

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (“Contract”) is made and entered into on the date of the last signature set forth below, by and between the City of Littleton, a municipal corporation within the State of Colorado (“City”), and Wild at Heart Investments, LLC dba TALL Contracting & Consulting Co., a Colorado limited liability company (“Contractor”). The Contractor and the City are referred to as a “Party” or collectively the “Parties.”

RECITALS AND REPRESENTATIONS

WHEREAS the City issued a solicitation for bids no. 5-2025, and the Contractor submitted a bid to perform the work; and

WHEREAS the City has elected to accept the Contractor’s bid.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Parties agree as follows:

1.1 **Contract Documents and Exhibits.** The term “Contract Documents” consist of this Contract together with the following:

Exhibit A	Scope of Work
Exhibit B	Bid Schedule
Exhibit C	General Conditions
Exhibit D	Construction Contract Forms
Exhibit E	Drawings and Specifications
Exhibit F	Special Conditions
Exhibit G	Federal-Aid Construction Contracts Required Contract Provisions

All exhibits referred to in this Contract are attached hereto and are, by reference, incorporated herein for all purposes. In the event any matter, term, provision, or condition that is the subject of this Contract requires clarification or is in dispute, or is the subject of a difference of opinion, the purpose and intent of the Contract shall be first ascertained by reference to the Contract Documents in their entirety. In the event of any dispute or differences between the respective documents that constitute the Contract Documents, then the Contractor shall secure the written instructions from the City before proceeding with the performance of the services affected by such conflicts, omissions or discrepancies.

For Colorado Department of Transportation (“CDOT”)-funded Work, in the event of any inconsistency or discrepancy amongst the provisions of this Contract, such shall be resolved by giving precedence in the following order:

1. Federal-Aid Construction Contracts Required Contract Provisions
2. Special Provisions
 - a. Project Special Provisions
 - b. Standard Special Provisions
3. Plans

- a. Detailed Plans
 - b. Standard Plans
 - c. Calculated dimensions will govern over scaled dimensions
 - 4. Supplemental Specifications
 - a. Exhibit C General Conditions
 - b. Exhibit F Special Conditions
 - c. Exhibit D Construction Contract Forms
 - 5. Standard Specifications. The Contractor shall not take advantage of any apparent error or omission in the Contract. If the Contractor discovers an error or omission, the Contractor shall immediately notify the City. The City will make corrections and interpretations as necessary to fulfill the intent of the Contract.
- 1.2 **Project.** The Contractor shall commence and complete the Scope of Work (“Work”), **Exhibit A**, in accordance with the Contract Documents, as defined herein. The Contractor agrees to perform and complete the Work in a proper and workmanlike manner, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expedition consistent therewith, with only new, undamaged and first quality equipment, materials and supplies. The Contractor shall, at its own expense, furnish all labor, materials, tools, supplies, machinery, utilities, permits, licenses, and other equipment that may be necessary for the completion of the Work, as outlined in the Contract Documents. No work shall commence until a Notice to Proceed has been issued, and if required by the City, until after approval by the City Council in accordance with the City Charter and City Code.
- 1.3 **Commencement and Completion of the Project.** The Contractor understands and agrees that all Work required under this Contract shall be fully completed, as set forth in the Contract Documents, within **144 calendar days of the date of the Notice to Proceed**. The Contractor acknowledges and understands that it is an essential term of this Contract that Contractor maintain a rate of progress in the Work that will result in completion of the Work in accordance with the Contract Documents, and to that end, Contractor agrees to proceed with all due diligence to complete the Work in a timely manner in accordance with the Contract Documents.
- 1.4 **Contract Price.** The City accepts the Contractor’s bid for the estimated quantities and costs as set forth in the Bid Schedule, **Exhibit B**, in the total amount of **\$2,375,653.10**. The City shall make payment(s) to Contractor in the manner and at such times as set forth in the General Conditions of such amounts as are required by the Contract Documents. The City shall deduct and retain five (5) percent from the total amount of each approved invoice, including Change Orders. The City may also deduct in addition to retainage as stated above, the additional amount(s) of any and all outstanding claims pursuant to Colorado Revised Statute (“C.R.S.”) §38-26-107 from each approved invoice. The City has appropriated sufficient funds for the completion of this work.

