



Colorado Department of Transportation

&

Contractor

BOOK 1

CONTRACT

*C-470 Tolled Express Lanes Segment 1
Design-Build Project*

FINAL REQUEST FOR PROPOSAL- Addendum#2

February 19, 2016

PROJECT NO.: NHPP 4701-124

Sub Account No.: 18999



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EXHIBITS

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Exhibit D	Key Personnel
Exhibit E	VECP Sample Calculation
Exhibit F	Intentionally Left Blank
Exhibit G	Cost Analysis for Request for Change Order
Exhibit H	Certification Statement
Exhibit I	Letter of Vested Interest
Exhibit J	Disadvantaged Business Enterprise Requirements
Exhibit K	Form 1378
Exhibit L	Intentionally Left Blank
Exhibit M	Small Business and Workforce Incentives
Exhibit N	Intentionally Left Blank
Exhibit O	Affirmative Action Standard Special Provision
Exhibit P	On the Job Training Standard Special Provision.
Exhibit Q	Pertinent Nondiscrimination Authorities
Exhibit R	Certification Regarding TIFIA Loan Agreement
Exhibit S	Certification Regarding TIFIA Loan Agreement (Joint Venture, Partner, Owner, Guarantor)
Exhibit T	Option Letter
Exhibit U	Drawdown Worksheet

THIS Design/Build Contract is entered into this ___ day of _____, 2015, 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 generally consists of adding two tolled express lanes westbound from I-25 to Colorado Boulevard, one tolled express lane westbound from Colorado Boulevard to Wadsworth Boulevard, and one tolled express lane eastbound from just west of the Platte River to I-25.
2. Safety and operational improvements between I-25 and Quebec Street via adding direct-connect ramps from SB I-25 to the WB C-470 tolled express lanes, NB I-25 to the WB C-470 tolled express lanes, and WB E-470 to the WB C-470 general purpose lanes.
3. Adding auxiliary lanes at select locations; improving portions of on-ramps and off-ramps to current standards (including ramp metering where appropriate); realigning substandard curves.
4. Full reconstruction of the pavement.
5. Widening existing structures throughout the corridor; replacing the bridges over the South Platte River; constructing new bridges for the direct connect ramps at I-25
6. Adding grade separations for the multi-use trail at Quebec Street and Colorado Boulevard.
7. Installing tolling/Intelligent Transportation Systems (ITS) elements.
8. Drainage and water quality treatment system.
9. Environmental mitigation as required in the Revised Environmental Assessment (July 2015), and “Decision Document (November 2015)”.

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.

1.0 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. Book1, as executed by CDOT and the Contractor, including all exhibits (Design/Build Contract).
2. Book 2, Section 1, including Exhibits A,B,C, and D (Technical Requirements).
3. Book 2, remaining sections, including all Appendices, Exhibits (Technical Requirements), and ATCs that were included in the Proposal Documents
4. Book 3 (Applicable Standards, Data and Reports)
5. Book 4 (Contract Drawings)
6. 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 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 or Section 19.

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) 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 Final 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 Additional Requested Elements (ARE's) incorporated into the Contract Documents.
5. In addition to the ATCs, comply with all ATC 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.codot.gov/projects/c470ExpressLanes>, 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, and, for Government Approvals that the Contractor is required to obtain, CDOT will assist the Contractor to the best of its ability to obtain these Government 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.

2.3.13 Certifications Regarding TIFIA Loan Agreement

The Contractor acknowledges that CDOT, through the High Performance Transportation Enterprise (“HPTE”), a government-owned business within and a division of CDOT, anticipates entering into a TIFIA Loan Agreement with the United States Department of Transportation (the “TIFIA Lender”) for purposes of providing a portion of the financing necessary to undertake the Project. Contractor further acknowledges that CDOT and HPTE are required to make certain additional representations and warranties to the TIFIA Lender as of the effective date of the TIFIA Loan Agreement, as well as on the date any subsequent disbursement of the TIFIA Loan is requested or made. In consideration of such necessity, Contractor agrees to provide to CDOT a certification in the Form attached hereto as Exhibit R, to be dated as of the effective date of the TIFIA Loan Agreement, and to provide updated certificates from time to time upon CDOT’s written request. The Contractor further agrees, as an express condition of entering into this Contract, to cause all joint venture members, partners, owners or other guarantors, if applicable, to likewise enter into a certification in the Form attached hereto as Exhibit S, to be dated as of the effective date of the TIFIA Loan Agreement, and to provide updated certificates from time to time upon CDOT’s written request.

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. 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. AREs included in the Contractor's Proposal and Approved ATCs (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 in accordance with Book 2. 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 Approval in accordance with Book 2. Within ten Working Days after Contractor's submittal of the Initial Schedule to CDOT, CDOT shall either Accept the Initial Schedule and issue NTP2 or provide Contractor with reasons why it is unable to Accept the Initial Schedule. In the event that CDOT fails to either Accept the Initial Schedule and issue NTP2 or provide reasons why it is unable to Accept the Initial Schedule within ten Working Days after Contractor's submittal of the 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 Recovery Schedule

The Contractor shall submit a Recovery Schedule in accordance with Book 2, Section 2. All costs incurred by Contractor in preparing and achieving the Recovery Schedule shall be borne by Contractor and shall not result in a change to the Contract Price, except to the extent that a change in the Contract Price is permitted in accordance with Section 13.

If a Recovery Schedule would be required in order to meet a Completion Deadline due to an event which is CDOT's responsibility as described in Section 13.3.1.2, CDOT shall have the right in its sole discretion to decide whether to allow a time extension (with no extended overhead or other delay or disruption damages payable except as provided in Section 13.5.2) or to require implementation of the Recovery Schedule without such time extension. In such event Contractor shall submit to CDOT at least two alternative Change Order forms, one of which shall include a Recovery Schedule and show the proposed Acceleration Costs associated with the Recovery Schedule, and the other of which shall provide for an extension of the Completion Deadline without any increase in the Contract Price except as provided in Sections 13.3.1.1 and 13.5.2. If CDOT elects to implement the Recovery Schedule in lieu of a time extension, CDOT shall issue a Change Order increasing the Contract Price to account for additional Acceleration Costs, if any. If it is not feasible to recover to the original Completion Deadline or if Contractor believes that the costs associated with such a recovery are prohibitive, then the Contractor shall recommend a date to be shown in the alternative Change Order form.

In the event that the Contractor fails to provide an Approved Recovery Schedule within 30 days from the Contractor's receipt of a notice to do so, the Contractor shall have no right to receive progress payments until such time as Contractor has prepared and CDOT has Approved such Recovery Schedule.

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 and shall determine if a Change Order is allowed pursuant to Section 13.

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 Book 4 (Contract Drawings). 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 Baseline 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 10 feet of the horizontal centerline location indicated on the Utility Plans, included with the Reference Documents (with no limitation on vertical location).
2. 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, the Contractor shall be fully responsible for obtaining the New Environmental Approval and any other environmental approvals 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.

7.0 CIVIL RIGHTS REQUIREMENTS

7.1 Equal Employment Opportunity (EEO) and Labor

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.

7.1.1 Affirmative Action and EEO 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 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 Labor Compliance/Davis Bacon Minimum Wages

The Contractor must comply with the U.S. Department of Labor, Davis Bacon Minimum Wages as provided in Exhibit C, Federal Requirements.

7.1.3 On-the-Job Training

The Contractor will be required to develop and implement a Training Plan in order to provide training opportunities on the C 470 Project. CDOT OJT Special Provision, Exhibit P includes the requirements for contractors. The Contractor will identify training opportunities within its own workforce and that of its subcontractors in order to reach the Project goal.

7.1.3.1 OJT Goal

Pursuant to Exhibit P, the Regional Civil Rights Manager has determined the on the job training hours for this Contract is 20,000 hours.

7.1.3.2 OJT Plan Requirements

The Contractor shall submit a draft Training Plan with its proposal and a final Training Plan to CDOT within 60 days after Notice to Proceed 1 for Approval. The Contractor is responsible for administering and reporting on all Training Plan accomplishments. The Training Plan is intended to be a living document and will be updated or revised as necessary during the course of the Project All subsequent revisions to the Training Plan will be submitted to CDOT for approval. The training Plan shall include the following elements:

- (i) Identify the number and description of the skilled craft areas where OJTs/apprentices will be used in construction activities;

- (ii) Identify activities, training and outreach to be conducted by the Contractor to increase minority and woman participation on the project;
- (iii) A description of the how the Contractor will monitor hours completed, and training provided; and
- (iv) Identify the Contractor's point of contact for administration of the Training Plan.

7.1.3.3 OJT Tracking and Reporting

The Contractor shall keep records regarding the progress of trainees/apprentices on the Project, including subcontractor participation. A monthly report will be submitted to CDOT including the following information: Total labor hours expended on the Project to date, a list of trainees/apprentices by providing full name, employer, work code, start date, skilled craft program registered in (including verification of enrollment), total hours worked in current month, pay rate, total hours worked to date on the Project, and supervisor full name. The report will include a signature of the Contractor's representative certifying its accuracy. CDOT may withhold the monthly Project payment, or a portion thereof, until the monthly report has been provided to CDOT for the payment period.

Semi-annually the Contractor shall also submit an updated plan as well as an assessment of current OJT participation and a revised schedule with activities to ensure the goal is met.

7.1.3.4 OJT Disincentive Penalty

In the event that the Contractor fails to meet the training goal, CDOT may assess a disincentive penalty as further described in the CDOT OJT Special Provision. CDOT will provide the Contractor with a written notice at Final Acceptance of the Project informing the Contractor of the noncompliance with this provision which will include a calculation of the disincentive to be assessed.

7.2 Title VI of the Civil Rights Act Requirements

7.2.1 Title VI Assurance Appendix A

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

7.2.1.1 Compliance with Regulations:

The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation or FHWA as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract. The current applicable authorities are listed in Exhibit Q.

7.2.1.2 Non-discrimination:

The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

7.2.1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment:

In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age or disability.

7.2.1.4 Information and Reports:

The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to CDOT or FHWA as appropriate, and will set forth what efforts it has made to obtain the information.

7.2.1.5 Sanctions for Noncompliance:

In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, CDOT will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
- b. cancelling, terminating, or suspending a contract, in whole or in part.

7.2.1.6 Incorporation of Provisions:

The contractor will include the provisions of paragraphs 7.2.1.1-7.2.1.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to subcontract or procurement as CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request CDOT to enter into any litigation to protect the interests of CDOT. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

7.2.2 Disadvantaged Business Enterprise

CDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. The Contractor shall comply with the requirements set forth in Exhibit J, Disadvantaged Business Enterprise Requirements, which includes making good faith efforts to meet the DBE goals of 10% for design and 12% for construction established for the Project.

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 owing 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:

7.6.1. Retainage

If the Contractor chooses to withhold retainage from Subcontractor, 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.

7.6.2 Required Terms

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, 7.2.2, 7.4, 9.2.1, 11.7.1, 13.7, 14, 15, 19, 22, 23, 24.6, and Section 1(b) of Exhibit J, DBE Requirements, specifically including an agreement by the Subcontractor to be joined in any dispute resolution proceeding pursuant to Section 19 if such joinder 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. Subcontracts over \$10,000 must also include terms set forth in 7.1.1.

7.7 Subcontract Data & Reporting

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. A Form 205 must be submitted and approved for each Subcontractor prior to commencement of the Subcontractor's work on the Project. Monthly the Contractor shall provide to CDOT a Subcontractor report (including suppliers), divided according to the design and construction work, detailing the following:

1. Name of Subcontractor;
2. Whether the Subcontractor is a DBE;
3. Total contract amount;
4. The amount and type of work completed;
5. Total payments to date;
6. Most recent payment and its date;
7. Payment due;
8. And status of the work (i.e. in progress, ended, etc.).

The monthly report shall include also subtotals for to-date DBE participation on the Contract, the total design and construction work amounts, and the percentage subbed to-date. If any subcontractors have not paid within seven days of receipt of payment to the Contractor or a higher tier subcontractor or have not received payment for invoices that have been outstanding for greater than sixty (60) days, as part of the monthly reporting, the Contractor must identify which subcontractors have not been paid and provide CDOT with an explanation of such delay. The Contractor 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 ensure 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 Contract 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 Contract 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

9.1 General Insurance Requirements

9.1.1 Evidence of Insurance

The Contractor shall provide evidence of insurance in a form acceptable to CDOT as proof of compliance for all insurance requirements contained in this Section 9. For all Work that occurs on the Regional Transportation District (RTD) property, RTD shall be named as an additional insured on the insurance policies, except for the workers' compensation and professional liability policies. These insurance requirements are applicable to the Contractor only. When the Contractor requires a Subcontractor to obtain insurance coverage, the types and minimum limits of coverage may be different than those required in this Section 9. The evidence of insurance shall provide for ten Days' written notice of cancellation for nonpayment of premiums, or 45 days' written notice of cancellation for any other reason, including nonrenewal. Evidence of the insurance that contains the phrase "will endeavor to" preceding all references to provisions of notice by the insurance company shall be unacceptable. A Certificate of Insurance indicating certain specified amendments and attachments shall be acceptable, but CDOT reserves the right to request a complete certified copy of the policy, at CDOT's sole discretion. Contractor shall not commence any Work until it has complied with these insurance requirements and CDOT has Approved the evidence of insurance. If the Contractor is performing Work and a Public Entity, Utility or other interested party requires a certificate of insurance, the Contractor shall be responsible to provide such certificate(s) listing that party as an additional insured as required by contract. The additional insured requirements for these entities is applicable to the Contractor only.

9.1.2 A.M. Best Rating

All insurance companies providing policies obtained to satisfy the insurance requirements must have an A.M. Best rating of A- VII or better.

9.1.3 Full Force and Effect

The commercial general liability, excess (umbrella) liability, contractor's pollution liability and professional liability insurance coverage requirements will remain in full force and effect throughout the term of all warranties or as otherwise required by the Contract Documents, whichever is greater.

9.1.4 No Recourse

There shall be no recourse against the State for payment of premiums or other amounts with respect to the insurance provided by the Contractor, or for deductibles under these policies. This provision does not affect any rights the Contractor is entitled to pursuant to Section 13.

9.1.5 Indemnification

The insurance coverage provided hereunder shall support, but is not intended to limit, the Contractor's indemnification obligations under Section 18.

9.2 Contractor Provided Insurance

The Contractor shall procure, at its own expense, insurance acceptable to CDOT, as described herein, and shall maintain such insurance, as specified herein, in accordance with the requirements stated in Section 9.1, or as otherwise Approved by CDOT at its sole discretion.

9.2.1 Workers' Compensation and Employer's Liability Coverage

The Contractor shall provide Workers' Compensation coverage that is in compliance with all Legal Requirements (including C.R.S. § 8-44-101, et seq.) and Employer's Liability with minimum limits of \$1,000,000 by disease each person, \$1,000,000 by disease aggregate, and \$1,000,000 each person by accident.

9.2.2 Commercial General Liability Insurance

The Contractor shall provide Commercial General Liability broad form coverage for Bodily Injury, Property Damage, Personal Injury and Advertising Liability written on an occurrence form that shall be no less comprehensive or more restrictive than the coverage provided by Insurance Services Office (ISO) for CG 00 01 10 01.

1. Limits of liability. General liability:
 - a. \$1 million - each occurrence.
 - b. \$2 million - general aggregate (annually). The general aggregate limit shall not be diminished by claims on other projects.
 - c. \$1 million - personal injury/advertising liability.
 - d. \$2 million - products/completed operations liability aggregate.
2. Such insurance shall include, by its terms or appropriate endorsements, Bodily Injury, Property Damage, Legal liability, Personal Injury, Blanket Contractual, Independent Contractors, Premises, Operations and Products and Completed Operations. Such insurance shall also include blanket coverage for Explosion, Collapse, and Underground (XCU) hazards.
3. Products and Completed Operations coverage shall be continued for a minimum of eight years from Project Completion.
4. CDOT shall be an additional insured with respect to liability arising out of acts or omissions of the Contractor or its Subcontractors, whether on or off the Site.

9.2.3 Automobile Liability Insurance

The Contractor shall provide commercial automobile liability insurance covering all owned/leased, non-owned and hired vehicles used in the performance of Work, both on and off the Site, including loading and unloading.

The following limits of liability and other requirements shall apply:

1. \$2 million combined single limit for bodily injury and property damage liability.
2. Coverage shall be provided on ISO form number CA 00 01 10 01 or equivalent.
3. The policy will include uninsured and underinsured, in compliance with Colorado law.
4. The policy shall be endorsed to include Motor Carrier Act endorsement – Hazardous Materials Cleanup (MCS-90), if applicable.

9.2.4 Excess (Umbrella) Liability Insurance

The Contractor shall provide Umbrella or Excess Liability insurance with limits of not less than \$10 million per occurrence and \$10 million annual aggregate which will provide bodily injury, personal injury and property damage liability at least as broad as the primary coverages set forth above, including Employer's Liability, Commercial General Liability and Commercial Automobile Liability, as set forth in Sections 9.2.1, 9.2.2, and 9.2.3.

9.2.5 Contractor's Pollution Legal Liability Coverage

The Contractor shall provide pollution legal liability coverage for the Project. The following limits and conditions shall apply:

1. The limit of liability per occurrence shall be at least \$5 million and the total Project aggregate shall be at least \$10 million.
2. CDOT shall be named as an additional insured (to the extent commercially available as determined by CDOT).
3. The policy form shall be written on a claims made form. The extended reporting period must be at least 24 months following completion of the Work.
4. CDOT reserves the right to purchase a Project-specific policy in lieu of the Contractor's pollution legal liability policy.

