



Colorado Department of Transportation

&

Contractor

BOOK 1

CONTRACT

***US 160 Elmore's Corner to Dry Creek
Design-Build***



**US 160 —
Elmore's East**

Request for Proposal Date June 16, 2026

PROJECT NO.: *NHPP 1602-157 & FBR 1602-193*

SUBACCOUNT NO.: *20980 - COMBO*

PURCHASE ORDER NUMBER _____

CMS Number _____

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Exhibit C-5	Affirmative Action Standard Provision
Exhibit C-6	Title VI Non-Discrimination Assurance
Exhibit D	Key Personnel
Exhibit E	VECP Sample Calculation
Exhibit F	Insurance Requirements
Exhibit G	Cost Analysis for Request for Change Order
Exhibit H	Certification Statement
Exhibit I	Letter of Vested Interest
Exhibit J	Intentionally Left Blank
Exhibit K	Intentionally Left Blank
Exhibit L	Intentionally Left Blank
Exhibit M	Intentionally Left Blank
Exhibit N	Intentionally Left Blank
Exhibit O	Intentionally Left Blank
Exhibit P	On the Job Training Standard Special Provision
Exhibit Q	Intentionally Left Blank
Exhibit R	Intentionally Left Blank
Exhibit S	Intentionally Left Blank
Exhibit T	Option Letter
Exhibit U	Drawdown Worksheet

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Exhibit V Contractor's Option Price Form

Exhibit W Intentionally Left Blank

THIS Design-Build Contract is entered into this ___ day of _____, 2026, 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 _____, 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 the following elements:
 - i. Reconstruct/construct the existing US 160 corridor from the existing two-lane facility on US 160 between Mile Post (MP) 91.5 just east of CO 172 and MP 97.5 just east of CR 223 at Dry Creek.
 - ii. As a five-lane Regional Highway from CO 172 to MP 93.0 (Encantado Lane) with four 12-foot lanes, a two way left turn lane and widened outside shoulders to accommodate access along the corridor.
 - iii. As a four-lane Regional Highway with four 12-foot lanes, left turn lanes at all access points and widened outside shoulders from MP 93.0 to the improvements at the CR 225 intersection.
 - iv. Reconstruct the CR 225 intersection as a roundabout with two through lanes for US 160 and one lane for CR 225.
 - v. Construct a minimum of 1-mile of passing lane for each direction between CR 225 and CR 223 with widened shoulders.
 - vi. Construct and consolidate Narrow Gauge and Englishman mobile home park access.
 - vii. Improve access locations.
 - viii. Reconstruct bridge over the Florida River Bridge.
 - ix. Construct two wildlife underpasses and associated wildlife appurtenances.
 - x. Construct required retaining walls.
 - xi. Construct small mammal crossing structures.
 - xii. Provide drainage and irrigation features along the corridor.
 - xiii. Other items specified in Books 2, 4, and the Proposal Documents.

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. Book 1, as executed by CDOT and the Contractor, including all exhibits (Design-Build Contract).
2. Book 2, Section 1, including Exhibits (Technical Requirements).
3. Book 2, remaining sections, including all Appendices, Exhibits (Technical Requirements), and Approved ATCs (including any Conditions for Acceptance as noted in the ATC approval letter from CDOT) 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. In the event that a Best and Final Offer (BAFO) process (as defined in the Instructions to Proposers and Notice to Bidders) is utilized by CDOT as part of the Project procurement, the BAFO Proposal Documents shall hold precedence over the Contractor's originally submitted Proposal Documents, unless otherwise determined by CDOT. The Contractor's obligations shall include all commitments from the original Proposal except as expressly modified by the BAFO Proposal Documents.

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 regarding the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

1.4 Reference Documents

Documents marked as 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 expressly 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 order of CDOT’s attention in writing via the Deliverable Management System (DMS) as outlined in Book 2, Section 2 any conflicts or ambiguities contained therein to the Project Director. 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 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 the CDOT Project Director in writing 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, Exhibit C-1, Exhibit C-2, Exhibit C-3, Exhibit C-4, Exhibit C-5, Exhibit C-6, and Exhibit P.

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 Project Completion and Final Acceptance by the applicable Completion Deadlines; and (ii) otherwise to do everything required by and in accordance with the Contract Documents.
2. At all times provide a Design-Build 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 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 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 (AREs) 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 but not limited to: (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. The Contractor may apply for the "DR0172 – Contractor Application for Exemption Certificate". For information on this application,

you can visit: <https://tax.colorado.gov/sales-use-tax-forms> and you can find information on a Youtube video at the following link: https://www.youtube.com/watch?v=jo7PZN_wKJE.

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 Subcontractor(s) have maintained, and throughout the term of the Contract and any 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 2.6.3.

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 <https://www.codot.gov/projects/us-550-us-160-Connection-design-build>, 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 Colorado, 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 Loan Agreement

Intentionally left blank.

2.4 Key Personnel

2.4.1 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.

2.4.2 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.

2.5 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.

2.6 Requirements Regarding Basic Configuration and Contract Drawings

2.6.1 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.

2.6.2 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.

2.6.3 Necessary Design Change

If it is necessary, in CDOT's sole determination, to modify the Basic Configuration or 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 or 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, as Approved under Section 2.6.2, 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 or the Contract Drawings/ROW Plans, as appropriate).

2.7 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 4 – 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 Acceptance of Field Design Change Documents or through CDOT-Directed Changes. Such Acceptance(s) shall be timely considered and shall not be unreasonably withheld.

2.8 CDOT Default Review Period

Unless specifically stated elsewhere in the Contract Documents, the Contractor shall allow for 14 Days for CDOT review of any document furnished by the Contractor.

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 included in the Contractor's Proposal (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 2.6.3.

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 First Notice to Proceed

The Contractor shall begin performance of certain limited Work as directed and described in First Notice to Proceed (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. No construction of any kind may be initiated during NTP1. Required submittals from Book 2 shall be submitted by the Contractor and Accepted by CDOT prior to issuance of NTP1. The amount to be paid to the Contractor for Work performed pursuant to NTP1 shall not exceed the NTP1 Payment Cap. The NTP1 Payment Cap for this project is \$2,000,000. If CDOT issues NTP1 more than 30 days after execution of the 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 issued NTP1.

4.2.2 Issuance of Second Notice to Proceed

The Contractor shall begin performance of the remainder of the Work as directed and described in Second Notice to Proceed (NTP2) issued by CDOT. CDOT shall issue NTP2 upon Approval in accordance with Book 2. Within 14 Days after Contractor's submittal of the Original Baseline Schedule to CDOT, CDOT shall either Approve the Original Baseline Schedule and issue NTP2 or provide Contractor with reasons why it is unable to Approve the Original Baseline Schedule. In the event that CDOT fails to either Approve the Original Baseline Schedule and issue NTP2, or provide reasons why it is unable to Approve the Original Baseline Schedule, within ten Working Days after Contractor's submittal of the Original Baseline 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 Request for Change Orders, 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 be deemed to have waived their rights to an increase in Contract price and time extension. Further, 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 has issued NTP2 for all other Work.

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 in writing of any action recommended to be taken regarding the situation. 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 working 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 to 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 Book 2, Section 20. 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 and associated schedule impacts; 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 9.

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 9, 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.

6.1.3 Preparation of Documents

Contractor shall prepare all documents described in Book 2, Section 9 and shall deliver them to CDOT in sufficient time to allow review and Approval prior to the date the transfer is scheduled to occur.

6.1.4 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 moneys due or to become due to the Contractor, or may invoice the Contractor. If CDOT submits an invoice for such amount, the Contractor shall reimburse CDOT for any such amounts within thirty days after receipt of an invoice from CDOT therefore.

6.1.4.1 Additional Requirements

Additional requirements applicable to the Contractor are set forth in Book 2, Section 9.

6.1.5 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 8. 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 8 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 Quality Level B (QLB) Utility's actual centerline location is within 2 feet of the horizontal centerline location indicated in the SUE Plans within Book 4: Contract Documents (with no limitation on vertical location).
2. The QLC and QLD Utility's actual centerline location is within 10 feet of the horizontal centerline location indicated in the SUE Plans within Book 4: Contract Documents (with no limitation on vertical location).
3. The Utility's actual size for all Quality Levels is within 12 inches of the size indicated in the Utility Data included in the SUE Plans within Book 4: Contract 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 in the SUE Plans within Book 4 Contract 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 8.

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, 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 in writing 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 6.

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 AND SUBCONTRACTING REQUIREMENTS

7.1 Required Federal Provisions, Federal-Aid Construction Contracts, for FHWA 1273

As this Project will be financed in whole or in part with federal funds, all the statutes, rules and regulations promulgated by the federal government and applicable to Work financed in whole or in part with Federal funds will apply to such Work.

In accordance with Section 1 of The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273" ("FHWA 1273") contained in Exhibit C-2, FHWA 1273 applies to Design-Build Contracts, and shall be incorporated in this Agreement and all lower-tier Subcontracts under which any part of the Work is performed, excluding those Subcontracts for design services, purchase orders, rental agreements or other agreements for supplies or services. FHWA 1273 applies to and shall be incorporated by reference for Work done under any purchase order, rental agreement, or agreement for other services.

7.2 Equal Employment Opportunity (EEO) and Non-Discrimination

7.2.1 Equal Employment Opportunity (EEO)

The Submitter will be required to follow applicable federal and state Equal Employment Opportunity (EEO) policies in the execution of the Project. CDOT and the Submitter will affirmatively assure that for the Project, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, marital status, disability, sexual orientation, or age.

7.2.2 Assurance of Non-Discrimination (49 CFR Part 26)

By entering into this Agreement, the Contractor agrees to the following assurance (as further included in Exhibit C-1) and shall include it in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract):

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

7.2.3 Non-Discrimination

The Contractor shall, and shall ensure that all Subcontractors shall, comply with all laws that prohibit certain employment practices. In furtherance of this and in accordance with state and federal laws, including but not limited to 41 C.F.R. Sections 60-1.4 and 60-4.3. The Contractor

shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

7.2.4 Affirmative Action

The Contractor shall take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor shall, and shall ensure that all Subcontractors shall, comply with CDOT's Standard Special Provision "Affirmative Action Requirements Equal Employment Opportunity" (contained in Exhibit C-5). This standard special provision shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

7.2.5 Title VI of the Civil Rights Act and Related Statutes

7.2.5.1 Non-Discrimination Provisions

Pursuant to Title VI of the Civil Rights Act of 1964 and related statutes, the Contractor shall not, and shall ensure that none of the Subcontractors shall, exclude from participation in the Work, deny the benefits of, or subject to discrimination, any person in the United States on the ground of race, color, national origin, sex, age or disability. The Contractor shall, and shall ensure that all Subcontractors shall, comply with all applicable federal and state nondiscrimination law and with the required terms of USDOT Order No. 1050.2A "USDOT Standard Title VI/Non-Discrimination Assurances, which are set out in Exhibit C-6.

7.2.5.2 Notice and Complaints

The Contractor shall, and shall ensure that all Subcontractors shall, report all complaints alleging discrimination on the grounds of race, color, national origin, sex, age or disability to the Department. In all facilities open to the public and on any websites (or equivalent digital media) maintained by the Contractor for the Project, the Contractor shall post and make available to the public CDOT's non-discrimination notice and complaint procedures.

7.2.5.3 Meaningful Access for Limited English Proficiency Persons

The Contractor, its agents and Subcontractors, shall provide language assistance designed to ensure meaningful access to services for persons with Limited English Proficiency (LEP) pursuant to Title VI of the Civil Rights Act (42 U.S.C. §2000d, et seq.) and 45 C.F.R. § 80.3(b).

Meaningful access will mean that the Contractor, its agents or Subcontractors, and LEP person(s) can communicate effectively when services are being provided to LEP persons.

Where a significant number or proportion of the population eligible to be served or likely to be directly affected by this Project needs service or information related to this Project in a language other than English, the Contractor shall take reasonable steps, considering the scope of the Project and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.

Some LEP persons may not have the ability to read and understand written materials; therefore, oral interpretation of written materials may be necessary. Interpreters should be aware of variances within a language and should be able to communicate with clients using the appropriate colloquial speech.

7.2.6 Americans with Disabilities Act

Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 CFR § 35.101 et seq., the Contractor, and each of its Subcontractors and each of their Subcontractors, understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 CFR § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by CDOT through contracts with outside contractors.

7.3 Davis-Bacon and Related Acts (DBRA)

The Davis-Bacon and Related Acts (40 USC § 276a; 29 CFR Parts 1, 3, 5, 6 and 7) (the "DBRA") apply to the Contractors and Subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. The Contractor shall ensure that the requirements of the DBRA, to the extent applicable to the Work being performed, are implemented on all Subcontracts throughout the Project.

7.3.1 Wage Rates

The minimum wage rates to be used for purposes of compliance with this Section 7.3 are established by the U.S. Department of Labor. Current rates are attached in Exhibit C-3.

7.3.2 Compliance and Reporting

The Contractor shall ensure that all employees performing Work subject to DBRA classifications and rates working during the Project receive the minimum compensation required in accordance with DBRA and other Law. For all activities subject to DBRA, the Contractor shall submit weekly certified payrolls electronically to CDOT via CDOT's LCP tracker database. The requirements for submitting certified payrolls are outlined in Book 2, Section 3.

The Contractor shall, and shall ensure that all Subcontractors shall, maintain and make available for review, inspection and audit by the Department all such project records as are necessary to document compliance with DBRA and other law.

7.4 Colorado Overtime and Minimum Pay Standards

The Contractor, all Subcontractors, and Suppliers, as applicable, shall comply with the Colorado Overtime and Minimum Pay Standards (COMPS Order).

7.5 Emerging Small Business Project-Specific Pilot Requirements (ESB)

7.5.1 ESB Contract Goal

The ESB Contract Goal is **2.2 percent**. The Contractor shall make Good Faith Efforts to meet the ESB Contract Goal using certified ESB firms listed in the respective directory at www.coloradoESB.org. The ESB Contract Goal shall be calculated based on the Guaranteed Maximum Price, excluding amounts attributable to the F/A On-the-Job Training, F/A Dispute Review Board, and F/A Partnering. The resulting adjusted GMP shall be used to calculate the required ESB participation amount, and no ESB credit shall be applied to the performance of the excluded costs.

7.5.2 ESB Disincentive

Failure to make Good Faith Efforts to achieve the ESB Contract Goal may result in a disincentive to the Contractor pursuant to Book 2, Section 3.

7.6 On-the-Job Training (OJT)

The OJT requirements for this Project are set forth in CDOT Standard Specifications for Road and Bridge Construction, Standard Special Provisions “On-the-Job Training,” contained in Exhibit P. The goal of CDOT’s OJT Program is to provide individuals with meaningful on-the-job training that develops career skills transferable beyond the initial Project. Training opportunities may be provided through program-approved trainees or apprentices.

