EPD shall at all times be treated as proprietary and confidential non-public information and shall be used only for purposes described in Section 22.1.1. At the Contractor's request, confidentiality agreements shall be executed and delivered to the Contractor by CDOT's employees or agents who review or have access to the EPD.

22.2 Subcontractor Pricing Documents

The Contractor shall require each first tier Subcontractor to submit to the Contractor a copy of all documentary information used in determining its Subcontract price, immediately prior to executing the Subcontract or Change Orders or amendments thereto, to be held in the same manner as the EPD and which shall be accessible by the Contractor, CDOT, the DRB, and other dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor stating that its EPD constitutes all the documentary information used in establishing its Subcontract price. Each Subcontract that is not subject to the foregoing requirement shall include a provision that requires the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to the Contractor and/or CDOT in connection with any disputed change order made by such Subcontractor.

22.3 Project Records

22.3.1 Maintenance of Records

The Contractor shall maintain at the Contractor's Project Manager's office in the State a complete set of all books, records and documents prepared or employed by the Contractor with respect to the Project.

22.3.2 Audit and Inspection Rights

The Contractor shall grant to CDOT, FHWA, the City and County of Pueblo and the U.S. Comptroller General and their respective authorized representatives, such audit and inspection rights and allow such Persons such access to and the right to copy such books and records (including all tax returns and supporting documentation filed with any Governmental Persons) as such Persons may reasonably request from time to time in connection with the issuance of Change Orders, the resolution of disputes, and such other matters as such Persons reasonably deems necessary for purposes of complying or verifying compliance with the Contract and Legal Requirements, including responding with requests pursuant to the Colorado Open Records Act. The Contractor shall grant to Utility Owners and their respective authorized representatives, such audit and inspection rights and all such Persons access to and the right to copy such books and records as such Persons may request in connection with the resolution of disputes or such other matters as such Persons reasonably deems necessary for purposes of complying or verifying compliance with the Utility-related Contractual or Utility Agreement requirements

22.3.3 Audit of Time and Materials Work

Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates the Contractor has been over-credited under a previous progress

report or progress payment, that overcredit will be credited against current progress reports or payments.

22.3.4 Change Order Pricing Data

For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, such Persons and their representatives have the right to examine all books, records, documents, and other data Contractor related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

22.3.5 Claims Audits

All Claims filed against CDOT shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of CDOT or by an auditor under contract with CDOT. No notice is required before commencing any audit before 60 days after Final Acceptance. Thereafter, CDOT shall provide 20 days notice to the Contractor, any Subcontractors or their respective agents before commencing an audit. The Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to CDOT, for the audit during normal business hours. The Contractor, Subcontractors, and their agents shall cooperate with the auditors. Failure of the Contractor, Subcontractors, or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or to permit the auditors access to the books and records of the Contractor, Subcontractors, or their agents shall constitute a waiver of the claim and shall bar any recovery there under. At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports.
2. Union agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and requisitions.
8. Material cost distribution worksheet.
9. Equipment records (list of company equipment, rates, etc.).
10. Subcontractors' (including Suppliers) and agents' invoices.
11. Subcontractors' and agents' payment certificates.
12. Canceled checks (payroll and Suppliers).
13. Job cost report.
14. Job payroll ledger.
15. General ledger.

16. Cash disbursements journal.
17. E-mail, letters, and correspondence.
18. Network servers, data storage devices, backup media.
19. All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim.
20. Work sheets used to prepare the Claim establishing the cost components for items of the Claim including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals and the rates for the individuals.

Full compliance by the Contractor with the provisions of this Section 22.3.5 is a contractual condition precedent to the Contractor's right to seek relief under Section 20. The Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 22.3.

22.4 Retention of Records

The Contractor shall maintain all records and documents relating to the Contract (including copies of all original documents delivered to CDOT) at the Contractor's Project Manager's office in the State until seven years after the earlier to occur of: (i) the date Final Acceptance is achieved; or (ii) the termination date. If Approved by CDOT, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents. The Contractor shall notify CDOT where such records and documents are kept.

Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books and other evidence bearing on the Contractor's costs and expenses under the Contract Documents. The Contractor shall make these records and documents available for audit and inspection to CDOT, at the Contractor's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to the Contractor).