9.2.6 Professional Liability Insurance

The Contractor or Subconsultant shall provide Project Professional Liability Coverage for the protection of all design professionals associated with the Project as follows:

1. Limits of Liability will be at least \$10 million per claim and an aggregate of at least \$10 million. Insurance will be purchased on a project specific basis, therefore ESB and DBE firms will be covered as long as the ESB and DBE firms' contracts are with the Contractor.
2. The policy will have an eight-year extended reporting period from the Final Acceptance Date with respect to all events that occurred, but were not reported, during the term of the policy.
3. The policy shall protect against any negligent act, error or omission arising out of design or engineering including environmental design or consulting with respect to the Project.
4. The policy shall have a retroactive date of no later than the date the first design and/or engineering Activities have been conducted by the design professionals and contractors associated with the Project.
5. Contractor shall provide insurance for construction management activities in the amounts required in this Section 9.2.6, per the Contractor's usual business practices including, but not limited to, purchasing a construction management professional policy or an errors and omissions policy.

If the Subconsultant provides Project Professional Liability Coverage, Contractors shall confirm that all requirements of this section have been met prior to the start of design Work. The following language could be included and give the option to the contract submitting their bid: From the date of this Agreement until eight years after the Substantial Completion Date professional liability insurance with limits of liability not less than ten million dollars (\$10,000,000) per claim and ten million dollars (\$10,000,000) annual aggregate for each of the

Subcontractors performing principal design work. The Contractor will ensure that all professionals involved in the Work carry professional liability insurance for limits that are usual to their specific disciplines and that prudent practitioners would normally carry. This insurance may be written on a claims made form

9.2.7 Railroad Protective Insurance

In addition to the above, the Contractor shall furnish evidence to CDOT that, with respect to the operation the Contractor or any of its subcontractors perform, the Contractor has provided for and on behalf of the Railroad Company, and each Railroad Company when more than one is involved, Railroad Protective Public Liability and Property Damage Insurance provided for a combined single limit of Five Million Dollars (\$5,000,000.00) per occurrence with an aggregate limit of Ten Million Dollars (\$10,000,000,000) applying separately for each annual period for:

1. All damages arising out of bodily injuries to or death of one or more persons.
2. All damages arising out of injury to or destruction of property.

Said policy or policies of insurance shall be deemed to comply with the Railroad Protective Insurance requirements if each of said policies contains a properly completed and executed "Railroad Protective Liability Form," copies of which are available from CDOT's Agreements Engineer, Colorado Department of Transportation, 4201 E. Arkansas Ave., Denver, CO, 80222. All required policy or policies of insurance shall be submitted to the Project Director for transmittal to the Railroad Company's Insurance Department.

The Railroad Protective Insurance shall be carried until all Work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance of CDOT. The Railroad Company shall be furnished with the original of each policy carried on its behalf.

9.2.8 Builder's Risk

Unless otherwise expressly stated in the Supplementary General Conditions (e.g. where the State elects to provide for projects with a completed value of less than \$1,000,000), the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the Probable Maximum Loss value at all times including any subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the State has an insurable interest in the property or the Date of Notice specified on the Notice of Acceptance, State Form SBP-6.27 or whichever is later.

This insurance shall include interests of the State, the Contractor, and Subcontractors in the Project as additional named insured.

All associated deductibles shall be the responsibility of the Contractor. Such policy may have a deductible clause but not to exceed twenty five thousand dollars (\$25,000) except the deductible for typical perils such as earthquakes, flood, and wind may not exceed fifty thousand

dollars (\$50,000) and the deductible for Work in a one hundred (100) year flood plain may not exceed two hundred and fifty thousand dollars (\$250,000).

Property insurance shall be on an “all risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris, removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architectural and Engineering Services and expenses required as a result of such insured loss.

Contractor shall maintain Builders Risk coverage including partial use by CDOT. The Contractor shall waive all rights of subrogation as regards to the State and CDOT, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment. For damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. The Contractor shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts.

Upon request by CDOT, the amount of such insurance shall be increased to include the cost of any additional Work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Contractor shall be reimbursed for this cost at its share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

9.2.8.1 Delay in Start-Up Coverage

Contractor shall purchase and maintain such insurance as will insure CDOT and HPTE against loss of use and soft costs (including, for certainty, additional interest charges and loss of toll revenues) due to delay in completion as a result of fire, physical loss or damage by an insured peril. The amount of coverage shall be at least ten million dollars (\$10,000,000) as provided by the State as an accurate valuation of the loss of use and soft cost exposure amount.

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

The costs submitted on Form J of the Instructions to Proposers shall be the "Contract Price" if the Form J costs are equal to or lower than the Upset Amount identified in the Instructions to Proposers. The Contract Price shall be full compensation for the Work and all other obligations to be performed by the Contractor under the Contract Documents. The Contract Price, and maximum payable to Contractor, shall be \$ [REDACTED]. The Contract Price may be increased or decreased only by a Change Order issued in accordance with Section 13 or by a Contract amendment. This is an incremental encumbrance project, as discussed in Section 13.16 and payment under this Contract shall be made from available CDOT funds encumbered for such purposes. CDOT hereby encumbers \$ [REDACTED] dollars.

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, including all Additional Requested Elements and portions thereof, 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. Within seven days after receipt by CDOT of each final invoice, 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 unless CDOT Accepts the work pursuant to Section 5.7.

11.3.1 Requirement to Provide Corrected Monthly Update

After Approval of the Original Baseline 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 11.3.3.1

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 20, 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 11.3.3.1 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 Book 2, Section 20.

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 19. 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.

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 Section 12.1.5.4, 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 and Encumbrance of Funds

This Section 13 sets forth the requirements for obtaining all Change Orders and Option Letters 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. Upon acceptance of the Stipend, ATCs and PAEs from unsuccessful Proposers that are made available by CDOT, may be incorporated as a Change Order at CDOT's sole discretion.

The Contractor and CDOT shall negotiate overhead rates and profit for all Design and Construction related Change Orders within 30 days of NTP2. Overhead rates and profits for Design and Construction Change Orders shall be negotiated on a yearly basis from NTP2.

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(in conjunction with an Option Letter).
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.

13.2.3 Options

CDOT's issuance of a Notice-to-Proceed with any Option by the number of Days after NTP 1 defined in Table 13.2.3 shall be considered direction to the Contractor to prepare a Change Order which shall add the Option work to the scope of the Work for the Option price set forth in Exhibit P the Contractor's Option Price Form submitted by the Contractor as ITP Form K.

TABLE 13.2.3 ISSUANCE OF NTPS FOR OPTIONS

Option	Description	# of Days after NTP 1
1	ARE #1 (If not included in Proposal)	90

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.

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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; (iv) 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 Claims

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 claims by the Subcontractor which constitute the basis for the request for Change Order and determined in good faith that each such claim 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 claims and has determined that all such claims 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 claim 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 Baseline Schedule, Current Baseline Schedule or Revised Baseline 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 a 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 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.

13.16 Option Letters and Encumbrance of Funds

This is an incremental Encumbrance project, as authorized by section 24-91-103.6(7)(a), C.R.S. Pursuant to subsection (2) of section 24-91-103.6, not all of the funds needed to pay for the performance of the entire project will be encumbered, in advance.

CDOT will encumber additional funds using Exhibit U based on the Approved Payment Schedule submitted by Contractor as an NTP2 requirement outlined in Exhibit 2, Section 2. Contractor must comply with Book 2, Section 20, specifically CDOT Special Provision 108.04. However, annually, the modified Payment Schedule Approved by CDOT by April 1 will be used by CDOT to encumber funds for the next fiscal year. CDOT may unilaterally modify the Encumbrance Amount for future fiscal years by using a form substantially equivalent to Exhibit T under this Contract based on the Contractor's updated and Approved Payment Schedule. The Payment Schedule that CDOT has accepted as of April 1 is what will be used for the current fiscal year encumbrance and for future fiscal years' encumbrances only if the new Payment Schedule is not submitted or Approved by April 1.

The Contractor shall not perform Work that creates a financial obligation for the State exceeding the amount of the Encumbrance Amount. During a current fiscal year, except for the initial encumbrance as part of NTP2, if Contractor anticipates exceeding the Encumbrance Amount that was contained in the Payment Schedule that was approved on or before April 1 or that was encumbered as part of NTP2, Contractor shall use the process outlined in Section 13.3.2.1 to notify CDOT and the Contractor shall comply with Book 2, Section 20, specifically CDOT Special Provision 108.04.

Because the Option Letter will be unilateral on the part of CDOT, the Payment Schedule that is Approved by April 1 shall be signed by a representative of Contractor listed on the Incumbency Certificate that was submitted as part of Contractor's Proposal and who is authorized to contractually bind the Contractor and shall constitute a firm offer to provide the Work under the Contract pursuant to the Payment Schedule.

The State's incremental funding of the project under this Contract shall not be deemed to create any state multiple-fiscal year direct or indirect debt or other financial obligation whatsoever for purposes of section 20 (4) (b) of Article X of the State Constitution ("Tabor"), and it shall not in any way be construed to create a general obligation indebtedness of CDOT or of the State under any other constitutional or statutory requirement.

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 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 \$250,000 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 19.

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

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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 7.10.
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 C-470 Corridor 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 Duration Deadlines or completions 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 Duration Deadline, 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 meet a contract deadline, Project Completion and/or Final Acceptance by the applicable Completion Deadline, the Contractor agrees to pay CDOT Liquidated Damages in the following amounts:

1. \$73,000 per Day (or portion of a Day) for the Contractor's failure to meet the E-470 Integration Prerequisites beyond the Completion Date as established in Item No. 1, Form P, of Exhibit B.
2. \$38,000 per Day (or portion of a Day) for the Contractor's failure to achieve Notice of Project Completion beyond the Completion Date as established on Item No. 2, Form P, of Exhibit B.
3. \$13,000 per Day (or portion of a Day) for the Contractor's failure to achieve Affidavit of Project Completion beyond the Completion Date as established in Item No. 3, Form P, of Exhibit B.
4. 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 \$20,000,000.

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

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.

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 20.

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

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 to 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.

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

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.

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 20.

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 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. The original bond will be returned upon replacement.

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 thereof. 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 19, 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

The Contractor shall have delivered its Escrowed Proposal Documents (EPD) to CDOT in a manner agreed to between CDOT and the Contractor, and in accordance with the terms of the Instructions to Proposers (ITP). 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 Contract Price were determined and shall be adequate to enable a complete understanding and interpretation of how the Contractor arrived at the Contract 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 Contract 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 Contract 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, 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 19. 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:

To be inserted at final contract execution

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:

Jerome Estes, Project Manager
Colorado Department of Transportation – Region 1
2000 South Holly Street
Denver, CO 80222

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
Kathy.young@state.co.us

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 19 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 contract 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

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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.

Revised 1-1-09

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.**

<p>CONTRACTOR:</p> <p>Name: _____</p> <p>CDOT Vendor # _____</p> <p>Title: _____</p> <p>_____</p> <p>*Signature</p> <p>CORPORATIONS</p> <p>(A Corporate Seal or Attestation is Required)</p> <p>Attest (Seal) By:</p> <p>_____</p> <p>(Corporate Secretary or Equivalent)</p>	<p>STATE OF COLORADO</p> <p>John Hickenlooper, GOVERNOR</p> <p>By: _____</p> <p>For The Executive Director</p> <p>Colorado Department of Transportation</p>
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	<p style="text-align: center;">LEGAL REVIEW:</p> <p style="text-align: center;">Cynthia Coffman, Attorney General</p> <p>By: _____</p>
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ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

<p>STATE CONTROLLER</p> <p>ROBERT JAROS CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>
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EXHIBIT A – ACRONYMS AND DEFINITIONS

As used in the Design/Build Contract to which this Exhibit is attached, and in the other Contract Documents (unless otherwise specified therein), the following acronyms and terms shall have the meanings set forth below.

A.1 ACRONYMS

AADT	Annual Average Daily Traffic
AAP	AASHTO Accreditation Program
AAR	Association of American Railroads
AASHTO	American Association of State Highway & Transportation Officials
ATC	Alternative Technical Concepts
ACI	American Concrete Institute
ACM	Asbestos-Containing Materials
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
AGC	Associated General Contractors of America, Inc.
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron & Steel Institute
AITC	American Institute of Timber Construction
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute (formerly ASA and USASI)
ARA	American Railway Association
ARE	Additional Requested Element
AREA	American Railway Engineering Association
AREMA	American Railway Engineering & Maintenance Association
ARTBA	American Road & Transportation Builders Association
ASCE	American Society of Civil Engineering
ASCII	American Standard Code of Information Interchange
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing & Materials
ATC	Applied Technology Council
ATMS	Advanced Traffic Management System
ATR	Automatic Traffic Recorder
ATSSA	American Traffic Safety Services Association
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BAFO	Best and Final Offer
BATCD	Basic and Temporary Configuration Diagram
BE	Colorado Bridge Enterprise
BMP	Best Management Practices
CADD	Computer-Assisted Drafting and Design
CBCP	Category B Change Proposal
CCA	Colorado Contractors Association
CCI	Construction Cost Index
CCR	Colorado Code of Regulations
CCTV	Closed Circuit Television

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CAPCDQ	Colorado Air Pollution Control Division
CDNR	Colorado Department of Natural Resources
CD	Collector-Distributor
CDOT	Colorado Department of Transportation
CDPHE	Colorado Department of Public Health & Environment
CDW	Colorado Division of Wildlife
CERCLA	Comprehensive Environmental Response, Compensation & Liability Act, 42 U.S.C. §§ 9601, <i>et. seq.</i>
CFR	Code of Federal Regulations
CHP	Colorado Highway Patrol
CIH	Certified Industrial Hygienist
CIP	Cost in Place
CMS	Changeable Message Sign
COE	(U.S.) Army Corps of Engineers
COM	Communications
CP	Colorado Procedure
CPM	Critical Path Method
CQMP	Construction Quality Management Plan
C.R.S.	Colorado Revised Statutes
CRSI	Concrete Reinforcing Steel Institute
CRT	Console Monitor (Cathode Ray Tube)
CSEO	Colorado State Engineer's Office
CSL	Cross Sonic Log
CTMC	Colorado Traffic Management Center
CURPAL	Contractor Utility Relocation Plan Acceptance Letter
D/B	Design/Build
dB	Decibels
DBE	Disadvantaged Business Enterprise
DCS	Document Control System
DRB	Dispute Review Board
DTM	Digital Terrain Model
DWG	Drawing
EA	Environmental Assessment
ECM	Environmental Compliance Manager
ECP	Emissions Control Plan
ECS	Transportation Erosion Control Supervisor
EEO	Equal Employment Opportunity
EIA	Electronic Industries Association
EIP	Environmental Investigation Plan
EPA	(U.S.) Environmental Protection Agency
EPD	Escrowed Proposal Documents
FAR	Federal Acquisition Regulation
FCMs	Fracture Critical Members
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIR	Field Inspection Review
FRA	Federal Railroad Administration
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
HASP	Health and Safety Plan
HBP	Hot Bituminous Pavement
HDPE	High-density polyethylene
HIRSYS	Hotline Information Retrieval System

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HLMR	Highload multi-rotational
IA	Independent Assurance
ICQC	Independent Contractor Quality Control
IEEE	Institute of Electrical & Electronics Engineers
IEQM	Independent Environmental Quality Manager
IES	Illuminating Engineering Society
IGA	Intergovernmental Agreement
IIMS	Incident Information Management System
IMP	Incident Management Plan
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
IRI	International Roughness Index
ISA	Initial Site Assessment
ISDN	Integrated Services Digital Network
ISO	International Organization for Standards
ISP	Information or Internet Service Providers
ITC	Interface Terminal Cabinet
ITE	Institute of Transportation Engineers
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
KW	Kilowatt
LAN	Local Area Network
LAPB	Link Access Protocol, Balanced
Lc	Length of Simple Curve
Ls	Length of Spiral Curve
LED	Light Emitting Diode
LLRU	Lowest Level Replaceable Unit
LRFD	Load and resistance factor design
LS	Line Section
LTDS	Long-term design strength
MACM	Maximum Achievable Control Measures
MARV	Minimum average roll value
Mb	Megabit
Mbps	Megabits per Second
MBTA	Migratory Bird Treaty Act
MESA	Modified Environmental Site Assessment
MHT	Method for Handling Traffic
MIL	Military Specification
MIS	Management Information System
Mm	Millimeter
MMIS	Maintenance Management Information System
MMP	Materials Management Plan
MMU	Malfunction Management Unit
MOA	Memorandum of Agreement
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
Mph	Miles per Hour
MSE	Mechanically Stabilized Earth
MTIP	Materials Testing and Inspection Plan
MUTCD	Manual on Uniform Traffic Control Devices
NAD	North American Datum
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NBS	National Bureau of Standards
NCHRP	National Cooperative Highway Research Program

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NCR	Nonconformance Report
NEC	National Electrical Code (NFPA-70)
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NFPA	National Fire Protection Association
NGS	National Geodetic Survey
NHS	National Highway System
NICET	National Institute for Certification in Engineering Technologies
NIOSH	National Institute for Occupational Safety & Health
NIST	National Institute of Standards & Technology
NPDES	National Pollution Discharge Elimination System
NSF	National Sanitation Foundation (nSf)
NTCIP	National Transportation Communications for I.T.S. Protocol
NTP1	First Notice to Proceed
NTP2	Second Notice to Proceed
NTS	Not to Scale
NWN	Nonconforming Work Notice
OA	Owner Acceptance
OCIP	Owner Controlled Insurance Policy
OSHA	Occupational Safety & Health Administration
OURPAL	Owner Utility Relocation Plan Acceptance Letter
OV	Owner Verification
PCCP	Portland Cement Concrete Pavement
PCI	Prestressed Concrete Institute
PCO	Potential Change Order
PCP	Product Control Plan
PDA	Pile-Driving Analyzer or Personal Digital Assistant
PE	Professional Engineer, or, in the context of right-of-way, PE shall mean Permanent Easements
PET	Polyester
PG	Performance Grade
PIP	Public Information Plan
PIV	Peak Inverse Voltage
PLS	Professional Land Surveyor
PM	Program Manager
PP	Polyester polypropylene
PPE	Personal Protective Equipment
PQCI	Process Quality Control Inspection
PQCT	Process Quality Control Testing
PRI	Pavement Rutting Index
PSI	Pavement Serviceability Index
PSR	Pavement Serviceability Rating
PSURA	Project Specific Utility Relocation Agreement or Utility Relocation Agreement (URA)
Pt	Potential Transformer
PTFE	Polytetrafluoroethylene
PUC	Colorado Public Utilities Commission
PVC	Polyvinyl Chloride
PVI	Point of Vertical Intersection
PVT	Point of Vertical Tangency
PWR	Power
QA	Quality Assurance