7.6.1 OJT Contract Goal

The OJT Contract Goal for this Project is **20,000 hours**.

7.6.2 Reimbursement to Contractors

Pursuant to CDOT Standard Specifications for Road and Bridge Construction “On The Job Training” contained in Exhibit P, the Contractor will be reimbursed at a rate of \$10.00 per hour for eligible OJT hours worked by CDOT Accepted trainees, up to the OJT Contract Goal. Each trainee shall be Accepted by CDOT pursuant to CDOT Standard Specification for Road and Bridge Construction “On The Job Training” for the trainee’s hours to be eligible for reimbursement. The maximum reimbursement for which the Contractor is eligible is the product of the OJT Contract Goal hours and Rate of \$10.00 per hour.

7.6.3 OJT Disincentive

Failure to achieve the OJT Contract Goal may result in a disincentive to the Contractor. The disincentive will be calculated pursuant to CDOT Standard Specification for Road and Bridge Construction, Standard Special Provisions “On The Job Training” contained in Exhibit P.

7.7 Subcontracting

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. 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. The Contractor shall maintain a copy of each Subcontract, which shall be made available to CDOT upon request. The Contractor shall ensure Exhibit C (to include Exhibit C-1 through Exhibit C-6) is included in each contractual agreement without modification except as appropriate to identify the Subcontractor or Supplier that will be subject to the provisions contained therein

7.7.1 Modification of Major Participant

The Contractor shall not add, delete, or change the role of, any Major Participant without the prior written Approval of CDOT.

7.7.2 Limitation on Subcontracted Work

The Contractor 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). The 30 percent shall be calculated in accordance with FHWA Form 1273 – Part VI 1-4.

7.7.3 Sublet and Supplier Acceptance

The Contractor shall not sublet, sell, transfer, assign, or dispose of the Contract, or any portion thereof without Acceptance from CDOT via B2GNow approval. Prior to beginning of any Work by a Subcontractor, the Contractor shall request Acceptance from CDOT by submitting a completed Design-Build Sublet Permit Application, CDOT DB Form 205. Such request shall be made only after execution of a Subcontract or written agreement that includes all applicable and pertinent Contract provisions. Work shall not begin until CDOT Acceptance has been received via B2GNow approval. The Contractor shall make all project related written Subcontracts, agreements, and purchase orders available to CDOT for review, upon request and at a location convenient to CDOT. CDOT DB Form 205 and CDOT Form 1425 shall not be submitted for any firms that are debarred, suspended, declared ineligible, or voluntarily excluded from participation from government contracting. A revised CDOT DB Form 205 shall be submitted for Acceptance through the Approved Document Management System if a new scope of Work is added to an Accepted CDOT DB Form 205.

For Suppliers, as defined in Book 1, Exhibit A, and rental equipment companies, within 30 Days after the value of the written agreement exceeds \$10,000 or that cumulative payments exceed \$10,000, whichever occurs first, the Supplier or rental equipment company shall create an account in the B2GNow software system, and the Contractor shall submit a completed CDOT Form 1425 in B2GNow for the applicable Supplier or rental equipment company. The \$10,000 payment threshold may be exceeded based on the cumulative rental charges for rental

equipment used on the Project, the total value of materials incorporated into the Contract, or the total amount of payments made for project materials, including payments made in advance of delivery.

7.7.4 Subcontract Assignment

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.

7.7.5 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. Each Subcontract shall include terms that are substantially similar to those terms required by Sections 5.1, 5.2, 5.3, 5.4, 7.2, 7.3, 7.4, 7.8, 3.7, 14, 15, 19, 22, 23, and 24.6, 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 7.3.4.

7.7.6 Prompt Payment

The Contractor is responsible for ensuring that all Subcontractors and Suppliers at every tier are promptly paid.

The Contractor shall pay Subcontractors and Suppliers for all Work that has been satisfactorily completed within 7 Days after receiving payment for that Work from CDOT. For the purpose of this section only, Work shall be considered satisfactorily complete when CDOT has made payment for the Work.

All Sub-Primes acting as payor shall pay their respective Subcontractors and Suppliers for all Work which has been satisfactorily completed within 7 Days after receiving a payment for that Work.

The Contractor shall include in all Subcontracts a provision that this requirement (as further included in Exhibit C-1) for prompt payment to Subcontractors and Suppliers must be included in all Subcontracts at every tier.

If the Contractor or its Subcontractors fail to comply with this provision, CDOT will not authorize further progress payment for Work performed directly by the Contractor or the noncompliant

Subcontractor until the required payments have been made. CDOT will continue to authorize progress payments for Work performed by compliant Subcontractors.

In the event a Subcontractor or Supplier invoices the Contractor, the Contractor shall invoice CDOT for that work in its next scheduled monthly invoice if the Contractor reasonably believes the Subcontractor's or Supplier's portion of the work described in the Subcontractor's invoice is satisfactorily complete. If a Subcontractor's invoice is received by the Contractor within 5 Days of the Contractor's invoice submittal date to CDOT, then the Contractor may include the Subcontractor's or Supplier's Work in the following month's invoice to CDOT.

If the Contractor or Sub-Prime has "good cause" to delay or withhold a Subcontractor or Supplier's progress payment, the Contractor or Sub-Prime shall notify the Subcontractor or Supplier in writing within 7 Days after receiving payment. The notification shall specify the amount being withheld and provide adequate justification for withholding the payment. The notice shall clearly state what conditions the Subcontractor or Supplier must meet to receive payment. Good cause shall include, but not be limited to, the failure of the Subcontractor or Supplier to make timely submission of required paperwork. Once all conditions of payment have been met, payment shall be released within 7 Days. The good cause notice shall be uploaded in B2GNow for the monthly audit applicable to the withheld payment.

7.7.7 Release of Retainage

The Contractor may withhold retainage from Subcontractors in accordance with Section 109.06(f) of the CDOT Standard Specifications for Road and Bridge Construction.

8 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.

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 INSURANCE

Insurance requirements and provisions are set forth in Exhibit F.

10 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 19.

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 18.

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 6.

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 7.

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 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 \$_____. 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 \$_____ 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 Approved ATCs 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 8.
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

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: (a) the overall completion percentage for the Project times the Contract Price; or (b) 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 First Notice-To-Proceed Payment Caps

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 the NTP1 Payment Cap until such time (if any) as NTP2 is issued. If the Contractor performs any Work in excess of the Payment Caps, 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 Exceptions-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 21, 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 CDOT Standard Specifications for Road and Bridge Construction. All Mobilization amounts, including Bonding, shall be subject to the Payment Cap.

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, incorporated herein by this reference. 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 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 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 VECs 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 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 execution of the agreement to accept the Stipend, ATCs from unsuccessful Proposers that are made available by CDOT, may be incorporated as a Change Order at CDOT's sole discretion.

With the exception of Time and Materials Change Orders as defined in Section 13.7, 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) 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 V (the Contractor's Option Price Form submitted by the Contractor as ITP Form K).

Table 13.2.3-1 Issuance of NTPs for Options

Option	Description	# of Days after NTP 1
	Any Option submitted	90 days

13.3 Procedure for Contractor Requested Change Orders

13.3.1 Eligible Changes

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

13.3.1.1 Contract Price Increase

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

1. Additional costs directly attributable to additional Work resulting from CDOT-Directed Changes.
2. Additional costs directly attributable to CDOT-Caused Delays.
3. Additional costs directly attributable to Necessary Design Changes, to the extent permitted in Section 13.8.
4. Additional costs directly attributable to Differing Site Conditions, to the extent provided in Section 13.9.
5. Certain additional costs relating to Hazardous Substances, as described in Section 13.11, to the extent provided therein.
6. Certain additional costs relating to Utility Work, as described in Section 6.2, to the extent provided therein.
7. Certain additional costs relating to material errors in the ROW Plans, as described in Section 13.12, to the extent provided therein.
8. Additional costs directly attributable to uncovering, removing, and restoring Work, to the extent provided in Section 5.5.3.
- 9(a). Additional costs directly attributable to Force Majeure events, to the extent provided in Section 13.10. For purposes of Contractor's entitlement to costs directly attributable to Force Majeure events, the term "Force Majeure" shall mean any of the following events (provided such events are beyond the control of Contractor and are not due to an act or omission of Contractor or Contractor-Related Entity) which materially and adversely affects Contractor's obligations hereunder and which event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Contractor:
 - (i) A tornado or an earthquake;
 - (ii) Any rebellion, war, riot, act of sabotage, terrorism, or civil commotion;
 - (iii) The discovery at, near, or on the Site of any archaeological, paleontological or cultural resources or any biological resources (which term shall be deemed to mean any threatened or endangered species, raptors or eagles), provided that the existence of such resources was not disclosed in the RFP Documents;
 - (iv) The suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any Environmental Approval, except as otherwise provided in Section 6.3;
 - (v) Any change in a Legal Requirement, change in the judicial interpretation of a Legal Requirement, or adoption of any new Legal Requirement, which is materially inconsistent with Legal Requirements in effect on the Proposal Due Date (excluding any such change or new Legal Requirement which was passed or

adopted but not yet effective as of the Proposal Due Date), and which: (i) requires a material modification in the Project Work; (ii) requires the Contractor to obtain a State or federal environmental approval not previously required for the Project; or (iii) specifically targets the Project or the Contractor; and

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

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

- (i) Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood not caused by the above-described events, hurricane, storm or action of the elements, or other acts of God;
- (ii) Except as provided in clause 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 clause 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 clause thereof is applicable. The first notice shall be labeled "PCO-001" 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 a 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, 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, 13.6, and 13.7.

13.4.2.3 Impacted Delay Analysis

The Contractor shall provide an impacted delay analysis for every change order, regardless if the Contractor claims that such event, situation, or change affects the Critical Path. The impacted delay analysis shall indicate 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. This information shall be provided by the Contractor to CDOT within 14 Days of receipt of the request 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 and provide the date when these requirements will be fulfilled.
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 within 14 Days of receipt of the request by CDOT. 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 design decisions, 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, equipment, 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. Cost of additional ICQC shall be a separate line item on the Change Order form. Negotiated deleted Work Change Orders with estimated costs, mark-ups for profit and overhead shall not be allowed, and for added Work Change Orders, risk associated with the Work described in the Change Order shall be addressed through an additional amount agreed to by CDOT and the Contractor. The negotiated mark-up for risk for added Work Change Orders shall not exceed 5 percent of the estimated costs of labor, material, and equipment. For negotiated Change Orders with actual costs, mark-ups for profit and overhead shall be as provided in Section 13.7.

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. 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 certified 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. The rates paid as provided above 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. Equipment rental rates not provided by the Blue Book must be Approved by CDOT before the start of any Change Order Work.

13.7.3.5 Small Tools

Individual pieces of equipment or tools not listed in the Blue Book and having an individual replacement value between \$500 and \$2000 if purchased new, whether or not consumed by use, shall be considered to be small tools. The rental rate for small tools shall be \$2.00 per operating hour. Pieces of equipment or tools with an individual replacement value less than \$500 shall be considered incidental to the 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 of 5 percent on Subcontracted Time and Materials Change Order Work as specified in this Section 13.7. This mark-up shall fully compensate the Contractor (and all Subcontractors) for 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 Administrative Compensation in accordance with CDOT Standard Specifications for Road and Bridge Construction, No. 109.04, which is incorporated herein by this reference.

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 reports of Time and Materials Change Order Work on forms Approved by CDOT. 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 (FAR)

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 for evaluation by CDOT. CDOT will either issue a Change Order, reject the request for Change Order, or request additional information from the Contractor.

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 6. (Accordingly,

compensation for certain Activities required under Book 2, Section 6, 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 C.R.S. § 24-91-103.6(7)(a). Pursuant to C.R.S. § 24-91-103.6(2), 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 (Drawdown Plan) submitted by Contractor as an NTP2 requirement outlined in Book 2, Section 2. Contractor must comply with CDOT Standard Specifications for Road and Bridge Construction, No 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 21, 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 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 15 of Book 2, for plant and landscape maintenance in accordance with Section 18 of Book 2 and for maintenance during construction in accordance with Book 2, Section 19. 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 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 the federal Legislature fails to make an appropriation, resulting in stoppage of Work, the Contractor agrees to resume performance of the Work without any modification to the terms and conditions hereof, provided that an appropriation therefore is approved or funds are made available within 60 Days after the Contractor stops Work under Section 15.16.1. Any such Work stoppage shall be considered a suspension for convenience under Section 14.1. If funds are not appropriated or made available before expiration of such 60-Day period, either party may terminate the Contract.

16 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 4.0).
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 ESB 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 incidental 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 7 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 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 US 160 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. \$17,500 per Day (or portion of a Day) for the Contractor's failure to achieve Project Completion, as defined in Section 20.1, beyond the Completion Date as established on Item No. 1, Form P, of Exhibit B.
2. \$8,750 per Day (or portion of a Day) for the Contractor's failure to achieve Notice of Final Acceptance beyond the Completion Date as established in Item No. 2, Form P, of Exhibit B.
3. After a warning for the first occurrence from CDOT, \$2,000 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 clause 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 \$8,000,000.

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, administrative costs, etc. 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 INDEMNIFICATION

18.1 Indemnifications by Contractor

18.1.1 General Indemnities

Subject to Section 18.1.3, the Contractor shall release, 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, 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'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 PROJECT FIRST, CLAIMS FOR ADJUSTMENT AND DISPUTES

19.1 Project First

CDOT intends to encourage the use of an extensive Project First among CDOT, the Contractor, its Subcontractors and other stakeholders, where appropriate. Contractor shall follow the partnering process set forth in Section 105 of the Standard Special Provisions.

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 their designee, including any direction, instruction, interpretation, or determination by the Project Director or their 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 clause 13; or (d) any other cause.

Participation in and completion of this dispute resolution process is a condition precedent to de novo litigation.

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 21.

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.

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, 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 utilize de novo litigation to finally resolve a Claim.

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, included in Book 2, Section 21 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 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.
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 18.

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. § 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 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 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 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. 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, and 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, are known only to a limited extent and by a limited number of employees of the Contractor, are 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 they are 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 7.12.

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 deem necessary for purposes of complying or verifying compliance with the Contract and Legal Requirements, including responding to 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 deem 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 over credit 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 (C.R.S. §§ 24-72-201, et seq.). CDOT will not advise the Contractor as to the nature or content of documents entitled to protection. CDOT will follow Policy Directive 508.2 in analyzing 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

CDOT will follow CDOT Policy Directive 508.2 in determining disclosure of Proposal Documents requested pursuant to the Colorado Open Records Act, or other applicable laws, for the disclosure of any Proposal Documents materials. For any and all records, documents, drawings, plans, specifications, and other materials created after the execution of the Contract, if 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, including Proposal Documents, 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 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 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.