1.5 **Payments to Constitute Current Expenditures.**

1.5.1 Notwithstanding any other term, provision, or condition herein, all financial obligations of the City are contingent on funds for that purpose being appropriated, budgeted and otherwise made available by the City Council. The City's obligations under the Contract shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the City within the meaning of Article X, Section 20 of the Colorado Constitution.

1.5.2 Further, pursuant to 103.6(2) of Article 91, Title 24, C.R.S., no Change Order, Amendment, or other form of order or directive by the City which requires additional compensable work to be performed, and which work causes the aggregate amount payable under this Contract to exceed the amount appropriated for the original Contract, shall be executed, or shall work be performed by the Contractor, unless the City provides written assurances to the Contractor that lawful appropriations to cover the costs of such additional work have been made or unless such work is covered under a remedy-granting provision of this Contract. For purposes of this paragraph, "remedy-granting provision" shall be defined as set forth in C.R.S. §24-91-103.6(4).

1.6 **Confidentiality.** Notwithstanding any provision in the Contract Documents to the contrary, the City is obligated to comply with the Colorado Open Records Act (C.R.S. §§24-72-101 *et seq.*), which may require the City to disclose all or a portion of communications relating to the Contract, or terms of same, or of any transaction under the Contract, and other related matters. The Contractor shall familiarize itself with the Colorado Open Records Act. In no event shall the City be liable to the Contractor for the disclosure of all or a portion of communications, or relating documents, or electronic imaging, including all documents and exhibits that may be included as part of this Contract.

1.7 **Insurance.**

1.7.1 The Contractor shall not commence work, and shall not allow any subcontractor to commence work, until it has obtained all insurance required herein and such insurance has been approved by City. For the duration of the Contract, the Contractor must maintain the insurance coverage required in this section. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Contract shall not act as a waiver of the Contractor's breach of Contract or of any of the City's rights or remedies under this Contract.

1.7.2 The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

1.7.3 The Contractor shall procure and maintain at its own cost and shall cause each subcontractor of the Contractor to procure and maintain at its own cost

(or shall insure the activity of Contractor's subcontractors in Contractor's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of the Work. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The City of Littleton shall be listed as Certificate Holder.

1. Workers' Compensation insurance as required by state statute, and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of their employment.
2. Commercial General Liability insurance written on ISO Occurrence Form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - \$1,000,000 each occurrence;
 - \$2,000,000 general aggregate;
 - \$2,000,000 products and completed operations aggregate; and
 - \$50,000 any one fire.

Completed operations coverage shall be provided for a minimum period of one year following final acceptance of work.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the City a certificate or other document satisfactory to the City showing compliance with this provision.

3. Automobile Liability insurance covering any auto (including owned, hired, and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
4. Professional liability insurance with minimum limits of not less than \$1,000,000 each claim and \$1,000,000 annual aggregate for both the Contractor or any subcontractors when:
 - a. CDOT items 625, 629, or both are included in the CDOT Standard Specifications.
 - b. Contractor's engineer electronically seals plans specifications and submittals, including but not limited to:

- i. Shop drawings and working drawings as described in CDOT Standard Specifications subsection 105.02.
- ii. Mix designs.
- iii. Design work as required by the plans and specifications.
- iv. Change orders.
- v. Approved value engineering change proposals.

The Contractor and any included subcontractor shall renew and maintain Professional Liability insurance as outlined above for a minimum of one year following final acceptance of work.

- 5. Umbrella or Excess Liability insurance with minimum limits of \$1,000,000. This policy shall become primary (drop down) in the event the primary liability policy limits are impaired or exhausted. The policy shall be written on an occurrence form and shall be following form of the primary. The following form excess liability shall include CDOT as an additional insured.

- 1.7.4 Commercial General Liability and Automobile Liability policies shall name both the City of Littleton and CDOT as additional insured.
- 1.7.5 Completed operations additional insured coverage shall be on endorsements CG 2010 11/85, CG 2037, or equivalent. Coverage required of the Contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
- 1.7.6 Each insurance policy shall include provisions preventing cancellation or non-renewal without at least 30 days' prior notice to Contractor. The Contractor shall forward to the City any such notice received within seven (7) days of the Contractor's receipt of such notice.
- 1.7.7 The Contractor shall require all insurance policies in any way related to the Contract and secured and maintained by the Contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the City and against CDOT, its agencies, institutions, organizations, officers, agents, employees and volunteers.
- 1.7.8 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the City and CDOT.
- 1.7.9 The Contractor shall provide certificates showing insurance coverage required by this Contract to the City before execution of the Contract. No later than fifteen (15) days before the expiration date of any such coverage, the Contractor shall deliver to the City certificates of insurance evidencing renewals thereof. At any time during the term of this Contract, the City or

CDOT may request in writing, and the Contractor shall thereupon within ten (10) days supply to the City or CDOT, evidence satisfactory to the City or CDOT of compliance with the provisions of this Section 1.7.