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QC	Quality Control
QCA	Quality Control Administrator
QCP	Quality Checkpoint
QMP	Quality Management Plan
R	Radius
RACM	Reasonable Achievable Control Measures
RCO	Request for Change Order
RCP	Request for Change Proposal
RCRA	Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 <u>et seq.</u>
RE	Railroad Easement
RECs	Recognized Environmental Conditions
RFC	Released for Construction
RFP	Request for Proposals
RFQ	Request for Qualifications
RHMs	Recognized Hazardous Materials
RL	Reinforcement Length
ROD	Record of Decision
ROM	Rough Order of Magnitude
ROW	Right-of-Way
RSC	Rigid Steel Conduit
RWIS	Roadway & Weather Information System
SAE	Society of Automotive Engineers
SAP	Sampling Analysis Plan
SBA	Small Business Administration
SHPO	State Historic Preservation Officer
SIC	Standard Industrial Code, U.S. Department of Labor
SI&A	Structural Inventory & Appraisal
SMA	Stone Mastic Asphalt
SMP	Safety Management Plan
SOQ	Statement of Qualifications
SPCS	State Plane Coordinate System
SSPC	Steel Structures Painting Counsel
STD	Standard
STP	Shielded Twisted Pair
SWMP	Stormwater Management Plan
TCC	(CDOT) Traffic Communications Center
TCP	Traffic Control Plan
TDM	Transportation Demand Management
TE	Temporary Easement
TECS	Transportation Erosion Control Supervisor
TFE	CDOT Furnished Equipment
TIC	(CDOT) Transportation Information Center
TIG	Tungsten Inert Gas
TL	Testing Level
TMSRs	Traffic Management Strategy Reports
TOC	(CDOT) Traffic Operations Center
TRB	Transportation Research Board (of National Research Council)
TYP	Typical
UDS	Utility Design Sheet
UE	Utility Easement
UIS	Utility Information Sheet
UL	Underwriters Laboratories
UNCC	Utility Notification Center of Colorado
UPRR	Union Pacific Railroad
UPS	Uninterruptible Power Supply

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URA	Utility Relocation Agreement or Project Specific Utility Relocation Agreement (PSURA)
USACE	United States Army Corps of Engineers
USASI	United States of America Standards Institute
U.S.C.	United States Code
USDOT	United States Department of Transportation
USGS	United States Geological Survey
USFWS	U.S. Fish & Wildlife Service
V _c	Length of Vertical Curve
VDS	Vehicle Detection System
VE	Value Engineering
VECP	Value Engineering Change Proposal
VM	Video Monitor
VMS	Variable Message Sign
WAQTC	Western Alliance for Quality Transportation Construction
WBS	Work Breakdown Structure
WPA	Works Progress Administration
WQCD	Water Quality Control Division, Colorado Department of Public Health & Environment

A.2 DEFINITIONS

Abandonment	As related to Utilities, shall have the meaning set forth in Book 2, Section 7.
ATC Conditions	Conditions that CDOT identified during the ATC process that were necessary for Approval of the ATC.
Acceleration Costs	Shall mean those fully documented increased costs reasonably incurred by the Contractor; (i.e., costs over and above what the Contractor would otherwise have incurred) which are directly attributable to increasing the performance level of the Work in an attempt to complete necessary Activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for resequencing in connection with acceleration efforts.
Accept or Acceptance	Formal conditional determination in writing by the CDOT Project Manager that a particular matter or item appears to meet the requirements of the Contract Documents.
Activity	Parts of the Work including finished products or functional processes required as subcomponents of the Work Breakdown Structure, as defined by the Contractor.
Additional Requested Elements	The meaning set forth in Book 2, Section 1.5.
Affected Area	As related to mined land reclamation, the total disturbed surface of a pit or quarry such as sand, gravel, topsoil, or borrow, that is being mined or will be mined. The area includes, but is not limited to, the excavation area, plant, and stockpile areas, parking and storage areas, and the haul roads.
Affiliate	<p>(1) Any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the: (i) Contractor or (ii) any Major Participant; and</p> <p>(2) Any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by the: (i) Contractor, (ii) any Major Participant, or (iii) any Affiliate of the Contractor under Part (1) of this definition.</p> <p>For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship, or otherwise.</p>
Alternative Technical Concept	The meaning set forth in Section 2.2.1 of the Instructions to Proposers.
Applicable Laws	See Legal Requirements.
Application for Final Payment	The application described in Book 1, Section 11.6.1.
Approve or Approval	Formal conditional determination in writing by the CDOT Project Manager that a particular matter or item is good or satisfactory for the Project. Such determination may be based on requirements beyond those set forth in the Contract Documents without payment of additional compensation or a time extension and may reflect preferences of CDOT.

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Architectural and Engineering Services	All Work relating to the design, including preparation and interpretation of architectural and engineering plans and specifications, development of design solutions for conformance with all codes and public safety requirements and other design related decision-making, and any other activities, collectively, which are required to be practiced by an architect or engineer in accordance with the laws of the State of Colorado.
As-Built Documents	The documents to be provided by the Contractor as described in Book 2, Section 3.
Award	The Acceptance of the Proposal by CDOT (with the understanding that the order of priority of the various Contract Documents shall be as set forth in Book 1, Section 1.3, and that CDOT shall have the right to require compliance with the requirements of the Contract Documents, even though it may necessitate performance of Work by the Contractor not contemplated in the Proposal Documents).
Backfill	Material used to replace or the act of replacing material removed during construction.
Base Course	One or more layers of specified material and thickness placed on a subbase or a subgrade to support a surface course.
Baseline Schedule	The meaning set forth in Book 1, Section 13 and Book 2, Section 2.
Basic Configuration	The elements defining the Project as set forth in Book 2, Section 1.4, subject to any permitted modifications thereto contained in the Proposal Documents.
Betterment	As related to Utilities, a betterment is generally defined as the upgrading; (e.g. increase in capacity) of a Utility being relocated that is not attributable to the construction of the Project or is made solely for the benefit of and at the election of the Utility Owner (not including a technology improvement which can be implemented at a cost equal to or less than the cost of a "like for like" replacement or relocation). The use of new materials or compliance with current standards in the performance of the Utility Work is not considered a Betterment.
Blue Book	The meaning set forth in Book 1, Section 13.7.3.1.
Book 1	The Contract Document designated as Book 1 in the RFP.
Book 2	The Contract Document designated as Book 2 in the RFP.
Bridge	<p>A structure, including supports, erected over a depression or an obstruction such as water, highway, or railroad, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of more than 20 feet (6 m) between undercopings of abutments or extreme ends of openings for multiple boxes.</p> <p><i>Length.</i> The length of a bridge structure is the over-all length measured along the line of survey stationing back to back of backwalls of abutments, if present, otherwise, end to end of the bridge floor; but in no case less than the total clear opening of the structure.</p> <p><i>Roadway Width.</i> The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers, or in the case of multiple heights of curbs, between the bottoms of the lower risers.</p>
Calendar Day	Each and every day shown on the calendar, beginning and ending at midnight.
CDOT	The Project Director for the Project, acting directly or through a representative authorized in writing, who is responsible for administrative supervision of the Project; or the State of Colorado for the use and benefit of the Department of Transportation, whichever the context requires.

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CDOT-Caused Delays	<p>Unavoidable delays, to the extent that they affect the Critical Path, arising from the following matters and no others:</p> <ul style="list-style-type: none">(a) A suspension order pursuant to Book 1, Section 14.1;(b) CDOT-Directed Changes;(c) Failure or inability of CDOT to provide the Contractor with access to ROW identified on the ROW Plans on or before the deadline for such access set forth in the ROW Access Schedule;(d) Failure or inability of CDOT to provide responses to proposed schedules, design submittals and other submittals and matters for which response by CDOT is required, within the time periods indicated in the Contract Documents;(e) Uncovering, removing, and restoring Work, to the extent provided in Book 1, Section 5.5.3;(f) Delay in issuance of NTP2 or provision of reasons why it was unable to do so to the extent provided in Book 1, Section 4.2.2;(g) Any improper action by CDOT as representative with binding authority or improper failure to act by CDOT within a reasonable time after delivery of notice by the Contractor to CDOT requesting such action; and <p>Any court order to suspend Work shall not be considered a CDOT-Caused Delay (although it may qualify as a Force Majeure event) despite the fact that CDOT may specifically direct the Contractor to comply with the court order.</p>
CDOT-Directed Changes	<p>Any changes in the Work (including changes in the standards applicable to the Work), which CDOT has directed the Contractor to perform as described in Book 1, Section 13.</p>
Certificate of Compliance	<p>A certification, including a signature by a person having legal authority to act for the manufacturer, stating that the product or assembly to be incorporated into the Project was fabricated in accordance with and meets the applicable requirements of the Contract Documents, or verifying the quality and quantity of material delivered which shall be accepted by the Contractor, whichever is applicable.</p>
Certified Invoice	<p>Any invoice or billing endorsed by the Contractor, certifying that material, specialty work, subcontract work, rental, lease, services, etc. were acquired for the Project and that the invoiced or billed amount represents the actual costs.</p>
Certified Test Report	<p>A test report from the manufacturer or an independent testing laboratory, including a signature by a person having legal authority to act for the manufacturer or the independent testing laboratory stating that the test results show that the product or assembly to be incorporated into the Project has been sampled and tested and the samples have passed all specified tests.</p>
Change Order	<p>The meaning set forth in Book 1, Section 13.1.1.1.</p>
Claim	<p>A separate demand by the Contractor for: (i) a time extension which is disputed by CDOT, or (ii) payment of money or damages arising from work done by or on behalf of the Contractor in connection with the Contract which is disputed by CDOT. A claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order or Contract amendment signed by all parties.</p>

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Commercial Vehicle(s)	A vehicle used on highways, in interstate commerce, that meets one of the following criteria: (i) has a Gross Vehicle Weight Rating (GVWR) or Gross Combination Weight Rating (GCWR), or gross vehicle weight or gross combination weight of 10,001 pounds or more, whichever is greater; (ii) is designed to transport more than eight passengers (including the driver) for compensation; (iii) is designed to transport 16 or more people, including the driver and is not used to transport passengers for compensation; (iv) functions to transport hazardous materials in quantities requiring the vehicle to be placarded.
Completion Deadline	Any or all contract deadlines as defined in Contract Documents and most specifically in Book 1, Section 17.
Constructive	When used in connection with the terms “change in the Work,” “delay,” “suspension,” or “acceleration,” that change in the Work, delay, suspension, or acceleration which, but for the express terms of the Contract Documents, could be inferred or implied at law.
Contaminated Groundwater	Extracted groundwater including contaminants above legally-permitted discharge levels so as to require treatment prior to re-use or disposal. Contaminated groundwater, which may legally be re-used without treatment, including use for dust control, or which merely requires dilution prior to re-use or disposal, shall specifically be excluded from the definition.
Contaminated Soils	Soils containing Hazardous Substance constituents in an amount above the applicable CDPHE remediation levels, and less than the amounts set forth in 40 CFR, Part 261.
Contract	Depending on the context: (i) the Design/Build Contract, or (ii) collectively, the Contract Documents, which establish the rights and obligations of CDOT and the Contractor.
Contract Deadlines	The deadlines set forth in Book 1, Section 4.3
Contract Documents	The meaning set forth in Book 1, Section 1.2.
Contract Drawings	The drawings included in Book 4, including the ROW Plans.
Contract Price	The meaning set forth in Book 1, Section 11.1.1.
Contract Schedule	The meaning set forth in Book 2, Section 2.
Contractor	The meaning set forth in the first page of Book 1.
Contractor-Related Entities	Contractor, Major Participants, Subcontractors, their employees, agents and officers and all other Persons for whom Contractor may be legally or contractually responsible.
Contractor Specifications	The specifications describing the Work that are developed by the Contractor.
Contractor’s Engineer	A professional engineer registered in the State of Colorado who is responsible for engineering and administrative supervision of the Project on behalf of the Contractor, who is either an employee of the Contractor, or a consulting engineer under contract to the Contractor.
Contractor’s Utility Tracking Report	The report regarding Utilities likely to be impacted by the Project which the Contractor shall maintain on a current basis, and which the Contractor shall periodically submit to CDOT, as more particularly described in Book 2, Section 7.3.2
Critical Path	The precedence of activities with total Float less than or equal to zero on each applicable Contract Schedule.

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Current Baseline Schedule	The meaning set forth in Book 2, Section 2.
Day	The meaning set forth in Book 1, Section 1.8.
DBE Performance Plan	The plan provided by the Contractor and Approved by CDOT as described in Book 1, Exhibit J (or, prior to such Approval, the draft DBE performance plan included with the Proposal Documents).
Defect or Defective Condition	Nonconforming Work.
Delay and Disruption Damages	The meaning set forth in Book 1, Section 13.5.2.
Department	The Colorado Department of Transportation.
Design Acceptance Review	The meaning set forth in Book 2, Section 3.5.
Design/Build Contract	That certain Design/Build Contract (C-470 Tolled Express Lanes Design/Build Project) executed by CDOT and the Contractor (to which this Exhibit A is attached), and any and all amendments thereto.
Design Documents	All drawings (including plans, elevations, sections, details, and diagrams), specifications, reports, calculations and records, at any stage of development or revision necessary for design of the Project in accordance with the Contract Documents.
Differing Site Conditions	"Differing Site Conditions" shall mean (a) subsurface or latent conditions encountered at the exact boring holes identified in the geotechnical reports included with the Reference Documents, which differ materially from those conditions indicated in the geotechnical reports for such boring holes, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract. The term shall specifically exclude all such conditions of which Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes (x) Utility facilities, (y) Hazardous Substances and (z) any conditions which constitute or are caused by a Force Majeure event.
Directive Letter	The letter described in Book 1, Section 13.1.1.2.
Disadvantaged Business Enterprise	The meaning set forth in Book 1, Exhibit J.
Dispute	The meaning set forth in Book 1, Section 19.2.
Dispute Review Board	The board described in Book 1, Section 19.2.3.
Duration Deadline	Any and all contract duration deadlines as defined in the Contract Documents and most specifically in Book 1, Section 17.
Effective Date	The date of execution of the Contract by CDOT.
Engineer	See "Contractor's Engineer." The Contractor acknowledges and agrees that CDOT will be responsible for certain oversight and other matters with respect to the Project, and that as a result certain rights in favor of the Engineer may be exercised by and inure to the benefit of CDOT rather than the Contractor's Engineer. In the event any question arises regarding whether any such rights are applicable to CDOT or how to apply such rights, CDOT's interpretation regarding such matter shall control.
Environmental Approvals	The EA, ROD, COE Section 404 Permit, COE Section 401 Certificate, CDOT Municipal Separate Storm Sewer (MS4) NPDES Permit, and SB 40 Certification for the Project identified in Book 2, Section 5.

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Environmental Compliance Work Plan	The meaning set forth in Book 2, Section 5.
Environmental Laws	All Legal Requirements now or hereafter in effect relating to the environment or to emissions, discharges, releases, or threatened releases of Hazardous Substances into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare, or the natural environmental (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including the statutes listed in the definition of Hazardous Substances; the National Environmental Policy Act, as amended, 42 U.S.C. §§ 4321 <i>et seq.</i> ; the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 <i>et seq.</i> ; and the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. §§ 1801; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 <i>et seq.</i> ; the Clean Water Act, 33 U.S.C. §§ 1251, <i>et seq.</i> ; the Safe Drinking Water Act, 42 U.S.C. §§ 300f, <i>et seq.</i> ; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 <i>et seq.</i> ; and the Eagle Protection Act, 16 U.S.C. § 668, each as amended.
Equipment	All machinery, tools, and apparatus together with supplies for upkeep and maintenance, necessary for the proper construction and acceptable completion of the Work.
Error	An error, omission, inconsistency, inaccuracy, deficiency or other defect.
Escrowed Proposal Documents	The meaning set forth in Book 1, Section 22.1.
Event of Default	A default as described in Book 1, Section 16.1.1, following notice and opportunity to cure to the extent permitted by Book 1, Section 16.1.2 and issuance by CDOT of notice that an Event of Default has occurred.
Existing Utility Plans	The set of plans included on the website, Reference Documents.
Federal Requirements	All Legal Requirements applicable to work financed with federal funds and the provisions required to be included in FHWA-assisted contracts, including the provisions set forth in Book 1, Exhibit C.
Final Acceptance	Acceptance of the Project as described in Book 1, Section 20.
Final Design Documents	The completed Design Documents following Acceptance thereof by CDOT as described in Book 2, Section 3
Fixed Price/Best Design Approach	The best value selection method set forth in 23 C.F.R., Part 627, <i>et al.</i>
Float	The meaning set forth in Book 2, Section 2.
Force Majeure	For purposes of a Contract Price increase, the meaning set forth in Book 1, Section 13.3.1.1(9)(a). For purposes of Contractor's entitlement to a time extension, the meaning set forth in Book 1, Section 13.3.1.1(9)(b).
General Layout Drawing	A drawing depicting the Plan View, the Longitudinal Section, a Profile Diagram and a Typical Section for a given structure.
Governmental Approval	Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling, required by or with any Governmental Person in order to design and construct the Project.