22.5 Colorado Open Records Act

22.5.1 Applicability of Act

The Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials including the EPDs in the Contractor's or CDOT's possession directly related to the Project, including materials submitted to CDOT by the Contractor, are subject to the provisions of the Colorado Open Records Act. The Contractor shall be solely responsible for all determinations made by it under such Act and for clearly and prominently marking each and every page or sheet of its materials with trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data as it determines to be appropriate. The Contractor is advised to contact legal counsel concerning such act and its application to the Contractor.

22.5.2 Confidential Materials

If any of the materials submitted by the Contractor to CDOT are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or

geophysical data by the Contractor, CDOT will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will CDOT be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of CDOT, except for any disclosure of trade secrets or proprietary information in violation of the confidentiality agreement described in Section 22.1.1.

22.5.3 Contractor to Defend Against Disclosure Request

In the event of litigation concerning the disclosure of any material submitted by the Contractor to CDOT, CDOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and the Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk.

22.5.4 Cooperation with CDOT Regarding Colorado Open Records Act Requests

In the event CDOT receives a Colorado Open Records Act request for documents that are in the custody and control of the Contractor, the Contractor shall cooperate with CDOT in responding to the request in a timely manner under the Colorado Open Records Act.

23.0 COOPERATION AND COORDINATION WITH OTHERS

23.1 Cooperation with Other Contractors

CDOT reserves the right to perform and to contract with others to perform other or additional work on or near the Site. The Contractor shall cooperate with CDOT and such other contractors to the extent reasonably necessary for the performance by CDOT and such other contractors of their work, and shall cause its employees, agents, officers, and Subcontractors and other Persons for whom the Contractor may be contractually or legally responsible to so cooperate. If other separate contracts are awarded by CDOT, which affect the Work, the Contractor shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by other contractors.

23.2 Interference by Other Contractors

If the Contractor asserts that any of CDOT's other contractors have hindered or interfered with the progress or completion of the Work, then the Contractor's sole remedy shall be to seek recourse against such other contractors.

24.0 MISCELLANEOUS PROVISIONS

24.1 Amendments

The Contract may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

24.2 Waiver

24.2.1 No Waiver of Subsequent Rights

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

24.2.2 Custom Does not Constitute Waiver

No act, delay, or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

24.2.3 Waivers Must be in Writing

No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

24.3 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of CDOT and the Contractor and their permitted successors, assigns and legal representatives.

24.3.1 Assignment by CDOT

CDOT may assign all or part of its right, title and interest in and to the Contract, including rights with respect to the surety bonds required hereunder and any other performance security provided, to any Person with the prior written approval of the Contractor.

24.3.2 Assignment by Contractor

The Contractor may assign its rights to receive payment under the Contract Documents and may subcontract Work in accordance with the Approved Subcontracting and Small Business Plan and in compliance with the requirements of the Contract Documents. The Contractor shall

not otherwise sublet, transfer, assign or dispose of any portion of the Contract, or delegate any of its duties hereunder, except with CDOT's prior written Approval. The Contractor's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve the Contractor of its responsibility for the Work assigned or delegated, unless CDOT, in its sole discretion, has Approved such relief from responsibility.

24.4 Designation of, and Cooperation with Representatives

24.4.1 Designation of Representatives

Concurrently with execution hereof, CDOT and the Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 24.10. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to bind CDOT or the Contractor.

24.4.2 Cooperation

The Contractor shall cooperate with CDOT and all representatives of CDOT designated as described above.

24.5 Gratuities

Neither the Contractor nor any of its employees, agents and representatives shall offer or give to an officer, official, or employee of CDOT or the State of Colorado gifts, entertainment, payments, loans, or gratuities. The Contractor represents and warrants that it has not previously offered or given any gifts, entertainment, payments, loans, or gratuities in violation of such prohibitions.

24.6 Survival

The dispute resolution provisions contained in Section 19, and all other provisions, which by their inherent character should survive termination of the Contract, shall survive the termination of the Contract.

24.7 Limitation on Third-Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the parties to the Contract Documents with respect to such third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between CDOT and a Subcontractor or any other Person except the Contractor.

24.8 No Personal Liability

CDOT's authorized representatives are acting solely as agents and representatives of CDOT when carrying out the provisions of or exercising the power or authority granted to them under

the Contract Documents. They shall not be liable either personally or as employees of CDOT for actions in their ordinary course of employment.