- 1.7.10 When the Contractor requires a subcontractor to obtain insurance coverage, the types and minimum limits of this coverage may be different than those required, as stated above, for the Contractor, except for the Commercial General Liability additional insured endorsement and those that qualify as needing Professional Liability insurance.
- 1.7.11 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of Contract upon which the City may immediately terminate the Contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.
- 1.7.12 The Parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations (presently \$387,000 per person and \$1,093,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., as from time to time amended, or otherwise available to the City, its officers, or its employees.
- 1.8 **Taxes.** The City of Littleton is not subject to taxation. The Contractor shall not invoice the City for any state, federal or local taxes whatsoever. Upon written notification by the City, the Contractor shall reimburse the City in a timely manner for any taxes erroneously paid by the City.
- 1.9 **Waiver of Breach.** A waiver by any Party to the Contract or the breach of any term or provision of the Contract shall not operate or be construed as a waiver of any subsequent breach by either Party.
- 1.10 **No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor and nothing contained in this Contract shall give or allow any such claim or right of action to any other third-party on this Contract. It is the express intention of the City and the Contractor that any person other than the City or the Contractor receiving services or benefits under this Contract shall be deemed to be an incidental beneficiary only.
- 1.11 **Independent Contractor.** The Contractor shall perform the Work as an independent contractor and shall not be deemed by virtue of this Contract to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent contractor.

- 1.12 **Non-Discrimination.** The Contractor shall comply with the Contract Provisions for Federal-Aid Construction Contracts as set forth in Exhibit G, incorporated herein by reference.
- 1.13 **Indemnification.** The Contractor agrees to investigate, defend, indemnify and hold harmless the City and CDOT, their officers, employees, insurers, and self-insurance pool, from and against all liability, claims and demands on account of any losses, injuries, and damages, including but not limited to, alleged personal injury claims, and/or death claims, or property damage claims, or errors and omissions, which arise solely out of the Contractor's and/or any of its agents' officers or employees performance of the Contractor's obligations under this Contract. The City and CDOT are prohibited by Article XI, Section 1, Colorado Constitution, from indemnifying any individual or entity. Therefore, the City and CDOT do not indemnify the Contractor, successors, or assigns under this Contract. Notwithstanding the foregoing, nothing herein is intended to constitute a covenant, promise, or agreement to indemnify and hold harmless the City or CDOT from any liability or damages directly caused by or attributable to the City's or CDOT's own negligence, nor is anything herein intended to be nor may be construed as a waiver of the immunities, protections, or limitations on damages provided to the City or CDOT by the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as it may from time to time be amended.
- 1.14 **Governing Law and Venue.** The Contract shall be governed by the laws of the State of Colorado. Venue for any action arising under the Contract or for the enforcement of the Contract shall be in the appropriate court for Arapahoe County, Colorado.
- 1.15 **Additional Documents or Action.** The Parties agree to execute any additional documents and to take any additional action that is necessary to carry out this Contract.
- 1.16 **Binding Effect.** This Contract shall inure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Contract except as otherwise expressly authorized herein.
- 1.17 **Integration, Amendment, and Severability.** This Contract represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Contract may be amended only by an instrument in writing signed by the Parties or as otherwise provided herein. If any other provision of this Contract is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Contract shall continue in full force and effect.
- 1.18 **Binding Authority.** The Contractor represents and affirms that the signature page hereof accurately states the full legal name of Contractor (whether as a corporation, partnership, limited liability company, sole proprietorship, or other), contains all requisite signature(s) on behalf of Contractor, has been properly acknowledged by

attestation, notary acknowledgment, or both, and in all other respects is effective to bind Contractor, in accordance with all applicable statutes, regulations, resolutions, rules, bylaws, agreements, or similar sources of authority or limitation. This Contract may be executed in counterpart(s), each of which shall be deemed to be an original, and all of which, taken together, shall constitute one instrument.