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Governmental Person	Any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. The term includes the State of Colorado and agencies and subdivisions thereof, other than the Department of Transportation.
Hazardous Substances	Any of the following: <ul style="list-style-type: none">(a) Substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 USC Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 USC Sections 2601 et seq.; the Clean Water Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect,(b) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court,(c) Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles, and(d) Asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).
Highway, Freeway, Street, or Road	A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW.
Holidays	New Year's Day, Dr. Martin Luther King, Jr.'s Birthday (observed), Washington-Lincoln Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When New Year's Day, Independence Day or Christmas Day falls on Sunday, the following Monday shall be considered a Holiday. When one of these days falls on a Saturday, the preceding Friday shall be considered a Holiday. Additional legal holidays, when designated by the Governor of the State of Colorado or the President of the United States will also be included as Holidays.
Incidental Utility Work	Incidental Utility Work shall include Abandonment, Protection-in-Place and Utility Removal Work necessary and/or determined by the Contractor to be convenient for construction and/or accommodation of the Project. The Contractor shall be responsible for Incidental Utility Work for all Utilities, including required Governmental Approvals
Including, or including, includes, included	All references in the Contract Documents to "Including" or "including" shall mean "including, but not limited to".

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Incremental Costs	Those costs, if any, which the Contractor incurs as a result of a particular circumstance, which the Contractor would not have incurred but for the circumstance. In determining such costs, one would determine the total cost that the Contractor would have incurred had the circumstance not occurred, and subtract such amount from the costs actually incurred; the difference is the "increment." (For example, if the Contractor originally has to relocate three water lines, and a fourth water line is discovered in the same general area which can be relocated by the same crew, then if the Contractor is entitled (pursuant to Contract Section 13.11.3) to a Change Order increasing the Contract Price on account of such newly discovered water line, CDOT will be charged with only the costs of keeping the crew working the additional time to relocate the fourth water line, and will not be charged any portion of the expense of moving the crew to the site in the first place.)
Indemnified Parties	The meaning set forth in Book 1, Section 18.1.1.
Independent Assurance	Activities that are an unbiased and independent evaluation of all the sampling and testing (or inspection) procedures used in the Quality Assurance program.
Independent Contractor Quality Control (ICQC)	Independent on-site inspection and testing of the construction elements of the work by the Contractor to verify the work has been constructed in conformance with the Contract requirements, and to support CDOT's owner acceptance responsibilities.
Initial Schedule	The meaning set forth in Book 2, Section 2
Inspection	The act of viewing or looking carefully at construction, manufacturing, design, and maintenance practices, processes, and products, including document control and shop drawing review, to ensure that the practices, processes, and products comply with the quality requirements contained in the Contract Documents.
Inspector or Inspector	Representatives of either the Design-Builder or CDOT to perform inspection during construction activity.
Instructions to Proposers	The RFP Document identified as Instructions to Proposers.
ITS Work	All elements of the Work necessary for completion of the ITS Elements, including providing equipment to meet specified performance measures, development of computer software, installation of equipment, testing and acceptance of equipment and software, integration of newly installed components with existing ITS infrastructure and maintenance of ITS components.
Key Personnel	The persons listed on Contract Exhibit D, subject to revision in accordance with the Contract requirements.
Laboratory	The testing laboratory of the Contractor, CDOT, or any other certified testing laboratory.
Landscape and Aesthetics	The design and visual treatment of Project elements and components comprising landscaping for the highway ROW, architectural treatment of bridges and Structures with their adjacent environments, retaining and noise wall patterning, parking structures, site furnishings and lighting and slope paving.
Landscape Acceptance	The meaning set forth in Book 2, Section 17.
Landscape and Wetlands Establishment Period	The meaning set forth in Book 2, Section .

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Late Finish Cost Schedule	The late start dates set forth on each applicable Contract Schedule, subject to revision in connection with any Change Orders, which revise the Contract Schedules.
Legal Requirements	All applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Person having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term "Legal Requirements" does not include Governmental Approvals.
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).
Liquidated Damages	The damages described in Book 1, Section 17.1.
Major Participants	The meaning set forth in Section 1.1 of the Instructions to Proposers
Materials	All components required for use in the construction of the Project.
Monthly Progress Schedule	The meaning set forth in Book 2, Section 2.
Multi-Use Trail	A trail that accommodates various travel modes.
Necessary Design Change	The meaning set forth in Book 1, Section 2.4.3.
New Environmental Approval	Any of the following: (a) A new Governmental Approval of the same type as an Environmental Approval; and (b) A renewal, revision, modification or amendment to one or more of the Environmental Approvals.
Nonconformance Report (NCR)	The report described in Book 2, Section 3.
Nonconforming Work	Work performed that does not meet the requirements of the Contract Documents.
Notice of Final Acceptance	The notice delivered to the Contractor under Book 1, Section 20.1.4 stating that final CDOT acceptance of the Project has occurred.
Notice of Termination (or Partial Termination)	A notice issued by CDOT to terminate the Contract and the performance of Work by the Contractor, either in whole or in part, pursuant to Book 1, Section 15.
NTP1 Payment Cap	The amount of \$6,000,000.
Original Baseline Schedule	The meaning set forth in Book 2, Section 2.
Overburden	Any material that overlays material designated for road or bridge construction.
Owner Verification (OV)	Testing and auditing performed by CDOT to verify and validate the ICQC.
Owner Acceptance (OA)	CDOT's responsibility for the acceptance of the project, as required by Title 23, Code of Federal Regulations, Part 637 (23 CFR 637).

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Pavement Structure	<p>The combination of one or more of the following courses placed on a subgrade to support and distribute the traffic load to the roadbed.</p> <p><i>Subbase.</i> The layer or layers of specified or selected material placed on a subgrade to support a base course, surface course, or both.</p> <p><i>Base Course.</i> The layer or layers of specified or selected material placed on a subbase or a subgrade to support a surface course.</p> <p><i>Surface Course.</i> One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called “Wearing Course.”</p>
Payment Bond	<p>The payment bond described in Book 1, Section 8.</p>
PCO Notice	<p>The potential change order notice described in Book 1, Section 13.3.</p>
Performance Bond	<p>The performance bond described in Book 1, Section 8</p>
Permission to Enter Property Forms	<p>The meaning set forth in Book 2, Section 8</p>
Person	<p>Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Person, including CDOT.</p>
Private Utility	<p>A Utility that is owned by a Private Utility Owner.</p>
Private Utility Owner	<p>Any owner or operator of a Utility that is not a Public Utility Owner. However, a private property owner, which merely owns one or more Service Lines is not considered a Private Utility Owner as a result of such ownership.</p>
Process Control (PC)	<p>The system used to monitor, assess, and adjust production or placement processes to ensure that the final product will meet the specified level of quality.</p>
Profile Grade	<p>The trace of a vertical plane usually intersecting the top surface of the proposed rail or wearing surface and usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.</p>
Project	<p>The C-470 Tolled Express Lanes Design-Build Project, as more specifically described in Book 2, Section 1.0, and all Work to be provided by the Contractor as a condition to Final Acceptance.</p>
Project Completion Deadline	<p>Achievement of all Work necessary to meet the Project Completion Deadline as described in Book 1, Section 4.3.</p>
Project Manager	<p>The person designated by the Contractor to supervise the Project Persons performing Work, and to receive delivery of notices to the Contractor per Book 1, Section 24.9.1.</p>
Project Operationally Complete	<p>Interchanges, Ramps and Bridges fully operational and in the final configuration. Final basic configuration, roadway lighting, pavement, signals, signage and striping complete in place.</p>
Utility Relocation Agreement (URA)	<p>An agreement made between CDOT and a Utility Owner that provides a general framework for addressing Utility conflicts associated with the Project, and which is deemed included in Appendix A (for Public Utility Owners) or Appendix B (for Private Utility Owners) to Book 2, Section 7.0.</p>
Project Survey Coordinator	<p>The meaning set forth in Book 2, Section 9.</p>

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Proposal or Proposal Documents	Those documents constituting the Contractor’s proposal in response to the RFP, including any best and final offers or supplements to proposals as may have been requested by CDOT.
Proposal Due Date	The date the Proposal was due as specified in the Instructions to Proposers.
Proposer	An individual, firm, partnership, corporation, joint venture, or combination thereof that was shortlisted under CDOT’s Request for Qualifications and that submits a proposal in response to the RFP.
Proposer’s Price	The price included by the Proposer in Form J of the Instructions to Proposers.
Protection-in-Place or Protect-in-Place	Any Activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility’s location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers, per Utility Owner’s requirements as necessary to ensure their safe operation and structural integrity. For example, temporarily lifting power lines without cutting them would be considered Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a temporary Relocation.
Public Information Plan	The plan provided by the Contractor and Approved by CDOT as described in Book 2, Section 4 (or, prior to such Approval, the draft public information plan included with the Proposal Documents).
Public Utility	A Utility that is owned by a Public Utility Owner.
Public Utility Owner	Any owner or operator of a Utility that is entitled to reimbursement of its Relocation costs pursuant to Section 43-1-225, Colorado Revised Statutes; provided, however, that in the event of any inconsistency between the foregoing definition and the designation of a Utility Owner as either “public” or “private” in the Reference Documents – Utilities, the designation set forth in the Reference Documents – Utilities shall control.
Punch List	The list of Work items with respect to the Project which remain to be completed after achievement of each Milestone Completion, each Segment Completion, or the Project Completion, limited to minor Work necessary to correct imperfections which have no adverse effect on the safety or operability of the Project.
Quality Assurance (QA)	All those planned and systematic actions necessary to provide confidence that a product or facility will perform satisfactorily in service.
Quality Control (QC)	The system used to monitor, assess, and adjust production or placement processes to ensure that the final product will meet the specified level of quality.
Quality Control Administrator (QCA)	The person designated by the Contractor that has overall responsibility for the Contractor’s design and construction quality activities, exclusive and independent of Process Control (PC) activities.
Quality Management Plan (QMP)	A written document that describes the implementation and maintenance of an effective quality program to manage, control, document and ensure all obligation of the Contractor comply with the requirements of the Contract Documents.

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Railroad	Depending on the context, either the ROW, tracks, and systems used for rail traffic in the vicinity of the Project, or the Union Pacific Railroad Company and/or Burlington Northern Santa Fe Railroad.
Real-Time Notice	Information about construction activities as they happen. This information will be disseminated to stakeholders through a variety of tools to give them access to current Project conditions.
Reasonable Accuracy	The meaning set forth in Book 1, Section 6.2.
Recognized Hazardous Materials	The meaning set forth in Book 2, Section 5.
Record Set	A reproduction of a drawing or set of drawings, design calculations, or other record of engineering work required to be performed by the Contractor's Engineer in accordance with the Rules of Procedures of the State Board of Registration for Professional Engineers and Land Surveyors.
Recovery Schedule	The schedule described in Book 2, Section 2, and which Contractor is required to provide under Book 1, Section 4.5.
Reference Documents	The RFP Documents designated on the website, Reference Documents, and described in Book 1, Section 1.4.
Reference Drawings	Preliminary and conceptual design plans developed for the project
Released for Construction Documents	The drawings (including plans, elevations, sections, details, and diagrams), specifications, shop drawings, drawings, samples, reports and calculations approved by the Contractor for construction as required by Book 2, Section 3.
Relocation or Relocate	As related to Utilities, each removal, transfer of location, Abandonment and/or protection in place (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.
Remediation Work	After determination by the Contractor that a Hazardous Substance(s) exists, sampling, treatment, and/or off-Site disposal of Hazardous Substances and materials containing Hazardous Substances, as Approved by CDOT and in accordance with Book 2, Section 5.
Request for Change Order (RCO)	A Contractor-initiated request for a change order under Book 1, Section 13.3.
Request for Change Proposal (RCP)	A proposal issued by CDOT under Book 1, Section 13.2.1.
Request for Proposals	The Request for Proposals for the C-470 Tolled Express Lanes Design/Build Project issued by CDOT on July 24, 2014, including all addenda thereto.
Retainage	The meaning set forth in Book 1, Section 11.5.1.
Revised Baseline Schedule	The meaning set forth in Book 2, Section 2.
RFP Documents	The documents listed in ITP Section 1.2.
Right-of-Way	The real property and property interests provided by CDOT, the City of Colorado Springs and/or Utility Owners (through agreements with CDOT) necessary for ownership and operation of the Project.
Road	A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW.
Roadbed	The graded portion of highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.
Roadbed Material	Material in cuts, embankments, and in embankment foundations from the subgrade down that supports the pavement structure.

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Roadside	A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.
Roadside Development	Those items necessary for the preservation of landscape materials and features. The rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching and the placing of other ground covers. Suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the highway.
Roadway	The portion of a highway within limits of construction.
Roadway Width	See bridge.
Routine Maintenance Activity	The type of work performed on a routine; (e.g., daily or weekly) basis to maintain the highway surfaces, shoulders, roadsides, facilities, and structures; such as litter pickup, graffiti removal, and vegetation control.
ROW Access Schedule	The meaning set forth in Book 1, Section 6.1.1.2.
ROW Plans	The meaning set forth in Book 1, Section 6.1.1.
Safety Management Plan	The Approved safety management plan established by the Contractor, as specified in Book 2, Section 2 (or, prior to such Approval, the draft safety management plan included with the Proposal Documents).
Salvable Material	Material that can be saved or salvaged. Unless otherwise specified in the Contract, all salvable material shall become the property of the Contractor.
Second Notice to Proceed (NTP2)	A written notice issued by CDOT to the Contractor to proceed with the remainder of the Work on the date specified therein.
Service Line	As related to Utilities, a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system. (The term "Service Line" also includes any Utility on public or private property that services structures located on such property.)
Shop Drawings	A general term that includes drawings, diagrams, illustrations, samples, schedules, calculations, and other data, which provide details of the construction of the Work and details to be used by the Engineer for inspection.
Shoulder	The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.
Sidewalk	That portion of the roadway constructed for pedestrian use.
Site	The parcels of ROW identified on the ROW Plans or upon which the Project is to be constructed and installed as well as all other areas in the vicinity used by the Contractor for construction Work.
Specialty Item	Work requiring highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organization qualified and expected to bid on the Contract as a whole, and generally limited to minor components of the overall Contract.
Stabilization	Modification of soils or aggregates by incorporating materials that increase load-bearing capacity, firmness, and resistance to weathering or displacement.
Stakeholder	The meaning set forth in Book 2, Section 4.
Standard Drawings	Plans issued by CDOT for general application and repetitive use in connection with CDOT projects; the Standard Drawings will not apply to the Work except with regard to work performed using the documents or in connection with any design furnished by the Contractor which references the Standard Drawings.

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Standard Specifications	Colorado Department of Transportation Standard Specifications for Road and Bridge Construction 2011.
Standards of the Industry	Practices, procedures, methods and standards that: (i) are consistent with current industry practices established for, or employed by, leading participants in the design, construction, operation, and maintenance industries; (ii) comply with applicable laws and applicable industry underwriters' and the fire and life safety codes and standards; and (iii) promote reliability, efficiency, safety, and security. Standards of the Industry include, without limitation, taking reasonable steps to assure that sufficient personnel are employed and available to perform the work and that such personnel are adequately skilled, experienced, and trained to design, construct, install, operate, and maintain the work properly and efficiently, and that appropriate coordination, monitoring, and testing is performed to assure that all elements of the work are designed, constructed, and installed so as to function as required by the Contract Documents.
State	State of Colorado acting through its authorized representative, or the State of Colorado in the geographic sense, depending on the context.
Street	A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW.
Structures	Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, storm drains, service pipes, underdrains, foundation drains, fences, guardrail, signs, end sections, traffic signals, light standards, and other features which may be encountered in the Work and not otherwise classified.
Subbase	Layer(s) of specified material thickness placed on a subgrade to support a base course.
Subcontract	Any subcontract to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work between the Contractor and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor or Subconsultant	Any Person with whom the Contractor has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.
Subgrade	The top surface of a roadbed upon which the pavement structure, shoulders, and curbs are constructed.
Subgrade Treatment	Modification of roadbed material by stabilization.
Substantial Landscape Completion	The meaning set forth in Book 2, Section 17.
Substructure	All of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the backwalls, wingwalls, and wing protection railings.
Superintendent	The Contractor's authorized employee responsible for the construction Work related to the Project or a Segment.
Superstructure	The entire structure except the substructure.
Supplemental Specifications	CDOT-approved additions and revisions to the Standard Specifications.

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Supplier	Any Person other than employees of the Contractor not performing work at the Site that supplies machinery, equipment, materials or systems to the Contractor or any Subcontractor in connection with the performance of the Work; Persons who merely transport, pick up, deliver, or carry materials, personnel, parts, or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.
Surety	Each properly licensed surety company approved by CDOT, which has issued one or more of the Payment and Performance Bonds.
Surface Course	One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called the “Wearing Course.”
Technical Criteria	The criteria described in Book 2 that establishes the minimum acceptable standards of quality, materials, and performance for the Work, and which will be used as a basis for reviews, and as a basis for Final Acceptance.
Test	The procedure and method of acquiring and recording physical data and comparing it to set standards and submitting a statement to such conditions or operations as will lead to its Acceptance or rejection (deficiency, <i>Defective Condition</i> , <i>Nonconformance</i>) of the item.
Test-Based Acceptance	Acceptance based on each test meeting minimum requirements.
Test Procedure	Methods that detail the practice of acquiring the <i>Test</i> data.
Time and Materials Change Order	A Change Order issued under Book 1, Contract Section 13.7.
Traffic Control Plan	The plan described in Book 2, Section 16.
Traveled Way	The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.
Unit Price	The meaning set forth in Book 1, Section 13.6.2.
Unit Price Allowance	The meaning set forth in Book 1, Section 11.1.1.
United States Department of Transportation (USDOT)	United States Department of Transportation or any executive department or agency thereof, or as the context may require, the USDOT Secretary or other person who may at the time be acting in the capacity of Secretary, or an authorized representative or any other person otherwise authorized to perform the functions to be performed hereunder by USDOT.
Upset Amount	The amount identified in the ITP.
Utility or utility	(i) A privately, publicly or cooperatively owned line, facility and/or system for producing, transmitting or distributing communications, power, cable television, electricity, light, heat, gas, oil, crude products, water, steam, waste, signal systems and other products that directly or indirectly serve the public; and/or (ii) a privately owned irrigation facility. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any Service Line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line. The term “Utility” is sometimes also used to refer to the owner or operator of any such line, facility and/or system (a “Utility Owner”). The term “Utility” shall specifically exclude existing storm water facilities, traffic signals, street lights, and proposed utility services for the park -n- rides and LRT sub-stations, without regard to whether or not such items are included in the definition of “Utility” in the PSURAs.