24.2.4 Revoked Executive Orders

Certain exhibits reference executive orders (EO) that have been revoked. Exhibit C references EO 11246, which has been revoked. This EO may also be referenced in other exhibits. Certain federal regulatory changes related to this revocation have been proposed but not yet finalized. Similarly, EO 11375 (which had amended EO 11246) and EO 13166, are referenced in exhibits and have been revoked.

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 ESB Performance 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 submitted electronically via CDOT's Document Management System, to the CDOT Project Director.

All correspondence with the Contractor shall be submitted to the Contractor's Project Manager or as otherwise directed by such Project Manager. Upon request by the Contractor, a hard copy shall be sent to the following address via certified mail, return receipt requested:

All communications to CDOT shall be marked with CDOT's project identification number and shall be submitted to CDOT's Project Director. Upon request by CDOT, a hard copy shall be sent to the following address via certified mail, return receipt requested:

David Valentinelli, Project Director
Colorado Department of Transportation – Region 5
3803 N Main Ave 300
Durango, CO 81301

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

Justin Curry
First Assistant Attorney General
Office of the Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203
Telephone: (720) 508-6636
Fax: (720) 508-6032
Justin.Curry@coag.gov

24.9.2 Receipt of Notices

Notices shall be deemed received when actually submitted via the CDOT Document Management System to CDOT. Notices sent after 5:00 p.m. Mountain Standard or Daylight Time (as applicable) shall be deemed received on the first Working Day following submittal to CDOT.

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 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*:

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

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

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

Effective 07/01/2022

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: Name:</p> <p>_____</p> <p>Title:</p> <p>_____</p> <p>*Signature</p> <p>_____</p> <p>CORPORATIONS</p> <p>(A Corporate Seal or Attestation is Required) Attest (Seal) By:</p> <p>_____</p> <p>(Corporate Secretary or Equivalent)</p>	<p style="text-align: center;">STATE OF COLORADO Jared Polis, GOVERNOR</p> <p>By: _____</p> <p style="text-align: center;">For The Executive Director Colorado Department of Transportation</p> <p style="text-align: center;">LEGAL REVIEW: Phil Weiser, 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 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

Acronym	Description
3DECS	3 Dimensional Construction Surveying
AADT	Annual Average Daily Traffic
AADTT	Annual Average Daily Truck Traffic
AAP	AASHTO Accreditation Program
AAR	After Action Review
AASHTO	American Association of State Highway and Transportation Officials
ABC	Aggregate Base Course
AC	Asphalt Concrete, or, in the context of power or electricity, AC shall mean Alternating Current
ACC	Alternate Configuration Concept
ACI	American Concrete Institute
ACL	Access Control List
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 and Steel Institute
AITC	American Institute of Timber Construction
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute (formerly ASA and USASI)
APCD	Colorado Air Pollution Control Division
APE	Area of Potential Effects
APEN	Air Pollution Emission Notice
APL	Approved Products List
ARA	American Railway Association
ARE	Additional Requested Element
AREA	American Railway Engineering Association
AREMA	American Railway Engineering and Maintenance Association
ARTBA	American Road and 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 and Materials

Acronym	Description
ATC	Alternative Technical Concepts, or, in the context of industry standards or specifications, ATC shall mean Applied Technology Council
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
BDM	Bridge Design Manual (CDOT)
BFE	Base Flood Elevation
BMP	Best Management Practices
BRRB	AASHTOWare Bridge Rating
BT	Bulb-Tee
BTPD	Black-Tailed Prairie Dog
C.R.S.	Colorado Revised Statutes
CADD	Computer-Assisted Drafting and Design
C&M	Construction and Maintenance Agreements
CAR	Corrective Action Request
CBCP	Category B Change Proposal
CCA	Colorado Contractors Association
CCI	Construction Cost Index
CCP	Crisis Communications Plan
CCR	Colorado Code of Regulations
CCSE	Corridor Common Structural Element
CCTV	Closed Circuit Television
CD	Collector-Distributor
CDMA	Code Division Multiple Access
CDNR	Colorado Department of Natural Resources
CDOT	Colorado Department of Transportation
CDOT FMM	CDOT Field Materials Manual
CDPHE	Colorado Department of Public Health and Environment
CDPS-SCP	Colorado Discharge Permit System - Stormwater Construction permit
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et. seq.
CFR	Code of Federal Regulations
CFS	Cubic Feet per Second
CSP	Colorado State Patrol
CIH	Certified Industrial Hygienist
CIP	Cost in Place
CLOMR	Conditional Letter of Map Revision
CMS	Changeable Message Sign
COC	Certificates of Compliance

Acronym	Description
COMM	Communications
CP	Colorado Procedure
CPM	Critical Path Method
CPW	Colorado Parks and Wildlife
CQMP	Construction Quality Management Plan
CR	La Plata County Road
CRAL	Construction of Relocation Acceptance Letter
CRCM	Civil Rights Compliance Manager
CRICQC	Civil Rights Independent Contractor Quality Control
CRMCA	Colorado Ready Mix Concrete Association
CRS	Colorado Revised Statutes
CRSI	Concrete Reinforcing Steel Institute
CSEO	Colorado State Engineer's Office
CSL	Cross Sonic Log
CTMC	Colorado Traffic Management Center
CTR	Certified Test Reports
CUF	Commercially Useful Function
CURPAL	Contractor Utility Relocation Plan Acceptance Letter
CWCB	Colorado Water Conservation Board
D-B	Design-Build
dB	Decibels
EPPS	ESB Performance Plan Schedule
DBH	Diameter at Breast Height
DCS	Document Control System
DDM	Drainage Design Manual
DFIRM	Digital Flood Insurance Rate Maps
DH	Design Height
DMDDR	Draft Master Drainage Design Report
DMS	Document Management System
DMWQR	Draft Master Water Quality Report
dpi	Dots per inch
DQM	Design Quality Manager
DQMP	Design Quality Management Plan
DRAL	Design of Relocation Acceptance Letter
DRB	Dispute Review Board
DTA	Design Technical Approach
DTD	Division of Transportation Development
DTM	Digital Terrain Model
DWG	Drawing
EA	Environmental Assessment
ECI	Erosion Control Inspector
ECM	Environmental Compliance Manager
ECMTP	Environmental Compliance Mitigation Training Program

Acronym	Description
ECP	Emissions Control Plan
ECSR	Environmental Status Report
ECWP	Environmental Compliance Work Plan
EDB	Extended Detention Basin
EEO	Equal Employment Opportunity
EGL	Energy Grade Line
EIA	Electronic Industries Alliance
EIP	Environmental Investigation Plan
EMT	Executive Management Team
EOP	Edge of Pavement
EPA	(U.S.) Environmental Protection Agency
EPD	Escrowed Proposal Documents
ESB	Emerging Small Business
ESRI	Environmental Systems Research Institute
FAR	Federal Acquisition Regulation
FCDC	Florida Consolidated Ditch Company
FACWet	Functional Assessment of Colorado Wetlands
FAST	Fixed Automated Spray Technology
FCMs	Fracture Critical Members
FDC	Field Design Changes
FDP	Floodplain Development Permit
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIR	Field Inspection Review
FIRM	Flood Insurance Rate Maps
FMV	Fair Market Value
FPUP	Floodplain Use Permit
FRA	Federal Railroad Administration
FTP	File Transfer Protocol
FWD	Falling Weight Deflectometer
GAAP	Generally Accepted Accounting Principles
GDP	General Development Plan or Gunnison Prairie Dog
GFE	Good Faith Efforts
GIS	Geographic Information Systems
GRS	Geosynthetic Reinforced Soil
HASP	Health and Safety Plan
HBP	Hot Bituminous Pavement
HDPE	High-Density Polyethylene
HDS	Hydraulic Design Series
HEC	Hydraulic Engineering Circular
HFS	Hydraulic Floodplain Studies
HGL	Hydraulic Grade Line
HIRSYS	Hotline Information Retrieval System

Acronym	Description
HLMR	High Load Multi-Rotational
HMA	Hot Mix Asphalt
IA	Independent Assurance
IAR	Interstate Access Request
IAT	Independent Assurance Testing
ICQC	Independent Contractor Quality Control
ID	Identification
IEEE	Institute of Electrical and Electronics Engineers
IEQM	Independent Environmental Quality Manager
IES	Illuminating Engineering Society
IESNA	Illuminating Engineering Society of North America
IGA	Intergovernmental Agreement
IIMS	Incident Information Management System
IMP	Incident Management Plan
IMSA	International Municipal Signal Association
INWMP	Integrated Noxious Weed Management Plan
IP	Internet Protocol
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
JPCP	Jointed Plain Concrete Pavement
ksi	Kilopound per Square Inch
KW	Kilowatt
L/s	Liters per Second
LabCAT	Laboratory for the Certification of Asphalt Technicians
LAN	Local Area Network
LAPB	Link Access Protocol, Balanced
Lc	Length of Simple Curve
LCCA	Life-Cycle Cost Analysis
LDA	Limits of Disturbed Area
LED	Light Emitting Diode
LEP	Limited English Proficient
LFR	Load Factor Rating
LID	Low Impact Development
LIMS	Laboratory Information Management Systems
LLRU	Lowest Level Replaceable Unit

Acronym	Description
LLDPE	Linear Low-Density Polyethylene
LOC	Limits of Construction
LOMC	Letter of Map Change
LOMR	Letter of Map Revision
LOS	Level of Service
LPEA	La Plata Electric Association, Inc.
LRFD	Load and Resistance Factor Design
LRFR	Load and Resistance Factor Rating
Ls	Length of Spiral Curve
LS	Line Section
LSCD	Land Survey Control Diagram
LTDS	Long-Term Design Strength
MACM	Maximum Achievable Control Measures
MAPCO	Midstream American Production Company/NW Pipeline
MARV	Minimum Average Roll Value
MASH	Manual for Assessing Safety Hardware
Mb	Megabit
Mbps	Megabits per Second
MBTA	Migratory Bird Treaty Act
MCL	Maintenance Consent Letters
MESA	Modified Environmental Site Assessment
mg/L	Milligrams per Liter
MHT	Method for Handling Traffic
MIL	Military Specification
MIMR	Minor Interchange Modification Request
MIS	Management Information System
MLOS	Maintenance Level of Service
mm	Millimeter
MMIS	Maintenance Management Information System
MMP	Materials Management Plan
MMU	Malfunction Management Unit
MOA	Memorandum of Agreement
MOE	Measures of Effectiveness
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MP	Milepost
mph	Miles per Hour
MRI	Mean Roughness Index
MS4	Municipal Separate Storm Sewer System
MSE	Mechanically Stabilized Earth
MTIP	Materials Testing and Inspection Plan
MTT	Materials Testing Technician
MUTCD	Manual on Uniform Traffic Control Devices

Acronym	Description
MVRD	Microwave Vehicle Radar Detectors
NAD	North American Datum
NFAD	No Further Action Determination
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NBS	National Bureau of Standards
NCHRP	National Cooperative Highway Research Program
NCN	Nonconformance Notice
NCR	Nonconformance Report
NDC	Notice of Design Changes
NDRD	New Development and Redevelopment
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 and Health
NIST	National Institute of Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollution Discharge Elimination System
NRHP	National Register of Historic Places
NSBA	National Steel Bridge Alliance
NSF	National Sanitation Foundation
NTCIP	National Transportation Communications for ITS Protocol
NTP1	First Notice to Proceed
NTP2	Second Notice to Proceed
NTS	Not to Scale
NWN	Nonconforming Work Notice
OA	Owner Acceptance
OAHP	Office of Archaeology and Historic Preservation
OCIP	Owner Controlled Insurance Policy
OCR	Optical Character Recognition
OJT	On-the-Job Training
OSHA	Occupational Safety and Health Administration
OTS	Over the Shoulder
OURPAL	Owner Utility Relocation Plan Acceptance Letter
OV	Owner Verification
OVT	Owner Verification Testing
PC	Process Control
PCCP	Portland Cement Concrete Pavement

Acronym	Description
PCI	Prestressed Concrete Institute
PCO	Potential Change Order
PCP	Product Control Plan
PD	Policy Directive
PDA	Pile-Driving Analyzer
PE	Professional Engineer, or, in the context of right-of-way, PE shall mean Permanent Easements
PET	Polyester
PG	Performance Grade
PGDHS	A Policy on Geometric Design on Highways and Streets
PI	Plasticity Index
PIM	Public Information Manager
PIP	Public Information Plan
PIV	Peak Inverse Voltage
PLD	Porous Landscape Detention
PLS	Professional Land Surveyor
PM	Program Manager
PMP	Project Management Plan
POSS	Point of Slope Selection
PP	Polyester polypropylene
PPE	Personal Protective Equipment
Ppm	Parts per Million
PQCI	Process Quality Control Inspection
PQCT	Process Quality Control Testing
PRI	Pavement Rutting Index
Psf	Pounds per Square Foot
PSI	Pavement Serviceability Index
Psi	Pounds per Square Inch
PSMP	Project Safety Management Plan
PSQF	Permanent Stormwater Quality Features
PSR	Pavement Serviceability Rating
PSURA	Project Specific Utility Relocation Agreement or Utility Relocation Agreement (URA)
Pt	Potential Transformer
PTFE	Polytetrafluoroethylene
PTI	Post-Tensioning Institute
PUC	Colorado Public Utilities Commission
PVC	Polyvinyl Chloride
PVI	Point of Vertical Intersection
PVT	Point of Vertical Tangency
PWQ	Permanent Water Quality
PWR	Power
QA	Quality Assurance
QC	Quality Control

Acronym	Description
QCA	Quality Control Administrator
QCP	Quality Checkpoint
QMP	Quality Management Plan
QRD	Quality Records Database
R	Radius
RACM	Reasonable Achievable Control Measures
RAS	River Analysis System
RCM	Regional Communications Manager
RCO	Request for Change Order
RCP	Request for Change Proposal
RCRA	Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.
REC	Recognized Environmental Conditions
RECAT	Regional Erosion Control Assessment Team
RFC	Released for Construction
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RHM	Recognized Hazardous Materials
RL	Reinforcement Length
RLA	Registered Landscape Architect
ROD	Record of Decision
ROM	Rough Order of Magnitude
ROW	Right-of-Way
ROWPR	Right-of-Way Plan Review
RSC	Rigid Steel Conduit
RW	Fee Parcel
RWIS	Roadway and Weather Information System
RWPCM	Regional Water Pollution Control Manager
SAE	Society of Automotive Engineers
SAP	Sampling Analysis Plan
SB 212	Senate Bill 212, Storm Water Facilities Not Injure Water Rights
SB 40	Senate Bill 40 Wildlife Certification
SBA	Small Business Administration
SD	Sight Distance
SE	Slope Easement
SFP	Small Form-Factor Pluggable
SH	State Highway
SHFA	Special Flood Hazard Area
SHPO	State Historic Preservation Office
SI&A	Structural Inventory and Appraisal
SIC	Standard Industrial Code, U.S. Department of Labor
SMA	Stone Matrix Asphalt
SMFO	Single-Mode Fiber Optic