24.9 Notices and Communications

24.9.1 Delivery of Notices

Notices under the Contract Documents shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by facsimile communication followed by a hard copy or with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence with the Contractor shall be sent to the Contractor's Project Manager or as otherwise directed by such Project Manager. The address for such communications shall be:

[add name]

All communications to CDOT shall be marked with CDOT's project identification number and shall be delivered to CDOT's Project Manager, with copies to such additional Persons as may be designated by CDOT's Project Manager, at the address set forth below:

Mr. Don Garcia
I-25 Ilex Design Build Project Manager
Colorado Department of Transportation
Region Two South Program
902 Erie Avenue
Pueblo, Colorado 81001
Donf.Garcia@state.co.us

All communications to CDOT after Contractor Selection shall be marked with CDOT's project identification number and shall be delivered to CDOT's Project Manager, with copies to such additional Persons as may be designated by CDOT's Project Manager, at the address set forth below:

Mr. Scott Dalton
I-25 Ilex Design Build Project Manager
Colorado Department of Transportation
Region Two South Program
902 Erie Avenue
Pueblo, Colorado 81001
Scott.Dalton@state.co.us

In addition, copies of all notices regarding disputes, termination, and default notices shall be delivered to the following person(s):

Kathryn E. Young
First Assistant Attorney General
Office of the Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203
Telephone: (720) 508-6609
Fax: (720) 508-6032

24.9.2 Receipt of Notices

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by fax after 4:00 p.m. Mountain Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. Mountain Standard or Daylight Time (as applicable) shall be deemed received on the first Working Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

24.9.3 Copies of Correspondence to CDOT

The Contractor shall copy CDOT on all written correspondence pertaining to the Contract between the Contractor and any Person other than the Contractor's Subcontractors, consultants and attorneys.

24.10 Further Assurances

The Contractor shall promptly execute and deliver to CDOT all such instruments and other documents and assurances as are reasonably requested by CDOT to further evidence the obligations of the Contractor hereunder, including assurances regarding assignments of Subcontractors contained herein.

24.11 Severability

If any clause, provision, Section or part of the Contract is ruled invalid under Section 20 or otherwise by a court of competent jurisdiction, then the parties shall: (i) promptly meet and negotiate a substitute for such clause, provision, Section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, Section or part.

24.12 Headings

The captions of the Sections of the Contract Documents are for convenience only and shall not be deemed part of the Contract or considered in construing the Contract.

24.13 Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the State of Colorado. Venue for any arbitration proceeding in connection with the Contract shall be Denver, Colorado, and venue for any legal action in connection with the Contract shall lie in the District Court of Colorado for the City and County of Denver.

24.14 Special Provisions

The following Special Provisions are required to be included in all CDOT Contracts except where noted in *italics*:

1. CONTROLLER'S APPROVAL. **CRS §24-30-202(1)**. This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. **CRS §24-30-202(5.5)**. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY. 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, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. 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 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. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. 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 shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW. Contractor shall strictly 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.

6. CHOICE OF LAW. 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. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. 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.

9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST**. **CRS §§24-18-201 and 24-50-507**. 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.

10. VENDOR OFFSET. **CRS §§24-30-202 (1) and 24-30-202.4**. [***Not Applicable to intergovernmental agreements***] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. **CRS §8-17.5-101**. [***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 Department program established pursuant to CRS §8-17.5-102(5)(c), 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 **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), 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 CRS §8-17.5-101 et seq., 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.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

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24.15 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

24.16 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** 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 and accept personal responsibility for any and all damages the State may incur for any errors in such representation.**

CONTRACTOR: **Name:** _____ **CDOT Vendor #** _____ **Title:** _____ _____ ***Signature** **CORPORATIONS** **(A Corporate Seal or Attestation is Required)** **Attest (Seal) By:** _____ **(Corporate Secretary or Equivalent)**	**STATE OF COLORADO** **John Hickenlooper, GOVERNOR** **By:**_____ **For The Executive Director** **Colorado Department of Transportation** **LEGAL REVIEW:** **John W. Suthers, Attorney General** **By:**_____

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 Contactor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER **ROBERT JAROS CPA, MBA, JD** **By:**_____ **Date:**_____