C-470 TOLLED EXPRESS LANES SEGMENT 1 DESIGN-BUILD PROJECT

PROJECT: NHPP 4701-124

BOOK 1 – CONTRACT

CONTRACT ROUTING # XXXXX

Utility Agreement	A PSURA and/or a Work Order, as the context may require.
Utility Delay	Any failure by a Utility Owner to meet any time parameters for performance by such Utility Owner which are set forth in the applicable Work Order, which failure by the Utility Owner delays the Critical Path so as to impair the Contractor's ability to meet a Completion Deadline; provided, however, that: (i) to the extent that such failure is excused under a "force majeure" provision in the applicable PSURA or in the Work Order, such failure shall not be the basis for calculating a Utility Delay against the Utility Owner; however, the Contractor shall be entitled to an extension of any Completion Deadline(s), (ii) once the Contractor has issued a Design Acceptance Letter for a particular Utility-Owner furnished design pursuant to Book 2, Section 7, any subsequent failure by such Utility Owner to meet the time parameters in the applicable Work Order resulting from any failure of such design to comply with the requirements of Book 2, Section 7 shall not constitute a Utility Delay, and (iii) once the Contractor has issued a Construction Inspection Acceptance Letter for construction by a particular Utility Owner pursuant to Book 2, Section 7, any subsequent failure by such Utility Owner to meet the time parameters in the applicable Work Order resulting from any failure of such construction to comply with the requirements of Book 2, Section 7 shall not constitute a Utility Delay. Any time parameters set forth in a PSURA shall not be the basis for calculating a Utility Delay. Time extensions as related to Utility Delays are described in Book 1 Section 6.2.4.
Utility Easements	All permanent easements and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities.
Utility Information Sheet (UIS)	A form, completed prior to NTP1 for each Utility impacted by the Project, which documents the existing condition of such Utility and a preliminary Relocation recommendation to mitigate the potential conflict.
Utility Owner	The owner or operator of any Utility (including both Public Utility Owners and Private Utility Owners).
Utility Owner Identification Number	The number that has been assigned to each Utility Owner on the UISs.
Utility Relocation Plans	The design plans for Relocation of a Utility impacted by the Project to be prepared by the Contractor or the Utility Owner, as determined pursuant to Book 2, Section 7.
Utility Removal Work	Work necessary to remove any Utilities (whether or not in use as of the date of NTP1 or NTP2) for which leaving the Utilities in-place is not feasible or not permitted, or which the Contractor otherwise proposes to be removed in order to accommodate or permit construction of the Project, regardless of whether or not replacements for such Utilities are being installed in other locations).
Value Engineering Change Proposal (VECP)	The meaning set forth in the Book 1, Section 12.
Verification/Verify	The act of testing or inspecting performed by qualified testing or inspecting personnel employed by CDOT or its designated agent to independently establish <i>Conformity</i> to the <i>Contract</i> .
Vision Message	The Project message communicated by the CDOT Public Information Team, which will include the overall goals, strategies, direction, and philosophy of the Project.
Warranty	Any warranty made by the Contractor in Book 1, Section 21.
Wetland Acceptance	The meaning set forth in Book 2, Section 5.

C-470 TOLLED EXPRESS LANES SEGMENT 1 DESIGN-BUILD PROJECT

PROJECT: NHPP 4701-124

BOOK 1 – CONTRACT

CONTRACT ROUTING # XXXXX

Wheel Path	Wheel paths are the two sections of each through-traffic lane that bear the wheel loading. The center of each wheel path is located 3 feet from the center of the lane; each wheel path is 2 feet wide.
Work	All duties and services to be furnished and provided by Contractor as required by the Contract Documents, including the administrative, design, engineering, quality control, quality assurance, Relocation, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, Materials, equipment, documentation and other efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by CDOT or other Persons. In certain cases the term is also used to mean the products of the Work.
Work Breakdown Structure	The meaning set forth in Book 2, Section 2.
Work Order	An ordering agreement (as the same may be amended from time to time) among CDOT, a Utility Owner and the Contractor, providing detailed information and terms relating to the Relocation of a particular Utility, which is executed pursuant to a PSURA. At CDOT's election, any Work Order will also function as a Change Order, in accordance with Book 1, Section 6.2, when the Work Order form is completed and/or modified as directed by CDOT to reflect such dual function.
Working Day	Any Calendar Day other than Saturday, Sunday, or a Holiday.
Working Drawings	A general term that includes drawings, diagrams, illustrations, samples, schedules, calculations, and other data which illustrate the construction of the work, material, equipment, methods, and items which are necessary to construct the work in accordance with the plans and specifications.
Written Permission of CDOT	A letter signed by the authorized representative of CDOT granting specific permission and outlining limitations of the permission.

EXHIBIT B

Completion Deadlines

(Form P of the ITP)



COLORADO

Department of Transportation

Division of Project Support

Project Development Branch
Standards and Specifications Unit

MEMORANDUM

DATE: January 9, 2015

TO: All holders of Standard Special Provisions

FROM: Larry Brinck, Standards and Specifications Engineer

SUBJECT: The Minimum Wages on Federal Aid Projects

Effective this date, our unit is issuing the revised **Minimum Wages, Colorado, U.S. Department of Labor, General Decision Number CO150016** standard special provision. This revised standard special is 10 pages long, and is dated **January 09, 2015**. It is to be included in all federal aid projects beginning with projects that have bid openings on **January 19, 2015** or later. Use this standard special provision on all federal-aid projects with contracts exceeding \$2000, except for non-ARRA projects on roadways classified as local roads or rural minor collectors, which are exempt. Projects on local roads, rural minor collectors, and enhancement projects funded with ARRA funds are not exempt.

If you have any questions or comments, please contact this office.

January 02, 2014

**U.S. DEPT. OF LABOR DAVIS BACON MINIMUM WAGES
COLORADO HIGHWAY CONSTRUCTION
GENERAL DECISION NUMBER - CO150016**

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions, unless such use is first approved by the Standards and Specification Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies which use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

Instructions for use on CDOT construction projects:

Use this standard special provision on all federal-aid projects with contracts exceeding \$2000, except for non-ARRA projects on roadways classified as local roads or rural minor collectors, which are exempt. Projects on local roads, rural minor collectors, and enhancement projects funded with ARRA funds are not exempt.

Decision Nos. CO150016 dated January 02, 2015 supersedes Decision Nos. CO140016 dated January 03, 2014.		<u>Modifications</u>			<u>ID</u>
		<u>MOD Number</u>	<u>Date</u>	<u>Page Number(s)</u>	
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.					
General Decision No. CO150016 applies to the following counties: Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, and Park counties.					
General Decision No. CO150016 The wage and fringe benefits listed below reflect collectively bargained rates.					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
	ELECTRICIAN (Traffic Signalization Only):				
1000	Clear Creek	26.42	4.75% + 8.68		
	POWER EQUIPMENT OPERATOR:				
	Drill Rig Caisson				
1001	Smaller than Watson 2500 and similar	24.73	9.15		
1002	Watson 2500 similar or larger	25.04	9.15		
	Crane (50 tons and under)				
1003	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	24.88	9.15		
	Crane (51 - 90 tons)				
1004	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	25.04	9.15		
	Crane (91 - 140 tons)				
1005	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	25.19	9.15		
1006	Scraper				
1007	Single bowl under 40 cubic yards	24.88	9.15		
1008	40 cubic yards and over	25.04	9.15		

General Decision No. CO150016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
	CARPENTER:			
	Excludes Form Work			
1009	Adams	16.61	3.88	
1010	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	19.27	5.08	
	Form Work Only			
1011	Adams	16.78	3.57	
1012	Broomfield, Clear Creek, Elbert, Gilpin	19.11	5.46	
1013	Jefferson	16.88	3.81	
1014	Park	17.28	5.38	
	CEMENT MASON/CONCRETE FINISHER:			
1015	Adams	16.05	3.00	
1016	Arapahoe	18.70	3.85	
1017	Broomfield, Clear Creek, Elbert, Gilpin	18.37	3.00	
1018	Jefferson	18.02	3.42	
1019	Park	17.09	2.85	
	ELECTRICIAN:			
	Excludes Traffic Signal Installation			
1020	Adams	31.00	14.01	
1021	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	35.13	6.83	
	Traffic Signalization Electrician			
1022	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	27.25	7.10	
1023	Jefferson	26.78	5.44	
	Traffic Signalization Groundsman			
1024	Adams	13.96	2.80	
1025	Arapahoe, Broomfield, Elbert, Gilpin, Park	15.24	3.81	
1026	Clear Creek	15.70	2.14	
1027	Jefferson	15.19	4.72	

General Decision No. CO150016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
1028	FENCE ERECTOR	13.02	3.20	
1029	FORM WORKER – Arapahoe	15.30	3.90	
	GUARDRAIL INSTALLER:			
1030	Adams	12.89	3.45	
1031	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	12.89	3.20	
	HIGHWAY/PARKING LOT STRIPING:			
	Painter			
1032	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	12.62	3.21	
1033	Jefferson	14.21	3.21	
	IRONWORKER:			
	Reinforcing			
1034	Adams	22.14	0.77	
1035	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	16.69	5.45	
1036	Park	19.98	2.89	
1037	Structural	18.22	6.01	
	LABORER:			
	Asphalt Raker			
1038	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	16.29	4.25	
1039	Park	17.41	1.86	
1040	Asphalt Shoveler	21.21	4.25	
1041	Asphalt Spreader	18.58	4.65	
	Common or General			
1042	Adams	16.29	4.25	
1043	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	16.67	4.27	
1044	Jefferson	16.51	4.27	
1045	Park	15.64	2.46	

General Decision No. CO150016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	Concrete Saw (Hand Held)			
1046	Adams	16.29	5.20	
1047	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	16.29	6.14	
	Landscape and Irrigation			
1048	Adams, Arapahoe, Broomfield, Elbert, Gilpin, Jefferson, Park	12.26	3.16	
1049	Clear Creek	14.98	3.16	
	Mason Tender - Cement/Concrete			
1050	Adams	17.71	2.83	
1051	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	16.96	4.04	
1052	Jefferson	16.29	4.25	
1053	Park	15.08	3.10	
1054	Pipelayer	13.55	2.41	
	Traffic Control (Flagger)			
1055	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	9.55	3.05	
1056	Jefferson	9.73	3.05	
1057	Park	9.42	3.21	
	Traffic Control (Sets Up/Moves Barrels, Cones, Install Signs, Arrow Boards and Place Stationary Flags)			
1058	Adams, Arapahoe, Broomfield, Elbert, Gilpin, Jefferson	12.43	3.22	
1059	Clear Creek	13.14	3.20	
1060	Park	12.76	3.20	
1061	PAINTER (Spray Only)	16.99	2.87	

General Decision No. CO150016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1062	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	22.67	8.75	
1063	Park	22.67	8.72	
1064	Asphalt Paver	24.97	6.13	
	Asphalt Roller			
1065	Adams	24.20	7.70	
1066	Arapahoe	22.68	8.72	
1067	Broomfield, Clear Creek, Elbert, Gilpin	23.41	7.67	
1068	Jefferson	22.84	7.69	
1069	Park	22.84	8.72	
	Asphalt Spreader			
1070	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	22.67	8.67	
1071	Jefferson	23.34	8.06	
1072	Backhoe/Trackhoe			
1073	Adams	20.31	4.24	
1074	Arapahoe	24.59	6.24	
1075	Broomfield, Clear Creek, Elbert, Gilpin	22.19	6.48	
1076	Jefferson	21.99	5.60	
1077	Park	20.81	6.58	

General Decision No. CO150016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't):			
	Bobcat/Skid Loader			
1078	Adams, Broomfield, Clear Creek, Elbert, Gilpin	15.37	4.28	
1079	Arapahoe	18.23	4.28	
1080	Jefferson	16.85	4.28	
1081	Park	22.46	0.00	
1082	Boom	22.67	8.72	
	Broom/Sweeper			
1083	Adams, Broomfield, Clear Creek, Elbert, Gilpin, Park	22.70	8.07	
1084	Arapahoe	22.67	8.73	
1085	Jefferson	22.18	8.36	
	Bulldozer			
1086	Adams	25.20	6.72	
1087	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	26.90	5.59	
1088	Concrete Pump	21.60	5.21	
	Crane			
1089	Adams, Park	22.82	8.72	
1090	Jefferson	23.55	6.68	
	Drill			
1091	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	20.48	4.71	
1092	Jefferson	20.65	5.74	
1093	Forklift	15.91	4.68	

General Decision No. CO150016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't):			
	Grader/Blade			
1094	Adams	23.94	8.23	
1095	Arapahoe	22.67	8.72	
1096	Broomfield, Clear Creek, Elbert, Gilpin, Park	23.90	7.93	
1097	Jefferson	23.28	7.73	
1098	Guardrail/Post Driver	16.07	4.41	
	Loader (Front End)			
1099	Adams	23.09	8.72	
1100	Arapahoe	26.80	4.84	
1101	Broomfield, Clear Creek, Elbert, Gilpin	23.20	8.33	
1102	Jefferson	23.06	7.76	
1103	Park	22.67	8.72	
	Mechanic			
1104	Adams	22.82	8.72	
1105	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	24.04	7.35	
1106	Jefferson	23.56	8.72	
	Oiler			
1107	Adams, Jefferson	21.97	8.72	
1108	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	23.73	8.41	
	Roller/Compactor (Dirt and Grade Compaction)			
1109	Adams	16.70	3.30	
1110	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	20.30	5.51	
1111	Park	16.52	3.13	
1112	Rotomill	16.22	4.41	

General Decision No. CO150016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't):			
	Screed			
1113	Adams	27.89	3.50	
1114	Arapahoe	22.67	8.72	
1115	Broomfield, Clear Creek, Elbert, Gilpin	24.67	6.02	
1116	Jefferson	22.64	8.43	
1117	Park	20.36	3.04	
1118	Tractor	13.13	2.95	
	TRUCK DRIVER:			
	Distributor			
1119	Adams	15.80	5.27	
1120	Arapahoe	19.62	5.27	
1812	Broomfield, Clear Creek, Elbert, Gilpin, Park	18.19	5.27	
1121	Jefferson	19.46	6.04	
	Dump Truck			
1122	Adams	16.68	5.27	
1123	Arapahoe	18.94	5.27	
1124	Broomfield, Clear Creek, Elbert, Gilpin	16.47	5.27	
1125	Jefferson	16.97	4.78	
1126	Park	15.40	3.21	
	Lowboy Truck			
1127	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	17.25	5.27	
1128	Jefferson	19.80	6.42	
1129	Mechanic	26.48	3.50	
	Multi-Purpose Speciality and Hoisting Truck			
1130	Adams, Broomfield, Clear Creek, Elbert, Gilpin, Park	17.49	3.17	
1131	Arapahoe	15.79	2.48	
1132	Jefferson	15.13	3.89	

General Decision No. CO150016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER (con't.):			
	Semi/Trailer Truck (Includes Pickup and Pilot Car)			
1133	Adams, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	18.39	4.13	
1134	Arapahoe	16.00	2.60	
	Single Axle (Includes Pickup and Pilot Car)			
1135	Adams, Jefferson	13.93	3.68	
1136	Arapahoe	15.10	3.77	
1137	Broomfield, Clear Creek, Elbert, Gilpin, Park	14.74	3.68	
1138	Truck Mounted Attenuator	12.43	3.22	
	Water Truck			
1139	Adams	17.50	5.19	
1140	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	19.36	4.07	
1141	Jefferson	17.57	5.27	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program.

If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION NO. CO150016



COLORADO

Department of Transportation

Division of Project Support

Project Development Branch
Standards and Specifications Unit

MEMORANDUM

DATE: January 9, 2015

TO: All holders of Standard Special Provisions

FROM: Larry Brinck, Standards and Specifications Engineer

SUBJECT: The Minimum Wages on Federal Aid Projects

Effective this date, our unit is issuing the revised **Minimum Wages, Colorado, U.S. Department of Labor, General Decision Number CO150019** standard special provision. This revised standard special is 7 pages long, and is dated **January 09, 2015**. It is to be included in all federal aid projects beginning with projects that have bid openings on **January 19, 2015** or later. Use this standard special provision on all federal-aid projects with contracts exceeding \$2000, except for non-ARRA projects on roadways classified as local roads or rural minor collectors, which are exempt. Projects on local roads, rural minor collectors, and enhancement projects funded with ARRA funds are not exempt.

If you have any questions or comments, please contact this office.

January 09, 2015

**U.S. DEPT. OF LABOR DAVIS BACON MINIMUM WAGES
COLORADO HIGHWAY CONSTRUCTION
GENERAL DECISION NUMBER - CO150019**

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions, unless such use is first approved by the Standards and Specification Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies which use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

Instructions for use on CDOT construction projects:

Use this standard special provision on all federal-aid projects with contracts exceeding \$2000, except for non-ARRA projects on roadways classified as local roads or rural minor collectors, which are exempt. Projects on local roads, rural minor collectors, and enhancement projects funded with ARRA funds are not exempt.