Acronym	Description
SMP	Safety Management Plan
SOP	Standard Operating Procedure
SOQ	Statement of Qualifications
SOV	Single Occupancy Vehicle
SPCC	Spill Prevention Control and Countermeasures
SPCS	State Plane Coordinate System
SRP	Spill Response Plan
SSD	Stopping Sight Distance
SSPC	Steel Structures Painting Counsel
STD	Standard
STP	Shielded Twisted Pair
SUE	Subsurface Utility Engineering
SWMM	Storm Water Management Model
SWMP	Stormwater Management Plan
TA	Technical Approach
TC	Transportation Commission
TCC	(CDOT) Traffic Communications Center
TCP	Traffic Control Plan
TCS	Traffic Control Supervisor
TDM	Transportation Demand Management
TE	Temporary Easement
TERO	Tribal Employment Right Office or Ordinance
TFE	CDOT Furnished Equipment
TIC	(CDOT) Transportation Information Center
TIG	Tungsten Inert Gas
TL	Testing Level
TMP	Transportation Management Plan
TMSRs	Traffic Management Strategy Reports
TNM	Traffic Noise Model
TOC	(CDOT) Traffic Operations Center
TOP	Traffic Operations Plan
TRB	Transportation Research Board (of National Research Council)
TRM	Turf Reinforcement Mat
TV	Television
TYP	Typical
UA	Upset Amount
U.S.C.	United States Code
UDFCD	Urban Drainage and Flood Control District
UDS	Utility Design Sheet
UE	Utility Easement
UIS	Utility Information Sheet
UL	Underwriters Laboratories
UNCC	Utility Notification Center of Colorado
UPS	Uninterruptible Power Supply

Acronym	Description
URA	Utility Relocation Agreement or Project Specific Utility Relocation Agreement (PSURA)
US	U.S. Highway
USACE	United States Army Corps of Engineers
USASI	United States of America Standards Institute
USB	Universal Serial Bus
USBR	U.S. Bureau of Reclamation
USDCM	Urban Storm Drainage Criteria Manual
USDOT	United States Department of Transportation
USFWS	U.S. Fish and Wildlife Service
USGS	United States Geological Survey
Vc	Length of Vertical Curve
VCUP	Voluntary Clean Up Program
VDS	Vehicle Detection System
VE	Value Engineering
VECP	Value Engineering Change Proposal
VLAN	Virtual LAN
VM	Video Monitor
VMS	Variable Message Sign
WAQTC	Western Alliance for Quality Transportation Construction
WBS	Work Breakdown Structure
WPA	Works Progress Administration
WQ	Water Quality
WQCD	Water Quality Control Division, Colorado Department of Public Health and Environment
WQCV	Water Quality Capture Volume
WQPCM	Water Quality Pollution Control Manager
WTVI	Working Time Violations Incidents

A.2 Definitions

Word	Definition
Abandoned	As related to Utilities, shall have the meaning set forth in Book 2, Section 8.
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, Accepted, or Acceptance	Formal conditional determination in writing by the CDOT 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.
Advanced Utility Relocations	The meaning set forth in Book 2, Section 6.
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	<ol style="list-style-type: none">(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(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>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>
Agreement	A legal contract between two or more parties respecting the transmission of some property, right, or benefit with a view of contracting an obligation.
Alternative Configuration Concept	A proposer-recommended alternative to the requirements found in Book 2, Section 1 and as set forth in the Instructions to Proposers.
Alternative Technical Concept	A proposer-recommended alternative to the requirements found in Book 2, Section 2 through Section 20 and as set forth in 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 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.
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-Constructed Documents	The documents to be provided by the Contractor as described in Book 2, Section 4. Also referred to as As-Built Documents, or As-Built.
As-Built Schedule	The meaning set forth in Book 2, Section 2. Also referred to as As-Constructed.
Alternative Technical Concept Conditions	Conditions that CDOT identified during the ATC process that were necessary for Approval of the ATC.
Archaeological	Cultural materials, including human remains, that are eligible for or listed on the National Register of Historic Places.
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	The layer or layers of specified or selected Material of designed 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, 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 undercoppings 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	<p>Each and every day shown on the calendar, beginning and ending at midnight.</p>
CDOT	<p>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.</p>
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(h) 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.
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	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.
Certified Test Report	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.
Change Order	The meaning set forth in Book 1, Section 13.1.1.1.
Chief Engineer	The Chief Engineer of the Colorado Department of Transportation
Civil Rights Plan	The meaning set forth in Book 2, Section 3.2.
Claim	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.
Colorado State Engineer's Office	The Colorado Division of Water Resources (DWR) or any authorized representative of the DWR.
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, Sections 1.2 and 1.3.

Contract Drawings	The drawings included in Book 4, including the ROW Plans.
Contract Execution	The meaning set forth in the ITP.
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 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 Conflict Matrix	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.
Contractor-Related Entity or 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.
CRAL	Construction of Relocation Acceptance Letter meaning the form as set forth in Book 2, Section 8 and Exhibit 8-D.
Critical Path	The precedence of activities with total Float less than or equal to zero on each applicable Contract Schedule.
Current Baseline Schedule	The meaning set forth in Book 2, Section 2.
Day	The meaning set forth in Book 1, Section 1.8.
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	The meaning set forth in Book 2, Section 4.5.
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.
Design-Build Contract	That certain Design-Build Contract executed by CDOT and the Contractor (to which this Exhibit A is attached), and any and all amendments thereto.
Design-Build Quality Manager	See Quality Control Administrator.

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 within Book 3 and 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.
Dispute	The meaning set forth in Book 1, Section 19.2.
Dispute Review Board	The board described in Book 1, Section 19.2.3.
Document Control System	The Contractor's system for storing and maintaining all project documentation, including reports, plans, certifications, and records. Also known as Contractor's Records or Contractor's Documentation
Document Management System	CDOT's secure web-based document control system for storing, transmitting, and maintaining all project documentation, including all submittals and correspondence with the Contractor.
DRAL	Design of Relocation Acceptance Letter meaning the letter as set forth in Book 2, Section 8 and Exhibit 8-C.
Duration Deadline	Any and all contract duration deadlines as defined in the Contract Documents and most specifically in Book 1, Section 17.
Easement	The legal right of one entity to use all or part of the property of another entity for some specific purpose either permanently or temporarily. The term may refer to either the right itself or the document conferring the right.
Effective Date	The date of execution of the Contract by CDOT.
Emerging Small Business	A business certified by CDOT to participate in the ESB Program pursuant to 2 CCR 604-1.
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 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 environment (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.
Environmental Requirements	Any and all requirements set out in Book 2 Section 5, including the obligation to comply with Environmental Laws and all Environmental Approvals.
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.
ESB Commitment	The Contractor's obligation for an ESB firm to perform a portion of the Work for a specified dollar amount, as documented in an Accepted CDOT Design-Build ESB Commitment Confirmation Form.
ESB Contract Goal	The meaning set forth in Book 1, Section 7.6.1.

ESB Eligible Participation	Work performed by an ESB that may be counted as ESB Eligible Participation toward the ESB Contract Goal subject to the requirements, conditions, and limitations set forth in Book 2, Section 3.3.5.
ESB Participation Target	The planned ESB participation identified in the ESB Performance Plan Schedule, established by scope of Work and the corresponding dollar amount allocated to each calendar year, based on when the Work is anticipated to be performed by ESB firms.
ESB Performance Plan	The Contractor's framework for achieving, monitoring, supporting, and enhancing the participation and success of the ESB Contract Goal. The ESB Performance Plan shall detail the Contractor's methodology for developing the ESB Performance Plan Schedule and the strategy for achieving the ESB Contract Goal as further described in Book 2, Section 3.3.2.
ESB Performance Plan Schedule	ESB Performance Plan Schedule represents the Contractor's framework of achieving the ESB Contract Goal across the life of the project and consists of both ESB Participation Targets and ESB Commitments by calendar year as further described in Book 2, Section 3.3.1.
ESB Reduction/Reduce/Reduced	To reduce the dollar amount of an ESB Commitment as further described in Book 2, Section 3.3.4.
ESB Substitution/Substitute/Substituted	When a Contractor seeks to replace an ESB firm to perform Work on the Contract as a result of an Accepted ESB Reduction or Accepted ESB Termination as further described in Book 2, Section 3.3.4.
ESB Termination/Terminate/Terminated	When a Contractor no longer intends to use an ESB firm to perform Work under an Accepted ESB Commitment as further described in Book 2, Section 3.3.4.
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.
Executive Management Team	The management team of the Contractor or of the Project, as defined by its use within the Contract. The EMT provides upper-level project guidance, oversees the progress and quality of the project, and resolves major issues that have been escalated to them by the CDOT/Contractor management teams. The CDOT Project Director or Project Manager, the QCA, and the Contractor's Project Manager report directly to the EMT.
Existing Utility Plans	The set of plans included on the website, Reference Documents.
Extra Work	Work neither required nor expected to be required by the Contract Documents but found by the Engineer to be essential to the satisfactory completion of the Contract.
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 Acceptance Deadline	Achievement of all Work necessary to meet the Final Acceptance Deadline as described in Book 1, Section 4.3.
Final Design Documents	The completed Design Documents following Acceptance thereof by CDOT as described in Book 2, Section 4.
First Notice to Proceed	A written notice issued by CDOT to the Contractor to proceed with the limited amount of Work directed and described in the notice on the date specified therein. Also referred to as NTP1.
Fixed Price/Best Design Approach	The best value selection method set forth in 23 C.F.R., Part 636, et.al.
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.
Good Faith Efforts	All necessary and reasonable steps taken by the Contractor that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to achieve the ESB Contract Goal, even if such efforts are not fully successful as further described in Book 2, Section 3.3.6.
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.
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. Also referred to as Third Party.

Hazardous Substances	<p>Any of the following:</p> <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	<p>A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW.</p>
Holidays	<p>New Year's Day, Dr. Martin Luther King, Jr.'s Birthday (observed), President's Day, Memorial Day, Juneteenth, Independence Day (observed), Labor Day, Frances Xavier Cabrini 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.</p>
Incidental Utility Work	<p>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</p>
Including, or including, includes, included	<p>All references in the Contract Documents to "Including" or "including" shall mean "including, but not limited to".</p>

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 field used in the Quality Assurance program.
Independent Contractor Quality Control	Independent on-site inspection and testing of the elements of the Work by the Contractor to verify the Work has been completed in conformance with the Contract requirements, and to support CDOT's owner acceptance responsibilities.
Independent Design Quality Control	The meaning set forth in Book 2, Section 4.
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 Book 1, 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 Acceptance	The meaning set forth in Book 2, Section 17.
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 and Wetlands Establishment Period	The meaning set forth in Book 2, Section 17.
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.
Local Agency	An agency that may hold review, acceptance or approval authority on the Project
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 Invoice	The meaning set forth in Book 2, Section 2.
Monthly Maintenance Progress Report	The meaning set forth in Book 2, Section 18.
Monthly Progress Report	The meaning set forth in Book 2, Section 2.
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 2.6.3.
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	The report described in Book 2, Section 4.
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.

OJT Contract Goal	The meaning set forth in Book 1, Section 7.8.1.
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 Acceptance	CDOT's responsibility for the acceptance of the project, as required by Title 23, Code of Federal Regulations, Part 637 (23 CFR 637).
Owner Verification	Testing and auditing performed by CDOT.
Pavement Structure	<p>The combination of Subbase, Base Course, and Surface Course placed on a prepared Subgrade to support the traffic load and distribute it to the Roadbed.</p> <p><i>Subgrade.</i> The top surface of a Roadbed upon which the Pavement Structure and Shoulders are constructed.</p> <p><i>Subbase.</i> The layer or layers of specified or selected Material of designed thickness 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 of designed thickness placed on a Subbase or a Subgrade to support a Surface Course.</p> <p><i>Surface Course.</i> The upper most component 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.</p>
Payment Bond	The payment bond described in Book 1, Section 8.
PCO Notice	The potential change order notice described in Book 1, Section 13.3.
Performance Bond	The performance bond described in Book 1, Section 8
Permanent Water Quality Mitigation Pool	The CDOT funding entity responsible for improvements to CDOT permanent water quality facilities to meet the MS4 permit requirements
Permission to Enter Property Forms	The meaning set forth in Book 2, Section 8
Permit	An official certificate, license, or document granting authorization
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Person, including CDOT.
Preferred Alternative	Means the alternative identified as the "Preferred Alternative" pursuant to NEPA in the FEIS related to the Project.
Preliminary Baseline Schedule	The meaning set forth in Book 2, Section 2.
Price Proposal	The meaning set forth in the ITP.
Private Utility	A Utility that is owned by a Private Utility Owner, including but not limited to private irrigation facilities.
Private Utility Owner	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.
Process Control	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.

Professional Engineer	A registered licensed professional engineer in the State of Colorado.
Professional Land Surveyor	A registered licensed professional land surveyor in the State of Colorado.
Profile Grade	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.
Progress Status Meeting	The meaning set forth in Book 2, Section 2.
Project	The US 160 Elmore's Corner to Dry Creek Design-Build Project or US 160 Elmore's East, 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.
Project Completion	Completion of the Project as described in Book 1, Section 20.
Project Completion Deadline	Date by which all Work necessary to achieve Project Completion must be finished, as described in Book 1, Section 4.3.
Project Survey Coordinator	The meaning set forth in Book 2, Section 9.
Project Management Plan	The meaning set forth in Book 2, Section 2.
Project Manager	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.
Project Operationally Complete	Interchanges, Ramps and Bridges fully operational and in the final configuration. Final basic configuration, roadway lighting, pavement, signals, signage and striping complete in place.
Proposal Due Date	The date the Proposal was due as specified in the Instructions to Proposers.
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.
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 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	All those planned and systematic actions necessary to provide confidence that a product or facility will perform satisfactorily in service.
Quality Control	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	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. Also referred to as the Design-Build Quality Manager.
Quality Management Plan	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.
Quality Status Reports Railroad	The meaning set forth in Book 2, Section 4. Depending on the context, either the ROW, tracks, and systems used for rail traffic in the vicinity of the Project, or the company that owns and operates such facilities.
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 CDOT website, project drive, 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 4.