- 1.19 **Subject to Legislative Approval and Compliance with Law.** The Contractor acknowledges and agrees that if a Change Order is required under the terms of the Contract, the City shall not incur any liability whatsoever for claims of payment, compensation, damages, or adjustment of any kind by the Contractor due to any delays for the required approvals and execution under Section 1.3 of the General Conditions, **Exhibit C**. The Contractor further acknowledges and agrees that this Contract's execution may be contingent upon approval by the City Council, in compliance with all applicable provisions of the City Charter and City Code. The City shall not incur any liability whatsoever if this Contract is not approved by City Council.
- 1.20 **Notices.** All notices required under this Contract shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the addresses of the Parties herein set forth. A Party may change its mailing address by giving written notice of such change of address to other Party.

Notice to City: City of Littleton
City Manager
2255 West Berry Avenue
Littleton, CO 80120

Notice to Contractor: TALL Contracting & Consulting Co.
333 S Monroe Street
#312
Denver, CO 80209

- 1.21 **Force Majeure.** Neither Party shall be responsible for a delay in its respective performance under this Contract, other than a delay in payment for Work already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, epidemics, pandemics, acts of governmental agencies or authorities, discovery of hazardous materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming Party. Contractor shall be entitled to an equitable adjustment to the project schedule and compensation in the foregoing circumstances.
- 1.22 **Electronic Signatures and Electronic Records.** The Contractor consents to the use of electronic signatures by the City. The Contract, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Contract solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the

admissibility of the Contract in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

DATED this ____ day of _____, 2025.

CITY OF LITTLETON, COLORADO

ATTEST

Kyle Schlachter
MAYOR

Colleen Norton
CITY CLERK

APPROVED AS TO FORM:

Reid Betzing
CITY ATTORNEY



CONTRACTOR

Terry Alldredge
President

Date

Exhibit A

Scope of Work

This project is funded by a Colorado Department of Transportation (“CDOT”) Safer Main Streets Grant and is also federally funded by a portion of a Denver Regional Council of Governments (“DRCOG”) Transportation Improvement Program (TIP) grant.

The project includes construction of approximately 3,000 linear feet of a paved 16-foot-wide bicycle and pedestrian trail (parallel to Mineral Avenue from Peninsula Drive to Jackass Hill Road in Littleton), a retaining wall, removal and replacement of an existing traffic signal pole, and accompanying hardware and pedestrian facilities. Work will also consist of mill and overlay of approximately 10,000 square yards of asphalt mat and striping.

Work also includes repaving and installing buffered bike facilities along Jackass Hill Road, as well as improved accessibility and safety improvements at multiple crossings between Mineral Avenue and the High Line Canal Trail. A buffered bicycle facility will also be installed along Mineral Avenue between Jackass Hill Road and Windermere Street/Southpark Lane.