Decision Nos. CO150019 dated January 02, 2015 supersedes Decision Nos. CO140019 dated January 03, 2014.		<u>Modifications</u>			<u>ID</u>
		<u>MOD Number</u>	<u>Date</u>	<u>Page Number(s)</u>	
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.					
General Decision No. CO150019 applies to the following counties: Denver and Douglas counties.					
General Decision No. CO150019 The wage and fringe benefits listed below reflect collectively bargained rates.					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
1234	CARPENTER (Form Work Only)	25.00	5.39		
	TRAFFIC SIGNALIZATION:				
	Traffic Signal Installation				
1235	Zone 1	26.42	4.75% + 8.68		
1236	Zone 2	29.42	4.75% + 8.68		
	<u>Traffic Installer Zone Definitions</u> Zone 1 – Within a 35 mile radius measured from the addresses of the following cities: Colorado Springs - Nevada & Bijou Denver - Ellsworth Avenue & Broadway Ft. Collins - Prospect & College Grand Junction - 12th & North Avenue Pueblo - I-25 & Highway 50 Zone 2 - All work outside these areas.				
	POWER EQUIPMENT OPERATOR:				
	Hydraulic Backhoe				
1237	Wheel Mounted, under ¾ yds.	24.73	9.15		
1238	Backhoe/Loader combination	24.73	9.15		
	Drill Rig Caisson				
1239	Smaller than Watson 2500 and similar	24.73	9.15		
1240	Watson 2500 similar or larger	25.04	9.15		
	Loader				
1241	Up to and including 6 cubic yards	24.73	9.15		
1242	Denver County - Under 6 cubic yards	24.73	9.15		

General Decision No. CO150019				
The wage and fringe benefits listed below reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
1243	Denver County - Over 6 cubic yards	24.88	9.15	
	Motor Grader			
1244	Douglas county - Blade Rough	24.73	9.15	
1245	Douglas county - Blade Finish	25.04	9.15	
	Crane			
1246	50 tons and under	24.88	9.15	
1247	51 to 90 tons	25.04	9.15	
1248	91 to 140 tons	25.19	9.15	
	Scraper			
1249	Single bowl under 40 cubic yards	24.88	9.15	
1250	40 cubic yards and over	25.04	9.15	
General Decision No. CO150019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
1251	CARPENTER (Excludes Form Work)	19.27	5.08	
	CEMENT MASON/CONCRETE FINISHER:			
1252	Denver	20.18	5.75	
1253	Douglas	18.75	3.00	
1254	ELECTRICIAN (Excludes Traffic Signal Installation)	35.13	6.83	
1255	FENCE ERECTOR (Excludes Link/Cyclone Fence Erection)	13.02	3.20	
1256	GUARDRAIL INSTALLER	12.89	3.20	
	HIGHWAY/PARKING LOT STRIPING:			
	Painter			
1257	Denver	12.62	3.21	
1258	Douglas	13.89	3.21	
	IRONWORKERS:			
1259	Reinforcing (Excludes Guardrail Installation)	16.69	5.45	
1260	Structural (Includes Link/Cyclone Fence Erection), (Excludes Guardrail Installation)	18.22	6.01	

General Decision No. CO150019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	LABORERS:			
1261	Asphalt Raker	16.29	4.25	
1262	Asphalt Shoveler	21.21	4.25	
1263	Asphalt Spreader	18.58	4.65	
	Common or General			
1264	Denver	16.76	6.77	
1265	Douglas	16.29	4.25	
1266	Concrete Saw (Hand Held)	16.29	6.14	
1267	Landscape and Irrigation	12.26	3.16	
	Mason Tender - Cement/Concrete			
1268	Denver	16.96	4.04	
1269	Douglas	16.29	4.25	
	Pipelayer			
1270	Denver	13.55	2.41	
1271	Douglas	16.30	2.18	
	Traffic Control			
1272	Flagger	9.55	3.05	
1273	Sets Up/Moves Barrels, Cones, Install Signs, Arrow Boards and Place Stationary Flags, (Excludes Flaggers)	12.43	3.22	
	PAINTER:			
1274	Spray Only	16.99	2.87	
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1275	Denver	22.67	8.72	
1276	Douglas	23.67	8.47	
	Asphalt Paver			
1277	Denver	24.97	6.13	
1278	Douglas	25.44	3.50	

General Decision No. CO150019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Asphalt Roller			
1279	Denver	23.13	7.55	
1280	Douglas	23.63	6.43	
1281	Asphalt Spreader	22.67	8.72	
	Backhoe/Trackhoe			
1282	Douglas	23.82	6.00	
1283	Bobcat/Skid Loader	15.37	4.28	
1284	Boom	22.67	8.72	
	Broom/Sweeper			
1285	Denver	22.47	8.72	
1286	Douglas	22.96	8.22	
1287	Bulldozer	26.90	5.59	
1288	Concrete Pump	21.60	5.21	
	Drill			
1289	Denver	20.48	4.71	
1290	Douglas	20.71	2.66	
1291	Forklift	15.91	4.68	
	Grader/Blade			
1292	Denver	22.67	8.72	
1293	Guardrail/Post Driver	16.07	4.41	
	Loader (Front End)			
1294	Douglas	21.67	8.22	
	Mechanic			
1295	Denver	22.89	8.72	
1296	Douglas	23.88	8.22	

General Decision No. CO150019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Oiler			
1297	Denver	23.73	8.41	
1298	Douglas	24.90	7.67	
	Roller/Compactor (Dirt and Grade Compaction)			
1299	Denver	20.30	5.51	
1300	Douglas	22.78	4.86	
1301	Rotomill	16.22	4.41	
	Screed			
1302	Denver	22.67	8.38	
1303	Douglas	29.99	1.40	
1304	Tractor	13.13	2.95	
	TRAFFIC SIGNALIZATION:			
	Groundsman			
1305	Denver	17.90	3.41	
1306	Douglas	18.67	7.17	
	TRUCK DRIVER:			
	Distributor			
1307	Denver	17.81	5.82	
1308	Douglas	16.98	5.27	
	Dump Truck			
1309	Denver	15.27	5.27	
1310	Douglas	16.39	5.27	
1311	Lowboy Truck	17.25	5.27	
1312	Mechanic	26.48	3.50	
	Multi-Purpose Specialty & Hoisting Truck			
1313	Denver	17.49	3.17	
1314	Douglas	20.05	2.88	

General Decision No. CO150019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER (con't.):			
	Pickup and Pilot Car			
1315	Denver County	14.24	3.77	
1316	Douglas County	16.43	3.68	
1317	Semi/Trailer Truck	18.39	4.13	
1318	Truck Mounted Attenuator	12.43	3.22	
	Water Truck			
1319	Denver County	26.27	5.27	
1320	Douglas County	19.46	2.58	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program.

If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION NO. CO150019

EXHIBIT D – KEY PERSONNEL

[Form I from the Proposal Documents – to be included with execution copy]

EXHIBIT E – VECP SAMPLE CALCULATION

The following example is a proposal by Contractor to acquire additional Right of Way in lieu of wall construction.

CALCULATION OF VECP SAVINGS

Cost of wall	\$ 250,000
Less cost of preparing VECP	(\$ 10,000)
Less costs of implementing proposal:	
Contractor's expenses	\$ 15,000
CDOT's cost of personnel	\$ 10,000
CDOT's cost of property	\$ 150,000
Total Cost:	<u>(\$185,000)</u>
Net savings from VECP:	<u>\$ 65,000</u>

CONTRACT ADJUSTMENT

CDOT's total cost	\$ 160,000
Plus Contractor's share of VECP savings (50%)	\$ <u>32,500</u>
Total Reduction in Contract Price:	<u>\$ 192,500</u>

CERTIFICATION STATEMENT

The Contractor shall submit the following documentation to CDOT, which documentation shall be retained in the Project records:

1. A certified invoice for purchased material shall contain the following statement, which has been signed by the Contractor:

"We certify, by photocopy of this invoice, the quantity of material represented by this invoice was purchased and received for the C-470 Tolled Express Lanes Segment 1 Design-Build Project and the prices shown are the actual costs."

Contractor

Date

Verification shall be provided that payment requested for material furnished and delivered will not exceed the amount paid by Contractor as evidenced by a bill of sale supported by paid invoice, or 75% of the in-place price, whichever is less.

Signed: Contractor's Superintendent and Subcontractors' Superintendents (if applicable)
The Contractor will review this analysis for reasonableness. If the analysis is considered reasonable, the Contractor will sign and date it. Otherwise, it shall be returned for further information or revision.

EXHIBIT I – LETTER OF VESTED INTEREST

CDOT, Region XYZ
Address

To Whom It May Concern:

It is hereby understood that the CDOT Project No. _____, S.A. No. _____ (the Project) fully intends to reimburse

(Contractor)

for materials owned by said Contractor-Purchaser and intended for incorporation into the Project.

Said materials, as described below, are now stored on property owned

By _____ and leased by _____
(if applicable)

Said storage property is located as follows:

(Address and/or Description of Property)

Said stored materials are described as follows:

(Detailed Description of Materials)

It is hereby recognized that once reimbursement has been accomplished, CDOT will have a vested interest in the materials. Access to and possession of the materials will be granted to CDOT upon demand and providing that acceptable proof is offered substantiating that reimbursement to Contractor was, in fact, accomplished.

_____	_____	_____	_____
Owner	Phone Number	Lessee (if applicable)	Phone Number

_____	_____	_____	_____
Owner	Phone Number	Lessee (if applicable)	Phone Number

Attachments: (When existing)
Warehouse Receipt of Contract for Storage

EXHIBIT J – DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

1. Objectives

- a. Compliance with 49 CFR Part 26. The terms of this exhibit are designed to comply with Title 49 Part 26 of the Code of Federal Regulations (CFR), Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Program. In the event of a conflict between these provisions and those of the 49 CFR Part 26, 49 CFR Part 26 shall apply. A conflict does not exist where 49 CFR Part 26 provides CDOT discretion or if CDOT has obtained a waiver of the requirement.
- b. Non-Discrimination in the Administration and Award of this Project. By submitting a proposal for this contract, the Proposer/Contractor agrees to the following assurance, and shall require the same of all subcontractors and suppliers on the project:

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

Any person who believes they have been subject to discrimination in accordance with the award or administration of this project may file a complaint with CDOT or FHWA.

- c. Only Firms That Fully Meet the Eligibility Requirements Permitted to Participate as DBEs. CDOT and the City and County of Denver are the two certifying agencies for the Colorado Unified Certification Program (UCP). In order to participate as a DBE on this project, the firm must be certified by one of these agencies and listed on the Colorado UCP DBE Directory at www.coloradodbe.org. The Proposer/Contractor shall only seek to count work performed by firms listed on the UCP DBE Directory and shall be responsible for ensuring that the firms are certified for the specific work to be performed.
- d. Creation of a Level Playing Field on Which DBEs can Compete Fairly for Contracts. The Proposer/Contractor shall not employ contracting methods which have the effect of excluding DBEs from opportunities to participate on the contract. The Proposer/Contractor shall provide interested DBEs with adequate information about the plans, specifications and requirements of the contract, shall give full and fair consideration to all solicitations from DBE firms, and shall negotiate in good faith with interested DBEs.
- e. Remove Barriers to Participation and Assist in the Development of DBE Firms. The Proposer/Contractor shall collaborate with the CDOT civil rights staff and the Connect2DOT program to provide services and training that will remove barriers to participation and assist in the development of DBE firms.
- f. Prompt Payment to All Subcontractors. At a minimum, each contractor and subcontractor must pay its subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of each payment made to such contractor or subcontractor. Further, each contractor and subcontractor must ensure prompt and full payment of retainage to a subcontractor within thirty (30) days after the

subcontractor's work is satisfactorily completed. CDOT may withhold payment if the contractor or its subcontractors fails to promptly pay any subcontractor.

2. Definitions

- a. **Commitment.** A commitment is a portion of the Contract, identified by dollar amount and work area, designated by the Proposer or Contractor for participation by a particular firm. Once submitted to CDOT, a commitment is a binding obligation and cannot be terminated or reduced without following the procedures for Termination outlined below.
- b. **Commercially Useful Function (CUF).** Responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing and supervising the work as further described in 49 CFR Part 26.55.
- c. **Disadvantaged Business Enterprise (DBE).** A Colorado-certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org.
- d. **DBE Program Manual.** The DOT-approved manual maintained by the CRBRC which details CDOT's policies and procedures for administering the DBE program.
- e. **Good Faith Efforts.** All necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient participation, even if not fully successful. For additional guidance see 49 CFR Part 26 Appendix A.
- f. **Joint Check.** A check issued by the Contractor or one of its subcontractors to a firm and a material supplier or other third party for materials or services to be incorporated into the work.
- g. **Subcontractor.** An individual, firm, corporation or other legal entity to whom the Contractor sublets part of the contract. For purposes of this exhibit, the term subcontractor includes subconsultants and suppliers.
- h. **Substitution.** Substitution occurs when the Contractor seeks to find another DBE firm to perform work on the contract as a result of a reduction or termination.
- i. **Termination.** A termination occurs when the Contractor no longer intends to use a DBE firm for fulfillment of a commitment. A reduction is considered a partial termination.
- j. **Work Code.** A code assigned by the certifying agency that identifies the work a DBE is certified to perform. A work code includes a six digit North American Industry Classifications System code and a descriptor. Work codes are listed on a firm's profile on the UCP DBE Directory. The Contractor may contact the CRBRC to receive guidance on whether a work code covers the work to be performed.

3. Contract Goals

- a. **Design Goal.** The contract goal for DBE participation on the design portion of the contract is ten percent (10%) of the design elements. Design elements include design survey, geotechnical testing and engineering, utilities investigation and design, pavement design, structures design (bridges and retaining walls), drainage design, MS-4 and stormwater management plans, landscape architecture and design, civil roadway design, traffic engineering, lighting design, and quality assurance.
- b. **Construction Goal.** The contract goal for DBE participation on the construction portion of the contract is twelve percent (12%) of the construction elements. Unless a modification is requested and approved, all elements of the project not included in the design elements shall be considered part of the construction elements.

4. Proposal Requirements

- a. Nondiscrimination and Good Faith Effort Affidavit: Each Proposer shall submit an affidavit of nondiscrimination and good faith efforts with its proposal. Failure to do so shall deem the Proposer non-responsive and ineligible for award. The affidavit shall include the following commitments:
 - i. To not discriminate on the basis of race, color, national origin or sex in the performance of the contract and to require the same of all subcontractors and suppliers;
 - ii. To carry out all applicable requirements of 49 CFR part 26 in the award and administration of the project; and
 - iii. To make good faith efforts to meet the contract goals prior to award and throughout performance of the contract.
- b. Bidders List: The proposer must provide CDOT with a list of all quotes received from subconsultants, subcontractors and suppliers for the project up to the time the proposal is due. This list should be separated between the design and construction elements and provide the following: name of the firm, email address, and work quoted.
- c. DBE Strategic Plan: Each Proposer will be evaluated based upon its strategic approach to meeting the DBE contract goals, its staffing and communications, and its commitment to efforts which will assist DBEs in being successful. Each of these elements is discussed in more detail below.
 - i. The Proposer must provide a strategic DBE participation plan demonstrating that it has evaluated and determined how it intends to meet each contract goal. A separate plan shall be submitted for each goal and include the areas of work identified for participation, the expected percentage of the applicable portion of the project, and whether a firm has already been selected or not. The expected percentage may be a range. For example:

Traffic Control and Flagging	.5-1%	No Firm Selected
Asphalt Paving	3-4.5%	Firm Chosen

If the Proposer identifies elements of the project that it determines should be moved from the design or construction portion of the contract in order to count toward such goals, it shall request a modification within its strategic plan with an explanation as to why the work should be reallocated. The Proposer may include more information about its approach to meeting the goals in its plans including outreach for opportunities, good faith effort process in the event of a termination or reduction of work, etc. The Proposer is expected to be strategic in developing its plan for meeting the goals, realizing that opportunities within the contract may change and one single approach to meeting the goals may not be sufficient.

- ii. The Proposer must describe the additional efforts to which it commits in order to level the playing field, increase DBE participation on the contract, mentor or assist DBEs during the performance of the project and/or aid DBE development. Examples of such efforts are described in 49 CFR 26.51. Additional efforts may also include prompt payment procedures beyond state law requirements and/or dispute resolutions procedures to aid DBEs.
- iii. The Proposer must identify a Civil Rights Liaison or Team who will be responsible for communicating with CDOT and DBEs, providing required reports and data, ensuring the compliance with the civil rights requirements for this contract, and conducting outreach. The Civil Rights Liaison should be an individual who will be present at regularly scheduled meetings with the project team and have the authority to address issues related to DBE participation or other civil rights matters on the project. The Proposer may select more than one individual for this role. The Proposer shall explain describe the relevant skill set/experience of the liaison(s),

the responsibilities and authority provided to the liaison(s), and the approach the liaison(s) will undertake for working and communicating with CDOT and DBEs.

5. Counting Participation.

- a. Compliance with 49 CFR 26.55. Unless otherwise specified below, all counting for DBE participation shall be in accordance with 49 CFR 26.55. However, as documented in the DBE Program Manual, CDOT does not permit the counting of non-certified trucking participation in accordance with 49 CFR 26.55(e).
- b. Approved Commitment. In order to count toward the contract goal, the commitment for the work to be performed must be submitted to and approved by CDOT. For DBE participation, the work performed by the DBE must be reasonably construed by CDOT to be included in the work area and work code identified by the Contractor in the approved commitment. A DBE cannot receive credit for work in an area for which it is not certified.
- c. Certified at Submission of Commitment and at Subcontract. The firm must be certified to perform the work upon submission of the commitment and upon execution of the subcontract. DBEs must possess the applicable work code for the work to be performed. When a commitment has been made and, upon review of Form 205, Sublet Permit, CDOT determines that the DBE is no longer certified in the applicable work code, the Contractor may not use the firm's participation toward the contract goal. A firm's work will continue to count as eligible participation if the firm was certified upon approval of Form 205, Sublet Permit, but the certification status changes during the performance of the work. Suppliers must be certified upon execution of the purchase order.
- d. Reasonable Fee for Contract-Specific Services. Services shall count toward the contract goal only if they are specifically required for the performance of the Contract. Non-contract specific expenses may not be counted toward the contract goal. Fees for services must be reasonable. Services include but are not limited to professional services, public involvement, etc.
- e. Placement Services. In the case of temporary employment placement agencies, only the placement fee and fees for a temporary employee that will be specifically and exclusively used for work on the contract shall count as eligible participation; the temporary employee's hourly fee does not count toward the contract goal.
- f. Pre-Approval for Joint Venture Participation. When a firm is a participant in a joint venture, the firm must apply to CDOT to determine how much of the work performed by the joint venture will count toward the contract goal. The firm must present this information to CDOT no less than ten days before the submission of the Proposal to ensure sufficient time for review.