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	A Contractor-initiated request for a change order under Book 1, Section 13.3.
Request for Change Proposal	A proposal issued by CDOT under Book 1, Section 13.2.1.
Request for Proposals	The Request for Proposals for this project, issued by CDOT on or about April 27, 2026, including all addenda thereto.
Requested Relocation	As related to Utilities, a requested relocation is generally defined as the relocation of a Utility that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner. For these types of relocations, the Utility Owner and the Contractor shall negotiate terms and come to agreement outside of the Project without CDOT involvement.
Retainage	The meaning set forth in Book 1, Section 11.5.1.
Review	A formal assessment or examination by CDOT of a particular matter or item with the possibility or intention of instituting change if necessary.
Revised Progress Schedule	The meaning set forth in Book 2, Section 2.
Request for Proposal Documents	The documents listed in ITP Section 1.2.
Right-of-Way	The real property and property interests provided by CDOT, local jurisdictions, 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.
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	A written notice issued by CDOT to the Contractor to proceed with the remainder of the Work on the date specified therein. Also referred to as NTP 2.
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.
Standard Specifications	Colorado Department of Transportation Standard Specifications for Road and Bridge Construction 2025, and as modified by special provisions and incorporated in the Contract.

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	The layer or layers of specified or selected Material of designed thickness placed on a Subgrade to support a Base Course, Surface Course, or both.
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	An individual, firm, corporation, or other legal entity at any tier to whom the Contractor sublets part of the Contract. A Subcontractor shall include an individual, firm, corporation, or other legal entity who meets one or both of the following criteria: <ul style="list-style-type: none">a) Establishes a fabricating process or facility exclusively for the use of the Project, whether on or off the site of Work per 29 CFR 5.2 Site of Work (1)(i)(ii)(iii).b) Performs Work that is incorporated within the Project limits.
Subgrade	The top surface of a Roadbed upon which the Pavement Structure and Shoulders are constructed.
Subgrade Treatment	Modification of roadbed material by stabilization.
Sub-Prime	A Subcontractor or Supplier that has a contract with a lower-tier Subcontractor and/or Supplier and is a payor on the Project.
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.
Supplier	<p>An individual, firm, or corporation who meets all of the following criteria:</p> <p>(a) Sells manufactured materials as a broker, distributor, dealer, manufacturer, or wholesaler who may or may not deliver the materials to the site of Work.</p> <p>(b) The manufacturing of the materials, articles, supplies, or equipment used for the contract that is being supplied shall come from a facility or facilities that:</p> <p>(1) Is not located on, nor does itself constitute, the project or contract's primary construction site or secondary construction site as defined in 29 CFR 5.2; and</p> <p>(2) Either was established before opening of bids on the contract, or is not dedicated exclusively, or nearly so, to the performance of the contract.</p> <p>(c) The Supplier's only obligations for activity on the contract is the delivery of materials, articles, supplies, or equipment, which may include pickup of the same in addition to, but not exclusive of, delivery, and which may also include activities incidental to such delivery and pickup, such as loading, unloading, or waiting for materials to be loaded or unloaded; and</p> <p>(d) If an entity, in addition to being engaged in the activities specified in paragraph (c) of this definition, also engages in other construction, prosecution, completion, or repair on the site of the Work, then this entity is not a Supplier but a contractor.</p>
Surety	Each properly licensed surety company approved by CDOT, which has issued one or more of the Payment and Performance Bonds.
Surface Course	The upper most component 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.
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 Procedure	Methods that detail the practice of acquiring the <i>Test</i> data.
Test-Based Acceptance	Acceptance based on each test meeting minimum requirements.
Third Party	An individual, firm, corporation or other legal entity including Utility and Ditch Companies for whom neither CDOT nor Contractor is legally or contractually responsible. See also Governmental Person.
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.

Type I Action	An alteration or modification of the existing highway that meets the definition of a Type I project per 23 CFR 772.5.
Ultimate Configuration	Has the same meaning as given to the Preferred Alternative.
Unidentified Utility	Any existing Utility that is not identified in the Utility Data included with the Reference Documents.
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	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 agreed to guaranteed maximum Contract Price not be exceeded. The amount as identified in the ITP.
Utility Agreement	A URA and/or a Work Order, as the context may require.
Utility Betterment	Meaning an upgrade or improvement to an existing utility facility being relocated that is not required by the road improvement project, and is made solely for the benefit and at the election of the utility company.
Utility Data	Meaning test hole logs, mapping preliminary design, and other utility information provided in the Reference Documents.
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 8, 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 or utility or Utility Company	(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 and street lights, without regard to whether or not such items are included in the definition of "Utility" in the PSURAs.
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 Agreement	An agreement made between CDOT and a Utility Owner that provides a general framework for addressing Utility conflicts associated with the Project
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 8.
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	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.
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, civil rights 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.

US 160 Elmore's Corner to Dry Creek
NHPP 1602-157 & FBR 1602-193
Sub Account: 20980 - COMBO
Book 1 – Contract

Contract Routing # _____

Exhibit B – Completion Deadlines (Form P of the ITP)

Exhibit C – Required Federal Provisions

The Contractor agrees to include this Exhibit C and all below listed Exhibits in each Subcontract, without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

Exhibit C-1 Federal Provisions

Exhibit C-2 Required Contract Provisions - Federal-Aid Construction Contracts
(FHWA Form 1273)

Exhibit C-3 Federal Prevailing Wages (Davis Bacon Wage Decision)

Exhibit C-4 Federal Law - 41 CFR Sections 60-1.4 and 60-4.3

Exhibit C-5 Affirmative Action Standard Provision

Exhibit C-6 Title VI/Nondiscrimination Assurance

Exhibit C-1 – Federal Provisions

1. Assurance of Non-Discrimination

By entering into this Agreement, the Contractor agrees to the following assurance and shall include it in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract:

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

2. Prompt Payment

The Contractor shall pay subcontractors and suppliers for all work which has been satisfactorily completed within seven calendar days after receiving payment for that work from the Department. For the purpose of this section only, work shall be considered satisfactorily complete when the Department has made payment for the work. All Subcontractors acting as payor shall pay their respective Subcontractors and suppliers for all work which has been satisfactorily completed within seven calendar days after receiving a payment for that work.

The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to subcontractors and suppliers must be included in all subcontracts at every tier.

If the Contractor or its Subcontractors fail to comply with this provision, the Engineer will not authorize further progress payment for work performed directly by the Contractor or the noncompliant subcontractor until the required payments have been made. The Engineer will continue to authorize progress payments for work performed by compliant subcontractors.

3. Performance of Previous Contract

In addition to the provisions in Section II, "Nondiscrimination," and Section VI, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Contractor shall cause each Subcontractor and Supplier to comply with the following: The bidder shall execute a CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS in accordance with 41 CFR § 60-1.7(b)(1). No request for subletting or

assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

4. Convict Produced Materials

FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials. Materials produced after July 1, 1991 by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987. The Contractor and each Subcontractor shall comply with such requirements and the Contractor agrees to include this section in each Subcontract, without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

5. Access to Records and Record Retention

As required by 2 CFR Parts 200 and 1201, and without limiting the Contractor's obligations under Book 1, Section 22 of the Contract Documents, the Contractor and its Subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of the Contractor and such Subcontractors which are directly pertinent to any grantee, subgrantee or financing contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 2 CFR Parts 200 and 1201, the Contractor and its Subcontractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed (or, if applicable, for such longer period as is required pursuant to Book 1, Section 22.4 of the Contract Document). The Contractor agrees to include this section in each Subcontract, without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract

Exhibit C-2 – Required Contract Provisions - Federal-Aid Construction Contracts

Attached is Form FHWA 1273 titled Required Contract Provisions Federal-Aid Construction Contracts. Section I. General, the provisions of Form FHWA 1273 apply to all work performed under the Contract and are to be included in contractual agreements as described herein.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag

Vessels: ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"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, sexual orientation, gender identity, color, national origin, age or disability. 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO 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:

a. 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 EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO 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.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. 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 minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. 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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

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 its 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 their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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 employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. 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 good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO 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, sexual orientation, gender identity, national origin, age, or disability.

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 contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of 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, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. 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 contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient 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.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting 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 FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. Conformance. (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. Fringe benefits not expressed as an hourly rate. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. Unfunded plans. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. Interest. In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. Withholding requirements. The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH–347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

- c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its procurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND
FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C.
7606; 2
CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

**X. CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;
- (2) Have not within a three-year period preceding this proposal 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, 2 CFR 180.800;
- (3) 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 (a)(2) of this certification, 2 CFR 180.700 and 180.800; and
- (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).
- (5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and
- (6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

US 160 Elmore's Corner to Dry Creek
NHPP 1602-157 & FBR 1602-193
Sub Account: 20980 - COMBO
Book 1 – Contract

Contract Routing # _____

In accordance with federal regulations, any revised wage determination for CO202600012 issued at least 10 calendar days before the Proposal Due Date is effective and must be incorporated into the Proposal. Proposers are responsible for monitoring the [CDOT website](#) up to this 10-day cutoff to ensure the most current determination is utilized.

Decision Nos. CO20260012 dated May 18, 2026, supersedes Decision Nos. CO20250012 dated January 2, 2026.		<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.		0	1/2/26	8	
		1	5/18/26	8	
General Decision No. CO20260012 applies to the following counties: Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, and San Miguel counties.					
General Decision No. CO20260012 The wage and fringe benefits listed below reflect collectively bargained rates.					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
1491	CARPENTER (Excludes Form Work)	33.11	12.17		
	POWER EQUIPMENT OPERATOR:				
	Drill Rig Caisson				
1492	Smaller than Watson 2500 and similar	35.41	15.20		
1493	Watson 2500 similar or larger	35.41	15.20		
	Mechanic				
1494	La Plata County	35.58	15.20		
General Decision No. CO20260012 The wage and fringe benefits listed below do not reflect collectively bargained rates.					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
	CARPENTER:				
	Form Work Only				
1495	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	18.57	5.38		
1496	La Plata	18.60	5.38		
	CEMENT MASON/CONCRETE FINISHER:				
1497	Alamosa, Archuleta, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Ouray, Rio Grande, Saguache, San Juan, San Miguel	17.67	2.85		

The wage and fringe benefits listed below do not reflect collectively bargained rates.

Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	CEMENT MASON/CONCRETE FINISHER (con't.):			
1498	Chaffee	15.55	2.85	
1499	La Plata	18.99	2.85	
1500	Montrose	16.95	2.85	
1501	ELECTRICIAN	28.06	8.76	
1502	GUARDRAIL INSTALLER	12.78	3.31	
	HIGHWAY/PARKING LOT STRIPING:			
1503	Truck Driver (Line Striping Truck)	14.60	3.49	
1504	Painter	12.90	3.07	
	IRONWORKER:			
1505	Reinforcing (Excludes Guardrail Installation)	16.94	6.77	
1506	Structural (Excludes Guardrail Installation)	16.76	6.01	
	LABORER:			
	Asphalt Raker			
1507	Alamosa	17.53	3.75	
1508	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, San Juan, San Miguel	16.43	3.42	
1509	La Plata	15.38	3.12	
	Common or General			
1510	Alamosa, Chaffee, Montezuma, Montrose	12.44	3.53	
1511	Archuleta, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Ouray, Rio Grande, Saguache, San Miguel	13.70	3.53	
1512	Fremont	15.19	3.00	
1513	La Plata	14.07	3.53	
1514	Mineral	14.84	3.53	
1515	San Juan	13.73	3.53	
1516	Concrete Saw (Hand Held)	16.00	6.14	

The wage and fringe benefits listed below do not reflect collectively bargained rates.

Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	LABORER (con't):			
	Landscape and Irrigation			
1517	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	14.02	3.16	
1518	La Plata	13.54	3.16	
	Mason Tender - Cement/Concrete			
1519	Alamosa, Archuleta, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	14.59	3.10	
1520	Chaffee	12.44	3.10	
1521	La Plata	15.67	3.10	
	Traffic Control			
1522	Flagger	9.42	3.21	
1523	Sets Up/Moves Barrels, Cones, Installs signs, Arrow Boards and Place Stationary Flags, (Excludes Flaggers)	12.39	3.20	
1524	PAINTER (Spray Only)	17.54	3.52	
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1525	Alamosa, La Plata	22.67	8.72	
1526	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	23.13	8.64	
1527	Asphalt Paver	22.67	8.72	
1528	Asphalt Plant	17.23	4.07	
	Asphalt Roller			
1529	Alamosa	21.67	8.22	
1530	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	22.77	8.36	
1531	La Plata	22.68	7.30	
1532	Montezuma	22.67	8.72	
1533	Asphalt Spreader	22.67	8.72	

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):			
	Backhoe/Trackhoe			
1534	Alamosa	21.03	3.75	
1535	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	19.75	3.75	
1536	La Plata	19.79	5.13	
1537	Mineral	19.17	5.53	
1538	Montezuma	16.42	4.42	
	Bobcat/Skid Loader			
1539	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	18.20	4.54	
1540	La Plata	19.98	4.88	
1541	Mineral	17.94	4.62	
	Broom/Sweeper			
1542	Alamosa	20.67	9.22	
1543	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	21.70	9.22	
	Bulldozer			
1544	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	23.28	9.22	
1545	Fremont	23.67	9.22	
1546	La Plata	23.57	8.72	
1547	Chipper	22.04	8.26	
	Crane			
1548	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	25.01	8.22	
1549	La Plata	25.21	8.22	

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.):			
1550	Drill	20.84	2.66	
1551	Forklift	18.30	5.01	
1552	Grade Checker	23.91	7.89	
	Grader/Blade			
1553	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	16.39	4.20	
1554	Fremont	19.68	3.37	
1555	La Plata	19.83	4.20	
1556	Guardrail/Post Driver	16.07	4.41	
	Loader (Front End)			
1557	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montrose, Ouray, Rio Grande, Saguache, San Juan	23.38	8.22	
1558	Fremont	23.67	9.22	
1559	La Plata	23.36	7.09	
1560	Montezuma	22.82	8.72	
1561	San Miguel	23.82	9.22	
	Mechanic			
1562	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	16.74	4.20	
1563	Fremont	18.79	3.51	
	Oiler			
1564	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan,	22.97	7.88	
1565	Fremont	22.97	8.56	
1566	La Plata	24.08	5.49	
1567	San Miguel	22.97	9.22	

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.):			
	Roller/Compactor (Dirt and Grade Compaction)			
1568	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	19.24	4.96	
1569	Fremont	16.52	5.28	
1570	La Plata	18.33	2.98	
1571	Rotomill	16.28	4.41	
1572	Scraper	17.62	2.96	
	Screed			
1573	Alamosa	20.33	6.81	
1574	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	19.58	4.96	
1575	La Plata	17.86	2.75	
1576	Tractor	15.08	2.95	
	TRAFFIC SIGNALIZATION:			
1577	Groundsman	17.04	2.28	
	TRUCK DRIVER:			
	Distributor			
1578	Alamosa	18.40	4.51	
1579	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, La Plata, Mineral, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	17.62	5.27	
1580	Montezuma	15.80	5.27	

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.):			
	Dump Truck			
1581	Alamosa	14.15	3.83	
1582	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	16.56	4.03	
1583	Fremont	16.55	4.34	
1584	La Plata	16.90	3.83	
1585	Mineral	16.97	4.61	
1586	Lowboy Truck	17.25	5.84	
1587	Mechanic	17.79	3.51	
1588	Multi-Purpose Specialty & Hoisting Truck	14.60	3.49	
	Pickup and Pilot Car			
1589	Alamosa, Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Fremont, Gunnison, Hinsdale, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	14.04	3.49	
1590	La Plata	15.47	3.49	
	Semi Truck			
1591	Alamosa, Archuleta, Chaffee, Gunnison, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	19.42	5.41	
1592	Conejos, Custer, Delta, Dolores, Fremont, Hinsdale, La Plata	17.25	5.41	
	Water Truck			
1593	Alamosa	17.58	3.75	
1594	Archuleta, Chaffee, Conejos, Custer, Delta, Dolores, Gunnison, Hinsdale, Mineral, Montrose, Ouray, Rio Grande, Saguache, San Juan, San Miguel	16.75	3.04	
1595	Fremont	16.15	3.14	
1596	La Plata	17.67	3.43	
1597	Montezuma	14.88	2.07	

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:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to: davisbaconinfo@dol.gov, or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to: BCWD-Office@dol.gov, or by mail 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 an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to: dba.reconsideration@dol.gov, or by mail 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 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.