Exhibit B

**MINERAL MOBILITY IMPROVEMENTS PHASE 1
CITY PROJECT NUMBER 21-39**

Item No.	Item	Unit	Estimated Quantity	Unit Cost	Extended Cost
201-00001	Clearing and Grubbing	ACRE	3	\$ 10,000.00	\$ 30,000.00
202-00010	Removal of Tree	EACH	1	\$ 1,500.00	\$ 1,500.00
202-00200	Removal of Sidewalk	SY	291	\$ 20.00	\$ 5,820.00
202-00203	Removal of Curb and Gutter	LF	498	\$ 12.00	\$ 5,976.00
202-00206	Removal of Concrete Curb Ramp	SY	109	\$ 20.00	\$ 2,180.00
202-00210	Removal of Concrete Pavement	SY	295	\$ 25.00	\$ 7,375.00
202-00240	Removal of Asphalt Mat (Planing)	SY	8489	\$ 2.00	\$ 16,978.00
202-00250	Removal of Pavement Marking	SF	6000	\$ 1.50	\$ 9,000.00
202-00806	Removal of Walkway	LF	26	\$ 20.00	\$ 520.00
202-00810	Removal of Ground Sign	EACH	4	\$ 100.00	\$ 400.00
202-00821	Removal of Sign Panel	EACH	7	\$ 110.00	\$ 770.00
202-00828	Removal of Traffic Signal Equipment	L S	1	\$ 5,400.00	\$ 5,400.00
202-00830	Removal of Traffic Signal Face	EACH	4	\$ 250.00	\$ 1,000.00
202-04005	Clean Valve Box	EACH	17	\$ 200.00	\$ 3,400.00
203-00010	Unclassified Excavation (Complete In Place)	CY	3160	\$ 30.00	\$ 94,800.00
203-01597	Potholing	HOURL	40	\$ 310.00	\$ 12,400.00
206-00000	Structure Excavation	CY	47	\$ 40.00	\$ 1,880.00
206-00200	Structure Backfill (Class 2)	CY	46	\$ 60.00	\$ 2,760.00
207-00700	Topsoil (Onsite)	CY	1193	\$ 10.00	\$ 11,930.00
208-00002	Erosion Log Type 1 (12 Inch)	LF	8430	\$ 7.00	\$ 59,010.00
208-00035	Aggregate Bag	LF	112	\$ 5.00	\$ 560.00
208-00045	Concrete Washout Structure	EACH	1	\$ 10,000.00	\$ 10,000.00
208-00052	Storm Drain Inlet Protection (Type II)	LF	48	\$ 90.00	\$ 4,320.00
208-00070	Vehicle Tracking Pad	EACH	1	\$ 7,000.00	\$ 7,000.00
208-00071	Maintenance Aggregate (Vehicle Tracking Pad)	CY	12	\$ 45.00	\$ 540.00
208-00103	Removal and Disposal of Sediment (Labor)	HOURL	60	\$ 80.00	\$ 4,800.00
208-00105	Removal and Disposal of Sediment (Equipment)	HOURL	60	\$ 180.00	\$ 10,800.00
208-00106	Sweeping (Sediment Removal)	HOURL	40	\$ 185.00	\$ 7,400.00
208-00107	Removal of Trash	HOURL	100	\$ 100.00	\$ 10,000.00
208-00207	Erosion Control Management	DAY	20	\$ 800.00	\$ 16,000.00
210-00760	Reset Luminaire	EACH	1	\$ 390.00	\$ 390.00
210-00809	Reset Blankout Sign (Fiber Optic)	EACH	1	\$ 3,000.00	\$ 3,000.00
210-00810	Reset Ground Sign	EACH	9	\$ 160.00	\$ 1,440.00
210-00815	Reset Sign Panel	EACH	4	\$ 100.00	\$ 400.00
210-00827	Reset Pull Box	EACH	2	\$ 1,610.00	\$ 3,220.00
210-04010	Adjust Manhole	EACH	2	\$ 110.00	\$ 220.00
210-04050	Adjust Valve Box	EACH	17	\$ 85.00	\$ 1,445.00