6. Preaward Good Faith Effort Review

- a. CDOT shall not award the contract unless and until the Civil Rights and Business Resource Center (CRBRC) has determined that the Proposer has made good faith efforts to meet the contract goals. In order to be awarded the contract, the Proposer must establish good faith efforts by securing and documenting commitments for participation that are sufficient to meet the contract goals or, if the commitments are not sufficient to meet the contract goals, documenting the commitments obtained as well as other adequate good faith efforts. Only the portion of the commitments which will be considered eligible for credit once performed shall count toward the contract goals.
- b. Within ten (10) calendar days of selection for each goal, the Proposer must submit a Form 1414, Anticipated Participation Plan and Form 1415, Commitment Confirmations to the CRBRC. A Form 1415

must be submitted for each commitment listed in the Form 1414. The second half of the commitment confirmation must be independently completed by the DBE firm. CDOT permits commitments to second tier or lower firms, however the Proposer/Contractor must sign all commitment documents and remains ultimately responsible for fulfillment of the commitment. CDOT will review all commitments to ensure that the commitments have been properly calculated. CDOT may adjust commitments as necessary.

- c. If the Proposer fails to secure commitments sufficient to meet the contract goals, the Proposer must also submit a Form 1416, Good Faith Effort Report listing all good faith efforts made by the Proposer, including documentation of all solicitations made, responses to such solicitations and reason for not selecting the firm if applicable. CDOT and the Proposer may negotiate for the proposer to engage in additional good faith efforts prior to being eligible for award. If the proposer does not cooperate or provides any indication of intentional misrepresentation or fraudulent activity, the CRBRC may deem that the Proposer has failed to make good faith efforts.
- d. If the CRBRC determines that the Proposer has not demonstrated good faith efforts to meet the contract goal, it will provide the Proposer with written notice of such decision and the Proposer will be provided an opportunity for administrative reconsideration in accordance with CDOT's DBE Program Manual.
- e. If the CRBRC determines that the Proposer has demonstrated good faith effort, the CRBRC will issue a Form 1417, Approved Participation Plan for each goal. Throughout the performance of the project, the Contractor shall make good faith efforts to fulfill the commitments established in the Form 1417 and meet the contract goals. Failure to do so may result in sanctions and/or be considered a breach of contract.

7. Plan Modifications.

- a. Plan Modification Requests. All plan modifications must be submitted to the Regional Civil Rights Office (RCRO) with the Form 1420, Plan Modification Request. The RCRO shall respond to the Contractor in writing using the second half of the Form 1420. The RCRO may request additional information for any plan modifications. Multiple requests may be made on one Form 1420.
- b. Additional Commitments/Commitment Modifications. If the Contractor intends to use a new firm or a firm for work that was not listed in the commitment, the Contractor shall submit to the RCRO a Form 1420 and a new or revised Form 1415 for approval. Unapproved work will not count toward the contract goal. A DBE commitment cannot be modified to include work for which the DBE was not certified at the time of the approval of the original commitment. The contractor does not need to submit a revised commitment for an increase in the amount of work to be performed.
- c. Terminations/Reductions. The Contractor shall utilize the specific DBE firm listed to perform the work and supply the materials for which it is listed. The Contractor shall not be entitled to payment for work or materials designated to be performed or supplied by the listed firm, unless the Contractor obtains written consent from the RCRO. The RCRO will provide written consent only if he or she agrees that the prime contractor has good cause to terminate the firm. Good cause includes the following circumstances:
 - i. The listed DBE subcontractor fails or refuses to execute a written contract;
 - ii. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action by the Contractor;
 - iii. The listed DBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.

- iv. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- v. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- vi. The listed DBE subcontractor is not a responsible contractor;
- vii. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- viii. The listed DBE subcontractor is ineligible to receive DBE credit for the type of work required;
- ix. A DBE owner dies or becomes disabled with the result that the listed contractor is unable to complete its work on the contract;
- x. Other documented good cause that compels the termination; provided, that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE subcontractor was engaged or so that the Contractor can substitute another DBE or non-DBE subcontractor after contract award.

Before requesting a termination from CDOT, the Contractor must give notice in writing to the DBE subcontractor, with a copy to CDOT, of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor must give the DBE subcontractor five (5) days to respond to the Contractor's notice and advise CDOT and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why CDOT should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), CDOT may designate a response period shorter than five (5) days. After the five (5) day waiting period, the Contractor must submit the request for approval of the termination via the Form 1420 to the RCRO.

- d. Substitution. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.
 - i. Good faith efforts shall be documented by the Contractor. If CDOT requests documentation under this provision, the contractor shall submit the documentation a Form 1420 and the supporting good faith effort documentation within seven (7) days, which may be extended for an additional seven (7) days if necessary at the request of the Contractor. CDOT shall respond to the Contractor via the second half of the Form 1420 stating whether or not good faith efforts have been demonstrated.
 - ii. If the Contractor is able to find substitute participation, the Contractor must request approval of the substitution via a Form 1420. The Contractor shall submit the Form 1420, an amended participation plan and commitment confirmation to the RCRO for approval. Substitute participation will not count toward the contract goal if not approved.
- a. Change Modification Orders. Alterations or changes in quantities which result in an increase in the amount to be paid to the Contractor of one hundred thousand dollars (\$100,000) or more shall be subject to the applicable contract goal. The Contractor shall ensure that sufficient participation is obtained to meet the contract goal or request a waiver via the Form 1420. Failure to request a waiver may result in sanctions up to the amount of the applicable contract goal on the change order.

8. Monitoring and Reporting Requirements

- a. Consistency Review. CDOT will review Form 205, Sublet Permit Application to determine whether the work being sublet is consistent with the commitments. CDOT may withhold approval of the sublet or stop performance of the work if the Contractor has reduced, terminated, or otherwise modified the type or amount of work to be performed by a DBE without seeking prior approval.
- b. Joint Checks. All joint checks must be approved by the RCRO before they are used. The request for a joint check must be made in writing in the form of a letter signed by the DBE and the Contractor stating the reason for the joint check and the approximate number of checks that will be needed. All approved joint checks will be monitored closely to avoid abuse and to ensure the DBE is performing a Commercially Useful Function.
- c. Monthly Reporting: The Contractor shall include a breakdown of expected participation as part of the Original Initial Schedule provided to CDOT. Thereafter, the Contractor shall use the monthly subcontractor report required in Book 1, Section 7.7 to document DBE participation.
- d. Semi Annual Reviews. The Contractor's representative and the RCRO shall meet on a semi-annual basis to review the Contractor's compliance with the proposal, participation plans and these Exhibit J requirements. The Contractor shall provide the following at each semi-annual review: (1) a detailed breakdown of the firms that have participated on the project, the work that has been performed and the amount paid to date; (2) an assessment of DBE participation to date and anticipated participation in the next six (6) months; and (3) any other documentation requested by the RCRO. The Contractor should maintain and have available all supporting documentation including the contract, agreement or purchase order, invoices, and monthly reports.
- e. FHWA DBE Reporting. On May 15 and November 15 of each year, the Contractor shall provide to CDOT a completed Uniform Report of DBE Awards/Commitments and Payments in order to summarize DBE participation on the project. The report format and instructions can be found at 49 CFR Part 26 Appendix B.
- f. Final Reporting. Upon completion of the project, the Contractor must submit a final report summarizing all DBE participation on the project. CDOT will not provide Final Acceptance of the project until the RCRO has reviewed the final report and determined whether the contractor made good faith efforts to meet the contract goals or shall be subject to sanctions.

9. Enforcement

- a. Sanctions. The Contractor will be subject to a payment reduction for the greater of the following:
 - i. The total amount of any unapproved terminations or reduction of commitments. In order to calculate this amount, for each DBE commitment calculate the anticipated DBE credit amount less the actual DBE credit and any approved terminations or reductions. The total of all non-approved terminations or reductions equals the payment reduction amount. An increased payment to another DBE does not offset the commitment based reduction; the work must be performed by the listed DBE unless approved by CDOT.; or
 - ii. The portion of the contract goal that was not met and was not waived by demonstration of good faith efforts. In order to calculate this amount, first calculate the contract goal amount by multiplying contract goal by total earnings amount. Deduct the amount of actual DBE credit approved participation waivers from contract goal amount.

- b. Investigations. As it determines necessary, CDOT may conduct reviews or investigations of participants. All participants, including, but not limited to, DBE firms and applicants for DBE certification, complainants, and contractors using DBE firms to meet contract goals, are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information.
- c. Intimidation and retaliation. Participants shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by the DBE program or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the DBE program.
- d. Consequences of Non-Compliance. Failure to comply with subsections (a) or (b) shall be grounds for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).
- e. Fraud and Misrepresentation. If CDOT determines that a contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by CDOT to be unallowable, or if the contractor engages in repeated violations, falsification or misrepresentation, CDOT may: refuse to count any fraudulent or misrepresented DBE/ESB participation; withhold progress payments to the contractor commensurate with the violation; suspend or reduce the contractor's prequalification status; refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; or seek any other available contractual remedy.
- f. A DBE firm that fails to perform a commercially useful function or operates in a manner inconsistent with these Exhibit J requirements, 49 CFR Part 26 or the DBE Program Manual may be subject to revocation of the firm's DBE certification.

COLORADO DEPARTMENT OF TRANSPORTATION

CONTRACTOR SELECTION OF LITIGATION OR ARBITRATION

Project No.:

Project Code (SA#):

Date:

Location:

Contractor:

Complete Address:

INSTRUCTIONS:

This Form 1378 shall be completed and signed by an officer of the Contractor's organization with authority to commit the Contractor to the selection of either de novo litigation or merit binding arbitration selected herein. This form shall be submitted by the Contractor to the Engineer at or prior to the preconstruction conference.

I hereby certify that if the Contractor, listed above, disagrees with the Chief Engineer's decision on a claim submitted to CDOT, the Contractor will attempt to finally resolve the claim by initiating only one of the following **[Mark only one]**:

De Novo Litigation

Merit Binding Arbitration

I also certify that I am an officer of the Contractor's organization with authority to commit the Contractor to the selection made above.

Signature of Contractor's representative:

Name of Contractor's representative (print):

Title of Contractor's representative:

Exhibit M Small Business and Workforce Incentives

A. Available Incentives:

If, during the performance of the project, the Contractor meets the criteria established in Subsections B-D, the Contractor shall be eligible for the following monetary incentives:

1. Emerging Small Business (ESB) Target: \$100,000
2. DBE/ESB Business Development Activities: \$75,000
3. OJT Additional Hours: \$75,000

Each incentive is independent and the Contractor need not meet the criteria of the other subsections in order to be eligible for the respective award.

B. ESB Target:

The ESB Target may be achieved by securing participation by certified ESBs for at least three percent (3%) of the total contract value.

1. Counting. Work must be performed by a currently certified ESB in order to count toward the ESB Target. All currently certified ESBs are listed on the CDOT ESB Directory at www.coloradoesb.org. ESB participation will be counted in the same manner as DBE participation, except that ESBs do not have work codes and any work performed by an ESB may perform count toward the ESB Target. The Contractor may count the performance by a DBE that is also certified as an ESB toward the ESB Target.
2. Procedural Requirements. While no plan is required of the Contractor, prior to the ESB commencing work, the Contractor must submit an ESB commitment to the RCRO for approval. The Contractor may use the Form 1415, Commitment Confirmation, with a designation on the form that the firm is an ESB. This approval is to ensure that the ESB is certified for the work and that the participation is being properly counted. Work performed before approval may not count toward the ESB Target. Termination and substitution procedures do not apply to ESBs. The RCRO may perform commercially function reviews of the ESB participation at any time.
3. Incentive Award. The incentive shall be awarded upon final acceptance of the project if it is determined by the RCRO that the Contractor reached at least three percent (3%) ESB participation on the Contract.

C. DBE/ESB Business Development Activities

In order to be eligible for the incentive for DBE/ESB Business Development Activities, the Contractor must complete the following:

1. Exit Interviews. In order to be eligible for this incentive, the Contractor or the subcontractor under which the DBE or ESB has performed work must meet with each DBE and ESB to discuss the firm's performance on the Contract. The Contractor shall develop an exit interview form to be agreed upon by the RCRO.
2. Small Business Construction Outreach Event. Prior to NTP2, the Contractor shall host a small business event targeted at DBE and ESB firms to perform work on the construction elements of the contract. The event shall be coordinated and advertised in

collaboration with CDOT's Connect2DOT program staff. The Contractor shall notify participants of areas for which subcontractors are still being sought and require attendance by known higher tier construction subcontractors.

3. Quarterly Small Business Trainings. In order to ensure that small businesses participating on the project understand the contract requirements, the Contractor shall host quarterly trainings. The Contractor shall work with the RCRO in order to determine the curriculum to be presented at these training in order to assist small businesses in being successful on the contract.

D. OJT Additional Hours

If, in accordance with the OJT program requirements established in the RFP and the OJT Standard Special Provision, the Contractor achieves a total of 30,000 trainee hours, the Contractor shall receive the OJT additional hours incentive.

February 3, 2011

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies which use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

Instructions for use on CDOT construction projects:

Use this standard special provision on all projects.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

A. AFFIRMATIVE ACTION REQUIREMENTS

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Goals and Timetable for Minority Utilization

Timetable - Until Further Notice			
Economic Area	Standard Metropolitan Statistical Area (SMSA)	Counties Involved	Goal
157 (Denver)	2080 Denver-Boulder	Adams, Arapahoe, Boulder, Denver, Douglas, Gilpin, Jefferson.....	13.8%
	2670 Fort Collins	Larimer.....	6.9%
	3060 Greeley	Weld.....	13.1%
	Non SMSA Counties	Cheyenne, Clear Creek, Elbert, Grand, Kit Carson, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Washington & Yuma.....	12.8%
158 (Colo. Spgs. - Pueblo)	1720 Colorado Springs	El Paso, Teller.....	10.9%
	6560 Pueblo	Pueblo.....	27.5%
	Non SMSA Counties	Alamosa, Baca, Bent, Chaffee, Conejos, Costilla, Crowley, Custer, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Mineral, Otero, Prowers, Rio Grande, Saguache.....	19.0%
159 (Grand Junction)	Non SMSA	Archuleta, Delta, Dolores, Eagle, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel	10.2%
156 (Cheyenne - Casper WY)	Non SMSA	Jackson County, Colorado.....	7.5%
GOALS AND TIMETABLES FOR FEMALE UTILIZATION			
Until Further Notice.....6.9% -- Statewide			

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Par 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this specification, and in the contract resulting from this solicitation, the "covered area" is the county or counties shown on the Invitation for Bids and on the plans. In cases where the work is in two or more counties covered by differing percentage goals, the highest percentage will govern.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these Specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes;
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractor toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance Programs Office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following;
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source of community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

- g. Review, at least annually, the Contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and Contractor's activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligation.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

AFFIRMATIVE ACTION REQUIREMENTS
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C. SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES.

1. *General.*

- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract. Provisions (Form FHWA 1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract provisions.
- b. The Contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
- c. The Contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The Contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The Contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program;

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include; 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, preapprenticeship, and/or on-the-job training.

3. *Equal Employment Opportunity Officer.* The Contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (herein after referred to as the EEO Officer) who will have the responsibility for an must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.*

- a. All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum;

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

AFFIRMATIVE ACTION REQUIREMENTS
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- (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the Contractor.
 - (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group employees.
- b. In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor will take the following actions:
- (1) Notices and posters setting forth the Contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - (2) The Contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. *Recruitment.*

- a. When advertising for employees, the Contractor will include in all advertisements for employees the notation; "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- b. The Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the Contractor for employment consideration.

In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the Contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246, as amended.)

- c. The Contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.
6. *Personnel Actions.* Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed;
- a. The Contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

AFFIRMATIVE ACTION REQUIREMENTS
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- b. The Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of his avenues of appeal.

7. *Training and Promotion.*

- a. The Contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
- c. The Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The Contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. *Unions.* If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women with the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The Contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.
- c. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

- d. In the event the union is unable to provide the Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such Contractor shall immediately notify the State highway agency.

9. *Subcontracting.*

- a. The Contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.
- b. The Contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. *Records and Reports.*

- a. The Contractor will keep such records as are necessary to determine compliance with the Contractor's equal employment opportunity obligations. The records kept by the Contractor will be designed to indicate:
- (1) The number of minority and nonminority group members and women employed in each work classification on the project.
 - (2) The Progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and
 - (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.
- c. The Contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391.

ON THE JOB TRAINING

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions regarding its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies that use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

INSTRUCTIONS FOR USE ON CDOT CONSTRUCTION PROJECTS:

Use this standard special provision in all Federal-aid projects.

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ON THE JOB TRAINING

This training special provision is an implementation of 23 U.S.C. 140 (a). The Contractor shall meet the requirements of the FHWA 1273 for all apprentices and trainees.