End of General Decision No. CO20260012

Exhibit C-4 – Federal Law – 41 C.F.R. Sections 60-1.4 and 60-4.3

The following clauses from Executive Order No. 11246 and has been incorporated into 41 C.F.R. Sections 60-1.4 and 60-4.3 shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to its provisions

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase

order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

Exhibit C-5 – CDOT Special Standard Provision for Affirmative Action

1
 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

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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.

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**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
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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
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- 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.

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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.

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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.

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- 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.

**Exhibit C-6- THE UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT)
STANDARD TITLE VI/NON-DISCRIMINATION ASSURANCE
Appendix A & E**

APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Colorado Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Colorado Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Colorado Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non discrimination provisions of this contract, the Recipient will impose such contract

sanctions as it or the Colorado Department of Transportation may determine to be appropriate, including, but not limited to:

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

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Colorado Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

Exhibit 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>

Exhibit F – Insurance This Exhibit is current at the time of the Request For Proposals and includes all insurance requirements.

Insurance

1.1 General Insurance Requirements

1.1.1 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 Exhibit. 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 Exhibit. The evidence of insurance shall provide for ten Days' written notice of cancellation for nonpayment of premiums, or 30 days' written notice of cancellation for any other reason. 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.

1.1.1.1 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.

1.1.2 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.

1.1.3 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 Book 1 Section 13.

1.1.4 Indemnification

The insurance coverage provided hereunder shall support, but is not intended to limit, the Contractor's indemnification obligations under Book 1 Section 18.

1.2 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 1.1, or as otherwise Approved by CDOT at its sole discretion.

1.2.1 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.

1.2.2 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. **\$1,000,000** - each occurrence.
 - B. **\$2,000,000** - general aggregate (annually). The general aggregate limit shall not be diminished by claims on other projects.
 - C. **\$1,000,000** - personal injury/advertising liability.
 - D. **\$2,000,000** - products/completed operations liability.
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.

1.2.3 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. Contractor Limit: **\$2,000,000** combined single limit for bodily injury and property damage liability.
2. Subcontractor Limit: **\$1,000,000** combined single limit for bodily injury and property damage liability.
3. Coverage shall be provided on ISO form number CA 00 01 10 01 or equivalent.
4. The policy will include uninsured and underinsured, in compliance with Colorado law.
5. The policy shall be endorsed to include Motor Carrier Act endorsement – Hazardous Materials Cleanup (MCS-90), if applicable.

1.2.4 Professional Liability Insurance

The Contractor, and/or Subcontractor shall provide Professional Liability Insurance Coverage for the protection of all design and engineering professionals associated with the Project as follow:

1. Contractors will provide contractual Limits of Liability of **\$2,000,000** per claim (or occurrence) and an annual aggregate limit of at least **\$2,000,000**. ESB firms will be covered as long as the ESB firms' contracts are with the Contractor. The Contractor, at its discretion, may elect to allow limits less than those imposed on the Contractor from its Subcontractors; however the Contractor shall accept the responsibilities and liabilities to satisfy the contract requirements for the Subcontractor, and such limits shall not be less than **\$1,000,000** per claim (or occurrence) and **\$1,000,000** in annual aggregate limits. A project specific policy may be substituted with Limits of Liability of **\$2,000,000** per claim (or occurrence) and an aggregate of **\$4,000,000**.
2. The policy will have a three (3) year, or as determined by CDOT Risk Management, 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 1.2.6, per the Contractor's usual business practices including, but not limited to, purchasing a construction management professional policy or an errors and omissions policy.
6. Where a Subcontractor provides Professional Liability Coverage, Contractor shall confirm that all requirements of this section have been met prior to the start of design work.

The limits required and provided by the Contractor for CDOT above does not reduce the liability of the Contractors, or its Subcontractors, to the insurance, nor the limit of liability provided herein.

1.2.5 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 in limits as required by the Railroad Companies, but in no case less than a combined single limit of Five Million Dollars (**\$5,000,000**) per occurrence with an aggregate limit of Ten Million Dollars (**\$10,000,000**) 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.

1.2.6 Builder's Risk

Unless otherwise expressly stated in the Supplementary General Conditions, 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 named insureds.

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). Subcontractors' policies may have a deductible clause but not to exceed ten thousand dollars (\$10,000).

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.

CDOT, with approval of the Colorado State Controller, shall have the power to adjust or settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured Work.

INTRODUCTIONS / DEFINITIONS

Capitalized terms not otherwise defined in this Exhibit shall have the meanings assigned to them in the Contract.

Contractor: meaning the Contractor set forth in the first page of Book 1. Contractor refers to any person or entity awarded a Contract with CDOT to provide construction services for the Project.

Owner: means the Colorado Department of Transportation (CDOT), a body corporate and political subdivision of the State of Colorado.

Project Site: means the physical location of Work to be performed on the Project as described in the Contract, as well as areas adjacent to the Work necessary for performance of the Work.

Subcontractor: means 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, performing Work at the Project Site.

Work: means all activities required to be performed by Contractor, Project Contractors and their Subcontractors to fulfill their obligations under the Contract.

1.2.7 Commercial General Liability –CG 12/07, or equivalent

Policy limits:

\$2,000,000 per Occurrence for Bodily Injury and Property Damage

\$4,000,000 General Aggregate

\$4,000,000 Completed Operations Aggregate

Policy Exclusions – Examples could include, but are not limited to:

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

COVERAGE C MEDICAL PAYMENTS

Additional Policy Endorsements [SAMPLE]:

Advertisement Redefined

Blanket Additional Insured

Bodily Injury Redefined

Bodily Injury to Co-Employees Coverage

Broad Form Named Insured

Broadened Damage to Premises Rented to You Coverage

Commercial General Liability Coverage Form (Occurrence Version)

Common Policy Conditions

Composite Rate Endorsement
Coverage Territory Redefined
Earlier Notice of Cancellation Provided By Us– (60 Days/10 Days for nonpayment)
Joint and Several Amendment
Joint Defense Endorsement
Knowledge of Occurrence
Mold and Mold Related Construction Defect
Non-Cumulation of Liability (Same Occurrence)
Notice of Cancellation to Third Parties (30 Days NOC)
Notice of Occurrence
Nuclear Energy Liability Exclusion
Per Project and Per Location Combined Aggregate Limits – With Optional Capped Limits
Endorsement (Aggregate Limit Cap: \$20,000,000)
Personal and Advertising Injury Redefined- Definition of Publication
Personal and Advertising Injury – Occurrence Redefined
Professional Health Care Services By Employees or Volunteer Workers Coverage
Reasonable Force
Repair Work Endorsement-Manuscript
Unintentional Failure to Disclose
Waiver of Transfer of Rights of Recovery Against Others to Us– (Any person or organization with whom you have agreed in writing to waive any right of recovery prior to a loss; Premium: TBD)
Wrap-Up Insurance Program – Amendment of Coverage (Completed operations extension period: 8 years)

Additional Policy Exclusions:

Asbestos Exclusion
Discrimination Exclusion
Employment Related Practices Exclusion
Exclusion – Contractors – Professional Liability
Exclusion – Fungi or Bacteria
Exclusion – Mold and Mold Related Construction Defect
Fungi or Bacteria Exclusion
Lead Exclusion
Nuclear Energy Liability Exclusion
Recording and Distribution of Material or Information in Violation of Law Exclusion
Silica Exclusion
Total Pollution Exclusion

Standard Insurance Service Office (ISO) Commercial General Liability Insurance policy or equivalent, including Bodily Injury, Property Damage, Personal Injury and Completed Operations covering operations at the Project Site for Project Contractors shall be provided. An eight-year extension of the Completed Operations Liability coverage for the Colorado Statute of Repose and the Statute of Limitations will begin upon the earlier of Substantial Completion of the Project, or the completion of Work under Contract.

This insurance extends coverage for the Contractor's Work under Contract at the Project Site, including Products / Completed Operations. This insurance is not intended to extend coverage for a product manufactured away from the Project Site and as such, products liability coverage for such products shall continue to be required.

1.2.8 Excess (Umbrella) Liability –

The Contractor shall provide Umbrella or Excess Liability insurance, with limits not less than those defined in this section below, which will provide bodily injury, personal injury and property damage liability coverage 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 1.2.1, 1.2.2, and 1.2.3.

\$20,000,000	Each Occurrence
\$20,000,000	Aggregate
\$20,000,000	Completed Operations Aggregate

Coverage is in excess of the primary Commercial General Liability and Employer's Liability. Such Excess Liability Insurance will be primary and non-contributory as to any other excess insurance the parties hereto may have in force. An eight-year extension (for the Statute of Repose) of the Completed Operations Liability coverage is anticipated and will begin upon the earlier of expiration of the Commercial General Liability Policy or Substantial Completion of the Project, or the completion of Work under Contract. This insurance will not extend products liability coverage for any product manufactured away from the Project Site.

Limits outlined above may be satisfied in various combinations with an Umbrella/Excess policy.

1.2.9 Contractor's Pollution Liability

\$ 25,000,000	Per Claim
\$ 25,000,000	Aggregate

Claims Expenses (including Defense Costs) within limits.

Coverage will include Bodily Injury or Property Damage from a pollution event as defined within the policy form resulting from covered operations or completed operations of the Work performed at the Project Site.

CDOT shall be named as an additional insured (to the extent commercially available as determined by CDOT).

The policy form shall be written on an occurrence-based form. The extended reporting period must be at least 24 months following completion of the Work.

CDOT reserves the right to purchase a Project-specific policy in lieu of the Contractor's pollution legal liability policy.

1.2.10 Workers' Compensation Will be the responsibility of the Contractor

1.2.11 Builder's Risk

POLICY COVERAGE FORM AND EXCLUSIONS [EXAMPLES]:

Commercial Inland Marine – Builders Risk Coverage Form

Endorsements:

Extra Expense Endorsement
Elite Property Enhancement: Builders Risk – sub limits apply
Builders Risk Warranties

Exclusions:

Government Action
Nuclear Hazard
War and Military Action
Ordinance or Law
Water – modified or deleted by endorsement
Mold Exclusion
Workmanship – Omission in, or faulty, inadequate or defective

Policy Coverage Extensions (sub limits may apply):

Fire Department Service Charges
Valuable Papers and Records
Trees, Shrubs and Plants
Debris Removal
Pollutant Clean Up and Removal
Flood
Earth Movement

1.2.12 Project Professional Liability for design and consulting services

Unless otherwise stated herein the Contractor shall provide such coverage as described in section 1.2.6 with limits as determined by the CDOT Risk Manager.

1.2.13 Excluded Property

Project Contractors shall retain the risk of loss for all premises and operations exposures of Contractor away from the Project Site, and for any damage whatsoever to their equipment, stationary or mobile, tools, supplies, materials, automobiles and vehicles, highway or otherwise, cranes, and hoists or any other property owned or leased which will not be incorporated into the physical construction.

The separate insurance maintained for any property described in this Section shall contain a Waiver of Subrogation on the part of the insurance company in favor of CDOT, Contractor, and all other Project Contractors, and Subcontractors at any tier, with respect to Project Site activities. If Project Contractors of any tier chooses to self-insure any of the property described under this Section, then that Contractor shall indemnify CDOT, Contractor, and all other Project Contractors and Subcontractors working at the Project, and all other persons or entities shall be held harmless for any loss or damage to the property while on the Project Site.

Contractor and each of the Project Contractors and Subcontractor shall pay any costs not covered because of deductibles, if any, under these policies.

1.2.13.1

Immediately report and assist in the investigation of any accident or occurrence involving injury to any person or loss or damage to property, and cooperate with the companies involved in adjusting any claim by securing and giving evidence, and obtaining the participation and attendance of witnesses required for the investigation or defense of any claim or lawsuit. If failure to report a claim, or late reporting of a claim,

or failure to comply with any contractual obligations results in an increase in cost to CDOT or in a rejection of a claim, then Contractor shall be responsible for the resulting increase in the cost of the claim.

Failure to comply with any of the above items will be considered noncompliance with the Contract and may result in remedial action, including withholding of payment, and/or removal of Project Contractors and/or Subcontractor from the Project Site.

1.3 Contractor/Subcontractor Provided Insurance - Required

Contractors shall at all times during the period in which this Contract is in force and effect provide and maintain insurance, and shall require all their Subcontractors to provide and maintain insurance, of the type and in limits as set forth below. Such insurance shall be in a form and from issuing companies acceptable to CDOT. The issuing companies must have a Best's rating of A-, VII or better. The insurance may be provided in a policy or policies, primary and excess, including the so-called umbrella or excess form. The limits of liability shall be as stated below, unless, prior to commencement of any Work, written approval is granted by CDOT for variance from those limits.

1.3.1 Automobile Liability

Insurance shall cover all owned, non-owned and hired automobiles. Such insurance shall provide coverage not less than that of a standard Insurance Services Office (ISO) Business Auto Coverage policy with limits not less than listed below. The policy shall be endorsed to include Motor Carrier Act endorsement – Hazardous Materials Cleanup (MCS-90), if applicable. Contractual Liability, if not provided in the policy form, is to be provided by endorsement.

Contractor limit

\$2,000,000 Combined Single Limit each occurrence for Bodily Injury and Property Damage

Subcontractor and Separate Contractor minimum limit

\$1,000,000 Combined Single Limit each occurrence for Bodily Injury and Property Damage.

1.3.2 Workers' Compensation

For all operations Contractors and Subcontractors shall carry Workers Compensation insurance in compliance with statutory limits for the Workers' Compensation Laws of the State of Colorado and Employer's Liability.

1.3.3 Commercial General Liability and Excess/Umbrella Liability

Evidence of liability insurance for premises and operations exposures of Contractor and Subcontractors away from the Project Site shall be provided by the Contractor and enrolled Subcontractors. Coverage to be provided in a form equivalent to the standard Insurance Service Office (ISO) Commercial General Liability Insurance policy (occurrence form) including products liability for any product manufactured, assembled or otherwise worked upon away from the Project Site, as well as for any damage whatsoever to their equipment, stationary or mobile, tools, supplies, materials, automobiles and vehicles, highway or otherwise, cranes, and hoists or any other property owned or leased which will not be incorporated into the physical construction.

The required insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy.

Contractor limit

\$10,000,000 per occurrence

\$10,000,000 annual general aggregate and products / completed operations aggregate limits

Subcontractor and Separate Contractor minimum limit

\$1,000,000 per occurrence

\$2,000,000 annual general aggregate and products / completed operations aggregate limits

1.3.4 Environmental and Asbestos Abatement Coverage

Should the Project involve the removal of asbestos, the removal/replacement of underground tanks or the removal of toxic chemicals and substances, such Contractor shall be required to provide adequate coverage, with limits not less than **\$10,000,000** per claim basis, for such exposures subject to requirements and approval of Owner and/or the Contractor.

1.3.5 Professional Liability (Errors & Omissions where required)

Should the Contractor's or Subcontractor's work involve design, or a design/build component where professional services are provided or contracted for, Professional Liability insurance as described below in this paragraph shall be required and will be maintained by each Contractor or Subcontractor, their Architect and all Sub-Consultants for the duration of the applicable Colorado Statute of Repose. There should be no exclusion on the policy for the type or scope of work associated with the Project. Such insurance shall be approved by the Owner and the Contractor.

\$ 2,000,000 each claim

\$ 2,000,000 general aggregate

See section 1.2.6 for additional information

1.3.6 Watercraft, Aviation and/or Drones (UAVs)

Should watercraft or aircraft of any kind be used by any Contractor or Subcontractor by any person on their behalf, Contractor/Subcontractor or such other party will maintain or cause the operator of the watercraft or aircraft to maintain watercraft or aircraft liability insurance, including bodily injury, property damage and passenger liability, as respects any watercraft or aircraft owned, used, operated or hired in connection with the Work by Contractor or anyone else with limits of **\$10,000,000** combined single limit for bodily injury and property damage any one occurrence, each watercraft or aircraft.

Should aerial drones of any kind be used by Contractor or by any person on its behalf, Contractor or such other party will maintain or cause the operator of the drone to maintain drone liability insurance, including bodily injury and property damage, as respects to any drone owned, used, operated or hired in connection with the Work by Contractor or anyone else with limits of **\$1,000,000** combined single limit for bodily injury and property damage any one occurrence.

1.3.7 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 in limits as required by the Railroad Companies, but in no

case less than a combined single limit of Five Million Dollars (**\$5,000,000**) per occurrence with an aggregate limit of Ten Million Dollars (**\$10,000,000**) 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.

1.4 Contractor/Subcontractor Obligations

All requirements imposed in this Exhibit, with the possible exception of any allowable differences in policy limits, and required of Contractor, shall likewise be imposed upon, assumed and performed by each Project Contractor and Subcontractor of every tier.

Each party hereto shall require that all policies of insurance, as allowed by statute, that are in any way related to the Work, including those that are secured and maintained by any Contractor, Subcontractors or their consultants, include clauses providing that each underwriter shall waive all of its rights of recovery under subrogation or otherwise, against CDOT, its officials, directors, officers, and employees, and all other interests as may be reasonably required by CDOT.

1.5 INSURANCE REQUIREMENTS FOR OTHER WORK RELATED PARTIES

1.5.1

Firms whose sole function is to transport materials, supplies, tools, equipment, parts or items to or from the project site and Subcontractors who will perform no actual labor at the site shall be covered by insurance at their own expense. These parties shall obtain and maintain until all of their obligations have been discharged, including any warranty periods under this contract are satisfied, the insurance coverage specified in subsections listed below.

Such insurance shall be in a form and from issuing companies acceptable to CDOT. The issuing companies must have a Best's rating of A-, VII or better.

Automobile Liability -

\$1,000,000 Combined single Limit each occurrence for Bodily Injury and Property Damage.

Workers' Compensation –

Statutory Workers' Compensation limits applicable to state of Colorado and Employer's Liability limits.

Commercial General Liability —

\$1,000,000 per occurrence

\$2,000,000 annual general aggregate and products / completed operations aggregate limits

Such insurance shall be primary and non-contributing with any other insurance and be in a form and from insurance companies reasonably acceptable to CDOT.

1.5.2

The required insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy.

1.5.3

Liability policies required shall, where prudently feasible, name CDOT and Contractor and their, elected and appointed officials, directors, officers, employees, agents, representatives, and any additional entities as CDOT or Contractor may request, as Additional Insured. The Additional Insured Endorsement, equivalent to ISO form CG2010 (07/04) edition, shall state that the coverage provided to the Additional Insured is primary and non-contributory with respect to any other insurance available to the Additional Insured. Contractor is responsible to ensure to the best of its ability that those entering the Project Site location have evidence of, or hold, the appropriate insurance or that those visitors are escorted while at the Project. Exceptions may be granted where mutually agreed to in advance between CDOT and the Contractor. Workers' Compensation policies are excluded from this requirement.

1.5.4

All policies of insurance required in this section shall be endorsed to provide that the insurance company shall provide written notice to CDOT at least 30 days prior to the effective date of any cancellation of such policies.

1.5.5

All policies of insurance, as allowed by statute, that are in any way related to the Work, including those that are secured and maintained by consultants and subcontractors, shall include clauses providing that each underwriter shall waive all its rights of recovery under subrogation or otherwise, against CDOT, CDOT's Representatives, Contractor, Project Contractors and Subcontractors.

1.5.6

Parties covered in this Section shall cause to be furnished to CDOT and Contractor, or their Insurance Representative, certificates of insurance evidencing all insurance as required by this Contract. As and when CDOT or Contractor may direct, copies of the actual insurance policies or renewals or replacements thereof shall be submitted to CDOT or Contractor. All copies of policies, if any, and certificates of insurance submitted to CDOT shall be in form and content acceptable to CDOT or Contractor.

1.6 Subrogation and Waivers

1.6.1

Contractor shall require all policies (except Professional Liability) of insurance that are related to the Project and that are secured and maintained by Contractor and each Subcontractor to include clauses providing that each underwriter and carrier shall waive all their respective rights of recovery, under subrogation or otherwise, against CDOT and Contractors rendering services at the Project, Contractor, its Subcontractors, CDOT's Separate Contractors, and their Subcontractors, regardless of tier.

1.6.2

Contractor waives rights of recovery against its Subcontractors, CDOT and Separate Contractors rendering services at the Project, regardless of tier that Contractor may have or acquire because of deductible clauses in or inadequacy of limits of policies of insurance that are in any way related to the Project and that are secured and maintained by Contractor, other than a right of contribution from Subcontractors for deductible amounts.

1.6.3

Contractor shall require its Subcontractors to waive the rights of recovery in the same manner, as waived in the preceding paragraph by Contractor, against CDOT and Contractor, other Project Contractors and Subcontractors, other Separate Contractors, and their Subcontractors, regardless of the tier.

1.7 Evidence Of Insurance

All insurance policies required to be obtained under the terms of this Contract shall be endorsed to provide that the insurance company shall provide written notice to CDOT and Contractor at least 30 days prior to the effective date of any cancellation of such policies.

Prior to the date on which Contractor commences any Work at the Project site, Contractor shall furnish to CDOT certificates of insurance evidencing all insurance required by this Contract. If CDOT directs, copies of the actual insurance policies or renewals or replacements thereof shall be submitted to CDOT. All copies of policies, if any, and certificates of insurance submitted to CDOT shall be in form and content acceptable to CDOT.

The Contractor considers its insurance policies to be confidential under the Colorado Open Records Act, because disclosure of these documents would be likely to cause substantial harm to its competitive position. In the event of a Colorado Open Records Act request, CDOT agrees to honor such request for confidentiality of the Contractor's insurance policies, subject to compliance with any subsequent court order to the contrary.

1.8 Miscellaneous

1.8.1

Nothing contained herein shall relieve Contractor, or its Subcontractors, of their obligations to exercise due care when performing any Work on the Project or to complete such Work in strict compliance with the Contract.

1.8.2

Any type of insurance or increase in limits not described herein which Contractor requires for its own protection or as a result of any applicable law shall be its own responsibility and expense.

1.9 Safety Requirements

1.9.1 General

CDOT requires the Contractor, and all Subcontractors of every tier working at their Project to, at a **minimum**, adhere to CDOT's Safety Requirements as provided for in Book 1 and 2, and as additionally outlined herein. The Contractor and Subcontractors shall within their own site-specific Safety Requirements or Manuals ensure compliance has been met with the following Safety Requirements, which are incorporated in the Contract Documents.

Contractor shall take all necessary precautions to protect the safety and health of the Project Site and is ultimately responsible to establish and maintain a written Contractor Safety Program (CSP) for the Work. Contractor shall establish administrative and technical means for the mitigation of risk, response to incidents, and recovery/restoration to normal operations at the Project Site. The Program shall include development of a site safety culture which supports, "best practices" for accident prevention, job specific hazard recognition and planning, training, reporting, management oversight, and implementation.

All costs, penalties, and expenses of complying with the requirements of these Safety Requirements shall be included as part of the cost of the Contract. Contractor shall notify CDOT promptly, in writing, if a charge of non-compliance has been filed against Contractor, or any Contractor or Subcontractor, in connection with its performance of the Work.

The developed CSP shall apply in all phases of the Work. The objective of the program is to eliminate or control accident risks to personnel, associated management, subcontractors, equipment, facilities, general public, and environment. Required activities include hazard identification & analysis, planning, management, dedicated resources, auditing conformance, training, communicating results and documentation.

Additionally, clear and open partnering and communications relative to the safety program between Contractor, Project Contractors and Subcontractors, and CDOT and its Representative(s) is a key component in effectively implementing and assuring conformance.

Contractor is solely responsible for health and safety and shall perform the Work in a safe and environmentally acceptable manner; this includes all of its Subcontractors, or other Contractors.

1.9.2 Safety Criteria

Meet all CDOT requirements listed in Book 1 and Book 2; in addition meet all requirements as described in this addendum.

Notice of Correction of other unsafe conditions will be conveyed in writing within 24 hours after receiving written notice from CDOT, Contractor, or Owner's Safety Representative (OSR) of unsafe work. Lost time and lost productivity associated with this or any safety violation will be at the sole cost of Project Contractor or the Subcontractor without additional compensation.

1.9.3 Required Contractor Site Safety Requirements:

1. The Contractors Safety Program will conform to all aspects of this Section 1.9 and be consistent with the requirements herein and the CDOT Required Contractor's Safety Management Plan.
2. Contractor shall conduct a project/site orientation for all Contractor & Subcontractor employees prior to their working on the Project Site; including orientation for all full-time project oversight and management personnel.

The safety orientation (at a minimum) shall include the following:

- a. A description of the extent and nature of the Project.
- b. A description of any hazards that can typically be expected during the course of work, and means and methods for avoiding or protecting oneself.
- c. Required work practices, job conduct, and accident reporting procedures.

- d. Any other general information to acquaint the employee with special work and requirements at the Site.
3. Project Contractors and Subcontractors shall be prohibited from use and possession of alcoholic beverages, drugs (other than prescription), carrying weapons or ammunition onto the site, or using or carrying weapons while performing work on the Project's behalf, or attending Project sponsored activities. Contractor, at its own expense, shall adopt a policy of a drug free work site on the Project, which at a minimum shall include pre-job site and post-accident drug testing. Contractor, at its discretion, may include "for cause" and "random" testing if consistent best practices are applied.

Contractor shall require all workers to demonstrate a negative drug test before attending a Project Safety Orientation, and performing any work on a CDOT Project. Previous drug test results from an accredited facility done within forty-five (45) days will be acceptable. Any employee who has not worked on a CDOT Project during the last 12 months must retest and go through a new Project Safety Orientation as provided by the Contractor.

4. Current certified crane operator for each crane is required and must be on file at the jobsite.
5. Contractor safety enforcement activities shall be documented and/or logged and provided to the Owner's Safety Representative upon request (without any personnel privacy sensitive information) and this information shall be on file at the jobsite.
6. Include Personal Protective Equipment (PPE) requirements and policy.
 - a. 100% Fall protection at working surfaces above 6ft without review and authorization from Contractor's Safety Manager.
 - b. 100% eye protection with side shields required.
 - c. 100% wearing of heavy-duty work boots/shoes required.
 - d. 100% wearing of hardhats required.
 - e. 100% wearing of shirt & long pants (no shorts).
 - f. 100% wearing of high visibility vest or clothing.
 - g. Hearing protection as required.

1.9.4 REQUIRED CONTRACTOR SAFETY MANAGEMENT PLANS / DOCUMENTS

1. Job Task Hazard Analysis Program.
 - a. All work activities shall have a written job/task/activity Hazard Analysis (HA) associated with it appropriate for the hazards, scope, and/or complexity of the work. At a minimum this HA will cover the steps, hazards, and mitigation, required to perform the work safely.
2. Project Hazard Communication Plan.
3. Project Utility Safety Management Plan.
 - a. Locates, accidental damage prevention, and incident reporting/correcting, policies, procedures, and practices. Contractor will have an adequate utility locate, protect, and emergency response program. Any utility strike will be reported to CDOT immediately, investigation and lessons learned follow-up reporting performed, and related program performance measures provided. In addition, no corrections and/or repairs will be re-covered

or otherwise made inaccessible until CDOT's Representative or designee has had the opportunity to review.

4. Project Water Intrusion Prevention and Mitigation Program.
5. Project Emergency Response Plan.
6. Project Security Plan.

Special consideration and concern shall be given to the storage/protection of highly valuable (i.e., copper), finished product and/or critical materials/equipment to be protected from theft and/or vandalism.