As part of the Contractor's Equal Employment Opportunity Affirmative Action Program, training shall be provided on projects as follows:

1. The Contractor shall provide on the job training aimed at developing full journey workers in the skilled craft identified in the approved training plan. The Contractor shall provide at a minimum, required training hours listed in the Project Special Provisions for each project.
2. The primary objective of this specification is to train and upgrade women and minority candidates to full journey worker status. The Contractor shall make every reasonable effort to enroll and train minority and women workers. This training commitment shall not be used to discriminate against any applicant for training whether or not the applicant is a woman or minority.
3. The Contractor may employ temporary workers from CDOT supportive services providers to meet OJT requirements. Information pertaining to supportive services providers may be obtained by calling the CDOT OJT Coordinator at the number shown on the link <http://www.coloradodot.info/business/equal-opportunity/training.html>
4. An employee shall not be employed or utilized as a trainee in a skilled craft in which the employee has achieved journey status.
5. The minimum length and type of training for each skilled craft shall be as established in the training program selected by the Contractor and approved by the Department and the Colorado Division of the Federal Highway Administration (FHWA), or the U. S Department of Labor (DOL), Office of Apprenticeship or recognized state apprenticeship agency. To obtain assistance or program approval contact:

CDOT Center for Equal Opportunity
4201 East Arkansas Avenue
Denver, CO 80222
eo@dot.state.co.us
1-800-925-3427
6. The Contractor shall pay the training program wage rates and the correct fringe benefits to each approved trainee employed on the project and enrolled in an approved program. The minimum trainee wage shall be no less than the wage for the Guardrail Laborer classification as indicated in the wage decision for the project.
7. The CDOT Regional Civil Rights Manager must approve all proposed apprentices and trainees for the participation to be counted toward the project goal and reimbursement. Approval must occur before training begins. Approval for the apprentice or trainee to begin work on a CDOT project will be based on:
 - A. Evidence of the registration of the trainee or apprentice into the approved training program.
 - B. The completed Form 838 for each trainee or apprentice as submitted to the Engineer.
8. Before training begins, the Contractor shall provide each trainee with a copy of the approved training program, pay scale, pension and retirement benefits, health and disability benefits, promotional opportunities, and company policies and complaint procedures.
9. Before training begins, the Contractor shall submit a copy of the approved training program and CDOT Form 1337 to the Engineer. Progress payments may be withheld until this is submitted and approved and may be withheld if the approved program is not followed.

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ON THE JOB TRAINING

10. On a monthly basis, the Contractor shall provide to the Engineer a completed On the Job Training Progress Report (Form 832) for each approved trainee or apprentice on the project. The Form 832 will be reviewed and approved by the Engineer before reimbursement will be made. The Contractor will be reimbursed for no more than the OJT Force Account budget. At the discretion of the Engineer and if funds are available, the Engineer may increase the force account budget and the number of reimbursable training hours through a Change Order. The request to increase the force account must be approved by the Engineer prior to the training.
11. Upon completion of training, transfer to another project, termination of the trainee or notification of final acceptance of the project, the Contractor shall submit to the Engineer a "final" completed Form 832 for each approved apprentice or trainee.
12. All forms are available from the CDOT Center for Equal Opportunity, through the CDOT Regional Civil Rights Manager, or on CDOT's website at <http://www.coloradodot.info/business/bidding/Bidding%20Forms/Bid%20Winner%20Forms>
13. Forms 838 and 832 shall be completed in full by the Contractor. Reimbursement for training is based on the number of hours of on the job training documented on the Form 832 and approved by the Engineer. The Contractor shall explain discrepancies between the hours documented on Form 832 and the corresponding certified payrolls.
14. The OJT goal (# of training hours required) for the project will be included in the Project Special Provisions and will be determined by the Regional Civil Rights Manager after considering:
 - A. Availability of minorities, women, and disadvantaged for training;
 - B. The potential for effective training;
 - C. Duration of the Contract;
 - D. Dollar value of the Contract;
 - E. Total normal work force that the average bidder could be expected to use;
 - F. Geographic location;
 - G. Type of work; and
 - H. The need for additional journey workers in the area
 - I. The general guidelines for minimum total training hours are as follows:

Contract dollar value	Minimum total training hours to be provided on the project
Up to 1 million	0
>1 - 2 million	320
>2 - 4 million	640
>4 - 6 million	1280
>6 - 8 million	1600
>8 - 12 million	1920
>12 - 16 million	2240
>16 - 20 million	2560
For each increment of \$5 million, over \$20 million	1280

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ON THE JOB TRAINING

15. The number of training hours for the trainees to be employed on the project shall be as shown in the Contract. The trainees or apprentices employed under the Contract shall be registered with the Department using Form 838, and must be approved by the Regional Civil Rights Manager before training begins for the participation to be counted toward the OJT project goal. The goal will be met by an approved trainee or apprentice working on that project; or, if a Contractor's apprentice is enrolled in a DOL approved apprenticeship program and registered with CDOT using Form 838 and working for the Contractor on a non-CDOT project. The hours worked on the non-CDOT project may be counted toward the project goal with approved documentation on Form 832. Training hours will be counted toward one project goal.
16. Subcontractor trainees who are enrolled in an approved Program may be used by the Contractor to satisfy the requirements of this specification.
17. The Contractor will be reimbursed \$2.00 per hour worked for each apprentice or trainee working on a CDOT project and whose participation toward the OJT project goal has been approved.
18. The Contractor shall have fulfilled its responsibilities under this specification if the CDOT Regional Civil Rights Manager has determined that it has provided acceptable number of training hours.
19. Failure to provide the required training will result in the following disincentives: A sum representing the number of training hours specified in the Contract, minus the number of training hours worked as certified on Form 832, multiplied by the journey worker hourly wages plus fringe benefits $[(A \text{ hours} - B \text{ hours worked}) \times (C \text{ dollar per hour} + D \text{ fringe benefits})] = \text{Disincentives Assessed}$. Wage rate will be determined by averaging the wages for the crafts listed on Form 1337. The Engineer will provide the Contractor with a written notice at Final Acceptance of the project informing the Contractor of the noncompliance with this specification which will include a calculation of the disincentives to be assessed.

Exhibit Q. Pertinent Non-Discrimination Authorities:

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

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

[D-B CONTRACTOR NAME]

CERTIFICATION REGARDING TIFIA LOAN AGREEMENT

This Certificate is being delivered pursuant that certain TIFIA Loan Agreement (the “**TIFIA Loan Agreement**”), dated as of _____, 2015 (the “**Effective Date**”), as it may be amended from time to time, by and between the United States Department of Transportation and the High Performance Transportation Enterprise, a government-owned business within and a division of the Colorado Department of Transportation (the “**Borrower**”) in relation to the [C-470 Tolled Express Lanes Segment 1 Project] (TIFIA – 201_) (the “**Project**”). All capitalized terms contained herein and not otherwise defined shall have the respective meanings ascribed to them in the TIFIA Loan Agreement. [D-B Contractor Name], a [joint venture] comprised of [List Joint Venture Member/Partner/Owner/Guarantor Constituent Entities], (the “**Contractor**”) has entered into those certain [Contract Documents] for the C-470 Tolled Express Lanes Segment 1 Design-Build Project dated as of [_____, 20__], as amended from time to time, [and that certain [Additional Agreement, if any] dated as of [_____, 20__], as amended from time to time, with the Colorado Department of Transportation, an agency of the State of Colorado (“**CDOT**”) (collectively, the “**Contracts**”).

The undersigned are duly authorized representatives of Contractor, and hereby certifies for and on behalf of Contractor, to the best of the undersigned’s knowledge and belief, that Contractor and its principals (as defined in 2 C.F.R. § 180.995) (other than partners, owners or guarantors providing separate executed Certifications):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in contracts, procurements or non-procurement matters by any federal department or agency, and are not delinquent on a government debt;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

The undersigned hereby further certify for and on behalf of the Contractor that:

(e) Contractor is, and has caused its contractors and subcontractors to be, in compliance in all material respects with, and has conducted (or caused to be conducted) its business and operations and the business and operations of the Project in compliance in all material respects with, all applicable laws and except as set forth in Schedule 1 hereto, the Contractor is in compliance with all applicable laws relating to: (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), or (vii) other environmental, health or safety matters (collectively, “**Environmental Laws**”), in each case to the extent related to the Project;

(f) There is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority, pending, or to the knowledge of the undersigned after reasonable inquiry and investigation, threatened against or affecting the Project, the ability of the Contractor to perform its obligations under the Contracts, or the assets, properties or operations of the Contractor as they relate to the Project, and no notices of violation of any United States law have been issued, entered or received by the Contractor, which in any case could reasonably be expected to have a Material Adverse Effect, and there are no lawsuits pending, threatened against or affecting the Contractor that could reasonably be expected to have a Material Adverse Effect;

(g) The Contractor has not received any communication or notice (written or oral), whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that Contractor is not in full compliance with all Environmental Laws (other than those items reflected on Schedule 1) and Governmental Approvals relating thereto in connection with the Project and, to the knowledge of the undersigned, there are no circumstances that may prevent or interfere with full compliance in the future;

(h) No event has occurred that gives the Contractor the right to terminate the Contracts;

(i) The Contractor is not in breach of any material term of the Contracts or in default under the Contracts;

(j) Contractor (i) is not in violation of (A) any applicable United States anti-money laundering laws, including those contained in the Bank Secrecy Act and the regulations promulgated thereunder; (B) any applicable economic sanction laws administered by Office of Foreign Assets Control of the United States Department of the Treasury (“**OFAC**”) or by the United States Department of State; or (C) any applicable United States anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; and (ii) is not a Person (1) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws; (2) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws; (3) that is named on the list of “Special Designated Nationals or Blocked Persons” maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list); (4) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type

contemplated by the TIFIA Loan Agreement and the other Related Documents under any other applicable law; (5) that is owned, controlled by, or affiliated with any Person identified in clause (1), (2), (3) or (4) of this clause (ii); or (6) that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business; and

(k) Schedule 2 lists all insurance policies of any nature maintained by the Contractor with respect to the Project as of the Effective Date, as well as a summary of the terms of each such policy, and the Contractor is in compliance with all insurance obligations under the Contracts.

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have executed this Certificate as of the ____ day of _____, 201_.

[D-B CONTRACTOR], [a joint venture]

By: [____], [on behalf of and as a member of the joint venture]

By: _____

Name:

Title:

By: [____], [on behalf of and as a member of the joint venture]

By: _____

Name:

Title:

By: [____], [on behalf of and as a member of the joint venture]

By: _____

Name:

Title:

Schedule 1
Environmental Matters

[List of items of any non-compliance with Environmental Laws]

[Schedule 1 to Certificate Regarding TIFIA Loan Agreement]

Schedule 2
Insurance Policies

[Schedule 2 to Certificate Regarding TIFIA Loan Agreement]

[JOINT VENTURE MEMBER/PARTNER/OWNER/GUARANTOR NAME]

CERTIFICATION REGARDING TIFIA LOAN AGREEMENT

This Certificate is being delivered pursuant that certain TIFIA Loan Agreement (the “**TIFIA Loan Agreement**”), dated as of _____, 2015 (the “**Effective Date**”), as it may be amended from time to time, by and between the United States Department of Transportation and the High Performance Transportation Enterprise, a government-owned business within and a division of the Colorado Department of Transportation (the “**Borrower**”) in relation to the [C-470 Tolled Express Lanes Segment 1 Project] (TIFIA – 201_) (the “**Project**”). All capitalized terms contained herein and not otherwise defined shall have the respective meanings ascribed to them in the TIFIA Loan Agreement. [D-B Contractor Name], a [joint venture] comprised of [List Partner/Owner/Guarantor Constituent Entities], (the “**Contractor**”) has entered into those certain [Contract Documents] for the C-470 Tolled Express Lanes Segment 1 Design-Build Project dated as of [_____, 20__], as amended from time to time, [and that certain [Additional Agreement, if any] dated as of [_____, 20__], as amended from time to time, with the Colorado Department of Transportation, an agency of the State of Colorado (“**CDOT**”) (collectively, the “**Contracts**”).

The undersigned is a duly authorized member of the joint venture that is the Contractor, and executed that certain [Development/Capital Maintenance Agreement Guaranty] as of [_____, 20__], [and that certain [Additional Guaranty Agreement, if any] dated as of [_____, 20__], in relation to the Contracts. The undersigned hereby certifies, to the best of the undersigned’s knowledge and belief, that the undersigned and its principals (as defined in 2 C.F.R. § 180.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in contracts, procurements or non-procurement matters by any federal department or agency, and are not delinquent on a government debt;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

The undersigned hereby further certifies that:

(e) The undersigned is, and has caused its contractors and subcontractors to be, in compliance in all material respects with, and has conducted (or caused to be conducted) its business and operations and the business and operations of the Project in compliance in all material respects with, all applicable laws and except as set forth in Schedule 1 hereto, the undersigned is in compliance with all applicable laws relating to: (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), or (vii) other environmental, health or safety matters (collectively, “**Environmental Laws**”), in each case to the extent related to the Project;

(f) There is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority, pending, or to the knowledge of the undersigned after reasonable inquiry and investigation, threatened against or affecting the Project, the ability of the undersigned to perform its obligations under the Contracts, or the assets, properties or operations of the undersigned as they relate to the Project, and no notices of violation of any United States law have been issued, entered or received by the undersigned, which in any case could reasonably be expected to have a Material Adverse Effect, and there are no lawsuits pending, threatened against or affecting the undersigned that could reasonably be expected to have a Material Adverse Effect;

(g) The undersigned has not received any communication or notice (written or oral), whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Contractor or the undersigned is not in full compliance with all Environmental Laws (other than those items reflected on Schedule 1) and Governmental Approvals relating thereto in connection with the Project and, to the knowledge of the undersigned, there are no circumstances that may prevent or interfere with full compliance in the future;

(h) No event has occurred that gives the undersigned the right to terminate the Contracts;

(i) The undersigned is not in breach of any material term of the Contracts or in default under the Contracts;

(j) Neither the undersigned, nor any Person owning the undersigned (excluding Persons owning securities effected on a recognized public stock exchange, unless such securities were acquired in a transaction involving an initial public offering) or Controlling the undersigned (as such terms are defined in the TIFIA Loan Agreement): (i) is in violation of (A) any applicable United States anti-money laundering laws, including those contained in the Bank Secrecy Act and the regulations promulgated thereunder; (B) any applicable economic sanction laws administered by Office of Foreign Assets Control of the United States Department of the Treasury (“**OFAC**”) or by the United States Department of State; or (C) any applicable United States anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; and (ii) is a Person (1) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws; (2) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws; (3) that is named on the list of “Special Designated Nationals or Blocked Persons” maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United

States Department of State (or any successor United States government office or list); (4) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by the TIFIA Loan Agreement and the other Related Documents under any other applicable law; (5) that is owned, controlled by, or affiliated with any Person identified in clause (1), (2), (3) or (4) of this clause (ii); or (6) that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business; and

(k) Schedule 2 lists all insurance policies of any nature maintained by the Contractor with respect to the Project as of the Effective Date, as well as a summary of the terms of each such policy, and the Contractor is in compliance with all insurance obligations under the Contracts.

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the ____ day
of _____, 201_.

[JOINT VENTURE MEMBER/PARTNER/OWNER/GUARANTOR NAME]

By: _____

Name: _____

Title: _____

Schedule 1
Environmental Matters

[List of items of any non-compliance with Environmental Laws]

[Schedule 1 to Certificate Regarding TIFIA Loan Agreement]

Schedule 2
Insurance Policies

[Schedule 2 to Certificate Regarding TIFIA Loan Agreement]

EXHIBIT T – OPTION LETTER

SAMPLE OPTION LETTER

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #
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1) OPTIONS:

- a. Accept and approve modified Payment Schedule under Book 1, Section 13.16 of the Original Contract and modify the Encumbrance Amount.
- b. Accept and approve the modified Payment Schedule for a Change Order which impacts the Contract Price and/or the fiscal year Encumbrance Amount pursuant to Section 11.1.1 of the Original Contract, and modify the Contract Price and/or Encumbrance Amount.

2) REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

a. For use with Option 1(a): In accordance with Section(s) 7 of the Original Contract between the State of Colorado, Colorado Department of Transportation, and Contractor's Name, the State hereby exercises its option to accept and approve the modified Project Payment Schedule attached hereto as **Attachment A**, which is incorporated by reference herein (the "**Modified Payment Schedule**"). As of the effective date of this Option Letter, the Payment Schedule attached to the Original Contract shall be deleted in its entirety and replaced with the attached Modified Payment Schedule and the Encumbrance Amount (as such term in defined in Section 6 of the Original Contract) shall be increased/decreased by \$ amount of change to a new Encumbrance Amount of Insert New \$ Amt as consideration for services/goods ordered under the Contract for fiscal year indicate Fiscal Year. The first sentence of the fifth paragraph in Section 6 is hereby modified accordingly. The total Contract value including all previous amendments, option letters, etc. is Insert New \$ Amt.

b. For use with Option 1(b): In accordance with Section(s) 15 and 7 of the Original Contract between the State of Colorado, Colorado Department of Transportation, and Contractor's Name, the State hereby exercises its option to accept and approve the modified Project Payment Schedule attached hereto as **Attachment A**, which is incorporated by reference herein (the "**Modified Payment Schedule**"). As of the effective date of this Option Letter, the Payment Schedule attached to the Original Contract shall be deleted in its entirety and replaced with the attached Modified Payment Schedule and **[insert information below and if necessary delete the options not required]**:

- i. the Project Commitment Amount (as such term in defined in Section 6 of the Original Contract) shall be increased/decreased by \$ amount of change to a new Project Commitment Amount of Insert New \$ Amt for work ordered under the Contract. The first sentence of the second paragraph in Section 6 is hereby modified accordingly.
- ii. the Encumbrance Amount (as such term in defined in Section 6 of the Original Contract) shall be increased/decreased by \$ amount of change to a new Encumbrance Amount of Insert New \$ Amt as consideration for services/goods ordered under the Contract for fiscal year indicate Fiscal Year. The first sentence of the fifth paragraph in Section 6 is hereby modified accordingly. The total Encumbrance Amount for all fiscal years including all previous amendments, option letters, this option letter is Insert New \$ Amt.

3) Effective Date. The effective date of this Option Letter is upon approval of the State Controller or , whichever is later.

C-470 TOLLED EXPRESS LANES SEGMENT 1 DESIGN-BUILD PROJECT

PROJECT: NHPP 4701-124

BOOK 1 – CONTRACT

CONTRACT ROUTING # XXXXX

<p>STATE OF COLORADO John W. Hickenlooper, Governor Name of Agency or IHE</p> <hr/> <p>By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>
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ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

<p>CRS §24-30-202 requires the State Controller to approve all State contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.</p>
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STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval

Date: _____

Project Definition (Subaccount)	Fiscal Year	Phase	July	August	September	October	November	December	January	February	March	April	May	June
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