Exhibit H – 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 US 160 Elmore's Corner to Dry Creek 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

Colorado Department of Transportation – Region 5
3803 Main Avenue, Suite 200
Durango, CO 81301

To Whom It May Concern:

It is hereby understood that the CDOT Project No. NHPP 1602-157 & FBR 1602-193 S.A. No. 20980-COMBO (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

US 160 Elmore's Corner to Dry Creek
NHPP 1602-157 & FBR 1602-193
Sub Account: 20980 - COMBO
Book 1 – Contract

Contract Routing # _____

Exhibit J

RESERVED

US 160 Elmore's Corner to Dry Creek
NHPP 1602-157 & FBR 1602-193
Sub Account: 20980 - COMBO
Book 1 – Contract

Contract Routing # _____

Exhibit K

RESERVED

US 160 Elmore's Corner to Dry Creek
NHPP 1602-157 & FBR 1602-193
Sub Account: 20980 - COMBO
Book 1 – Contract

Contract Routing # _____

Exhibit L

RESERVED

US 160 Elmore's Corner to Dry Creek
NHPP 1602-157 & FBR 1602-193
Sub Account: 20980 - COMBO
Book 1 – Contract

Contract Routing # _____

Exhibit M

RESERVED

US 160 Elmore's Corner to Dry Creek
NHPP 1602-157 & FBR 1602-193
Sub Account: 20980 - COMBO
Book 1 – Contract

Contract Routing # _____

Exhibit N

RESERVED

US 160 Elmore's Corner to Dry Creek
NHPP 1602-157 & FBR 1602-193
Sub Account: 20980 - COMBO
Book 1 – Contract

Contract Routing # _____

Exhibit O

RESERVED

Exhibit P – CDOT Special Standard Provision for On-The-Job Training

This On-the-Job Training (OJT) special provision is an implementation of 23 U.S.C, 140(a), a federal requirement to provide equal opportunity and training on federal-aid construction projects. The Contractor shall meet the requirements of the FHWA 1273 for all apprentices and trainees. For additional guidance, please look at the OJT Contractor Manual.

1. Goal Setting

CDOT will set OJT goals for every federally-assisted project. Goals for the projects will be set based on the criteria that is outlined in the 23 CFR Part 230, Appendix B to Subpart (A):

- A. Availability of minorities, women, and disadvantaged persons for training;
- B. The potential for effective training;
- C. Duration of the contract;
- D. Dollar value of the contract;
- E. Total normal workforce that the average bidder could be expected to use;
- F. Geographic location;
- G. Type of work;
- H. The need for journey-level workers in the area;
- I. Recognition of the state's goal;
- J. A satisfactory ratio of trainees to journeymen expected to be on the workforce.

The number of required training hours will be identified in the Contract. The following chart provides guidelines based on contract value, but the required number of hours will be determined by CDOT after consideration of the aforementioned variables.

Contract dollar value	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

1
ON THE JOB TRAINING

2. Training Plan Options

CDOT accepts the following training programs:

- A. CDOT's pre-approved classifications utilization program (PAC-UP);
- B. A registered U.S. Department of Labor training program or apprenticeship program;
- C. Approved programs through workforce centers and through specific groups like Colorado Contractors Association (CCA) and Western Colorado Contractors Association (WCCA);
- D. A Contractor specific plan approved by CDOT and the Federal Highway Administration (FHWA).

The minimum length and type of training for each skilled craft shall be as established in the training program selected by the Contractor.

When one or more approved plans are chosen, the Contractor shall submit the OJT Contractor Commitment to Meet OJT Requirements, CDOT Form 1337 to the Engineer. Additional pre-approved training programs and/or additional apprentices/trainees may be utilized at any point throughout the project. The plan option(s) that the Contractor chooses will be effective for the duration of the project.

3. Journey-Level Worker to Apprentice/Trainee Ratio

The OJT goal requirement shall be met through approved trainee(s)/apprentice(s) working on the CDOT project under the supervision of a journey-level worker. For the CDOT Pre-Approved Classification Training Programs (PAC-UP), the apprentice/trainee ratio to journey-level worker shall not exceed a one to one ratio for all classifications, and the Contractor shall not exceed 25 percent of the workforce as trainees/apprentices at any time. Furthermore, it is at CDOT's discretion that a stricter ratio guideline may be imposed as outlined in the specific training classification. For all other approved programs, the apprentice/trainee ratio shall be as outlined in the specific program. When apprentices/trainees are on the job without proper supervision as outlined above, they shall be paid full Davis-Bacon wages.

4. Trainee Selection

Two components must be considered when choosing a trainee:

- A. The intent of this program is for Contractors to recruit and train entry-level individuals or individuals who will be working within new classifications and guide them toward journey-level status in that specific classification. A trainee will not be approved in any classification for which they have already obtained journey-level status.
- B. Another intent of the OJT program is the primary consideration for the Contractor to use minorities, women, and disadvantaged persons to fulfill the trainee roles, and as such, the Contractor shall make every effort to enroll such individuals in the program by using "systematic and direct recruitment through public and private sources."

The consideration to include women and minorities is based on the regulation; however, it will not be used to systematically deny any one person or group from the opportunity to be a part of the OJT program. CDOT may reject non-minority male trainees for entry into the program if it is determined that a Contractor failed to make sufficient good faith efforts (GFE) to hire minorities or female trainees and/or the Contractor failed to document or submit evidence of its GFE to do so. CDOT will consider a Contractor's documentation of all GFE on a case-by-case basis and will take into account the items listed in the goal setting section of this specification. For more information, please see Section 11 of this specification.

5. OJT Apprentice/Trainee Approval

As a condition of the OJT program, the Contractor will:

- A. Notify all employees at the start of employment and at a minimum of at least once per year regarding the available training programs, positions, and eligibility requirements. The Contractor shall document that this information was conveyed to and received by employees.
- B. Provide each trainee with a copy of his or her enrollment form (if applicable) and the training program within a month of starting the chosen plan.

2
ON THE JOB TRAINING

The OJT submittals (CDOT Form 1337, Contractor Commitment to Meet OJT Requirements; CDOT Form 832, Trainee Status and Evaluation; CDOT Form 838, OJT apprentice/trainee Record) shall be filled out completely and approved or rejected by CDOT. If the apprentice/trainee is working within the proposed classification before approval is granted, full Davis-Bacon prevailing wages shall be paid to the individual.

The Regional Civil Rights Office must approve the CDOT Form 838 prior to any of the hours counting toward the OJT goal. If there is a CDOT delay that is completely outside of the Contractor's responsibility for approval of the apprentices/trainees, and if approval is ultimately granted, the date that will be utilized will be ten business days after the date that the CDOT Form 838 was submitted.

The Contractor shall retain full responsibility for meeting the training requirements imposed by this special provision.

6. Eligible Work Activities that Count Toward the Training Goal

The work hours that are completed on the site of work and per the training documents for approved apprentices/trainees in approved classifications and programs will apply toward the project goal. Hours for work performed outside the individual's approved training classification will not count toward the project OJT goal and the individual shall be paid full applicable prevailing wage.

Job shadowing can apply toward the project goal if it is written into the specific training plan. If the Contractor is using CDOT's PAC-UP training program, job shadowing can apply toward the project goal when the approved employee is performing within the "Observation" component of the plan (hours vary by classification). Non-CDOT project hours will not be accepted toward the project goal.

Although US DOL apprenticeship programs can use the reduced wages for any CDOT job (with or without an OJT goal) with approval, none of these "additional" hours may be banked or included for use as part of the required special provisions on any project other than that for which it was approved.

The Contractor may count OJT hours accomplished by a subcontractor with an approved plan. The subcontractor's trainee or apprentice, who is enrolled in any of the approved OJT programs and is contributing toward meeting a project's OJT goal hours, can count toward the project's OJT goal to satisfy the requirement of this specification. A subcontractor who chooses to participate in meeting the OJT goal shall follow the same process as the Contractor in terms of approving apprentices/trainees, submitting forms, etc. The Contractor retains the full responsibility for meeting the training requirements imposed by this special provision.

7. Contractor Training and Trainee Monitoring

The Contractor's representative (supervisor, manager, or other designee) will evaluate progress for the apprentice/trainee monthly and will provide a copy to the apprentice/trainee of the submitted CDOT Form 832 within 30 calendar days. This evaluation will include documentation of the apprentice/trainee's performance including what was done well and what needs to be improved. The Contractor training and monitoring will be evaluated through CDOT's use of the CDOT Form 200 Interview.

8. Wages

The Contractor may pay apprentice/trainee wages at a reduced rate for those that are in an approved program according to the following guidelines:

US DOL Apprenticeship Programs

Rates (at minimum) will be paid according to the scaled adjustments for a registered US DOL Apprentice. Fringe benefits (either in cash and/or bona fide benefits in lieu of cash) will be paid in full and as outlined by the bargained agreement. If fringe benefits are not mentioned as part of a bargained agreement or if there is no collectively bargained agreement, full fringe benefits will be paid as outlined through the US DOL wage decision. Approved US DOL apprenticeship programs can use the reduced wages for any CDOT project.

If the project does not have a training goal and the Contractor is seeking to pay apprenticeship rates as part of a registered US DOL Apprenticeship Program, the following documentation is required to ensure wages are being paid correctly: apprenticeship program registration, OA (formerly BAT) certificates, and collective bargaining agreement including the wage sheet.

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ON THE JOB TRAINING

Other Approved Programs

For all other OJT wage reductions, reduced percentages are allowed for the project if there is a goal greater than zero as outlined in the 23 CFR Appendix B to Subpart A of Part 230 (as described in this section), in the collectively bargained agreement, or as outlined in the specific plans. If the Contractor chooses to pay the trainee rates, the reduced percentage shall be based only on the base rate of pay. Fringe benefits shall be paid at 100 percent of the journey-level wage. If the apprentice/trainee is working within the proposed classification before approval is granted, full Davis-Bacon prevailing wages shall be paid to the apprentice/trainee.

The minimum trainee wage (base and fringe) shall be no less than \$13.00 per hour. Trainees shall be paid at minimum:

First half of the training period -- at least 60 percent of the appropriate minimum journey-level rate

Third quarter of the training period -- at least 75 percent of the appropriate minimum journey-level rate

Last quarter of the training period -- at least 90 percent of the appropriate minimum journey-level rate

9. Contractor Reporting

The Contractor shall keep all data associated with the trainees and the project for a period of at least three years from the closing date of the Contract.

10. Reimbursement to Contractors

For the purposes of reimbursement, the Contractor will have satisfied its responsibilities under this specification if CDOT has determined that it has fulfilled the acceptable number of training hours. Contractors will be reimbursed at a rate of \$10.00 per hour per (approved) trainee for all OJT hours worked in approved classifications up to the project goal.

The Contractor will be reimbursed for no more than the amount outlined in the OJT Force Account budget.

11. OJT Good Faith Efforts (GFE)

CDOT recognizes two explanations of good faith efforts: (1) The Contractor will be required to prove an effort has been made to achieve a diversified workforce, but it has not yet been accomplished, or (2) The attempt has been made to meet the number of required OJT hours by using approved trainees or apprentices in approved classification(s) utilizing approved plans, but the Contractor cannot meet the required number of hours. In either case, a GFE will be required, and the Region Civil Rights Office will make the determination.

- A. If the Contractor does not meet its OJT project goal with the inclusion of some female and/or minority trainees, the Contractor may be requested to produce documentation of adequate good faith efforts taken to fill that position with a minority or female applicant. Good faith efforts are designed to achieve equal opportunity through positive, assertive, and continuous result-oriented measures. Good faith efforts should be taken as hiring opportunities arise.
- B. If the Contractor does not meet its OJT project goal, the Contractor may submit a CDOT Form 1336, Waiver Request for Contract's OJT Hours. On the form, the Contractor shall outline and submit all good faith efforts made when it is believed that the required number of training hours will not be met. If GFE is not demonstrated and approved, The Contractor will be subject to payment reductions outlined in the Disincentive Section.

If a good faith effort has been denied by CDOT, the Contractor may ask for reconsideration by the Region Civil Rights Manager and the Resident Engineer for the region where work is being performed. Additionally, if requested by the Contractor, the Region Civil Rights Office and the Project Engineer will meet with the Contractor to discuss the Contractor's initial Good Faith Effort determination.

12. Disincentive

A failure to provide the required training without the demonstration and approval of GFE to meet the project OJT goal may result in the Region Civil Rights Office assigning the following disincentive: A sum representing the total number of hours not met in the contract shall be multiplied by the journey worker hourly wages plus fringe benefits [(hours not met) x (dollar per hour + fringe benefits) = disincentive amount].

ON THE JOB TRAINING

In order to obtain the disincentive amount, the journey worker wages will be figured using the prevailing wages for the classifications outlined on the CDOT Form 1337. If a single classification is noted on the submitted CDOT Form 1337, then that one wage will be used to figure the monetary amount owed. If multiple classifications are used, then the journey worker wages of all classifications will be used to determine an average wage rate. If the Contractor does not submit any documentation toward the OJT goal, the disincentive rate will be calculated at \$30.00 per hour. CDOT will provide the Contractor a written notice at the final acceptance stage of the project informing them of the noncompliance with this specification which will include a calculation of the disincentive(s) to be assessed.

US 160 Elmore's Corner to Dry Creek
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Sub Account: 20980 - COMBO
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Contract Routing # _____

Exhibit Q

RESERVED

US 160 Elmore's Corner to Dry Creek
NHPP 1602-157 & FBR 1602-193
Sub Account: 20980 - COMBO
Book 1 – Contract

Contract Routing # _____

Exhibit R

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US 160 Elmore's Corner to Dry Creek
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Book 1 – Contract

Contract Routing # _____

Exhibit S

RESERVED

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

2) REQUIRED PROVISIONS

a. For use with Option 1(a): In accordance with Book 1, Section(s) 13.16 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 Approved Project Payment Schedule attached hereto as **Attachment A**, which is incorporated by reference herein (the "**Approved Payment Schedule**") [the final construction season to be recognized in lieu of an Approved Payment Schedule as appropriate and all associated references herein removed]. As of the effective date of this Option Letter, the Approved Payment Schedule attached to the Original Contract shall be deleted in its entirety and replaced with the attached Approved Payment Schedule and the encumbrance amount (as such term in defined in Book 1, Section 11.1.1 of the Original Contract) shall be increased 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. Book 1, Section 11.1.1 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 Book 1, Sections 11.1.1 and 13.16 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 Approved Payment Schedule attached hereto as **Attachment A**, which is incorporated by reference herein (the "**Approved Payment Schedule**"). As of the effective date of this Option Letter, the Approved Payment Schedule attached to the Original Contract shall be deleted in its entirety and replaced with the attached Approved Payment Schedule and [insert information below and if necessary delete the options not required]:

- i. the Contract Price (as such term in defined in Section 11.1.1 of the Original Contract) shall be increased by \$ amount of change to a new Contract Price of Insert New \$ Amt for work ordered under the Contract. Book 1, Section 11.1.1 is hereby modified accordingly.
- ii. the encumbrance amount (as such term in defined in Book 1, Section 11.1.1 of the Original Contract) shall be increased 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.

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STATE OF COLORADO Jared Polis, Governor Name of Agency or IHE
_____ By: Name & Title of Person Signing for Agency or IHE
Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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.

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: _____

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Exhibit V – Contractor's Option Price Form

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

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Exhibit W

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