212-00100	Tree Retention and Protection	L S	1	\$ 6,500.00	\$ 6,500.00
212-00700	Organic Fertilizer	LB	666	\$ 1.65	\$ 1,098.90
212-00701	Compost (Mechanically Applied)	CY	145	\$ 80.00	\$ 11,600.00
212-00703	Humate	LB	444.00	\$ 2.25	\$ 999.00
212-00706	Seeding (Native) Drill	ACRE	2.22	\$ 960.00	\$ 2,131.20
213-00002	Mulching (Weed Free Hay)	ACRE	2	\$ 3,300.00	\$ 7,326.00
213-00061	Mulch Tackifier	LB	444	\$ 2.25	\$ 999.00
215-00010	Transplant Tree	EACH	8	\$ 1,000.00	\$ 8,000.00
217-00020	Herbicide Treatment	HOURL	16	\$ 300.00	\$ 4,800.00
240-00000	Wildlife Biologist	HOURL	16	\$ 180.00	\$ 2,880.00
304-06007	Aggregate Base Course (Class 6)	CY	1336	\$ 80.00	\$ 106,880.00
403-00720	Hot Mix Asphalt (Patching) (Asphalt)	TON	200.0	\$ 162.00	\$ 32,400.00
403-33741	Hot Mix Asphalt (Grading S) (75) (PG 64-22)	TON	376	\$ 215.00	\$ 80,840.00
403-34741	Hot Mix Asphalt (Grading SX) (75) (PG 64-22)	TON	923	\$ 101.00	\$ 93,223.00
412-01000	Concrete Pavement (10 Inch)	SY	95	\$ 180.00	\$ 17,100.00
503-00012	Drilled Shaft (12 Inch)	LF	7	\$ 294.00	\$ 2,058.00
503-00042	Drilled Shaft (42 Inch)	LF	17	\$ 925.00	\$ 15,725.00
504-08255	Masonry Landscape Wall (Dry Stack)	SF	1139	\$ 70.00	\$ 79,730.00
607-11525	Fence (Plastic)	LF	590	\$ 4.00	\$ 2,360.00
608-00006	Concrete Sidewalk (6 Inch)	SY	7057	\$ 67.00	\$ 472,819.00
608-00010	Concrete Curb Ramp	SY	123	\$ 250.00	\$ 30,750.00
608-01600	Aggregate Walkway	SY	31	\$ 50.00	\$ 1,550.00
609-20010	Curb Type 2 (Section B)	LF	21	\$ 45.00	\$ 945.00
609-21020	Curb and Gutter Type 2 (Section II-B)	LF	670	\$ 42.00	\$ 28,140.00
609-40120	Curb (Median) (Special)	SY	17	\$ 210.00	\$ 3,570.00
609-71000	Curb (Special)	LF	292	\$ 65.00	\$ 18,980.00
610-00020	Median Cover Material (Patterned Concrete)	SF	89	\$ 40.00	\$ 3,560.00
613-00206	2 Inch Electrical Conduit (Bored)	LF	140	\$ 34.00	\$ 4,760.00
613-00306	3 Inch Electrical Conduit (Bored)	LF	50	\$ 43.00	\$ 2,150.00
613-01200	2 Inch Electrical Conduit (Plastic)	LF	440	\$ 40.00	\$ 17,600.00
613-01300	3 Inch Electrical Conduit (Plastic)	LF	240	\$ 42.00	\$ 10,080.00
613-07003	Type Three Pull Box	EACH	1	\$ 2,700.00	\$ 2,700.00
613-10000	Wiring	L S	1	\$ 8,100.00	\$ 8,100.00
614-00011	Sign Panel (Class I)	SF	140	\$ 42.00	\$ 5,880.00
614-00012	Sign Panel (Class II)	SF	140	\$ 68.00	\$ 9,520.00
614-00216	Steel Signpost (2x2 Inch Tubing)	LF	290	\$ 25.00	\$ 7,250.00
614-01554	Steel Signpost (4 Inch Round) (Slipbase)	LF	39	\$ 65.00	\$ 2,535.00
614-01572	Steel Sign Support (2-1/2 Inch Round NP-40)(Post & Slipbase)	LF	170	\$ 65.00	\$ 11,050.00
614-10160	Signal Head Backplates	EACH	3	\$ 140.00	\$ 420.00
614-70150	Pedestrian Signal Face (16) (Countdown)	EACH	1	\$ 990.00	\$ 990.00
614-70336	Traffic Signal Face (12-12-12)	EACH	5	\$ 1,285.00	\$ 6,425.00
614-70448	Traffic Signal Face (12-12-12-12)	EACH	1	\$ 1,700.00	\$ 1,700.00
614-72858	Pedestal Pole (3 Foot 6 Inch)	EACH	1	\$ 1,900.00	\$ 1,900.00
614-72860	Pedestrian Push Button	EACH	5	\$ 775.00	\$ 3,875.00
614-80001	Flashing Beacon (Solar Powered)	EACH	5	\$ 6,000.00	\$ 30,000.00
614-81011	Traffic Signal-Light Pole Steel (1 Mast Arm) (Install Only)	EACH	1	\$ 6,000.00	\$ 6,000.00
625-00000	Construction Surveying	L S	1	\$ 50,000.00	\$ 50,000.00

626-00000	Mobilization	L S	1	\$ 230,000.00	\$ 230,000.00
626-01114	Public Information Management (Tier IV)	DAY	144	\$ 140.00	\$ 20,160.00
627-00008	Modified Epoxy Pavement Marking	GAL	180	\$ 355.00	\$ 63,900.00
627-00070	Preformed Thermoplastic Pavement Marking	SF	140	\$ 22.00	\$ 3,080.00
627-30405	Preformed Thermoplastic Pavement Marking (Word- Symbol)	SF	1340	\$ 22.00	\$ 29,480.00
627-30410	Preformed Thermoplastic Pavement Marking (Xwalk-Stop Line)	SF	930	\$ 17.00	\$ 15,810.00
627-30411	Preformed Thermoplastic Pavement Marking (Xwalk-Stop Line) (Special)	SF	910	\$ 27.00	\$ 24,570.00
630-00000	Flagging	HOURL	20	\$ 50.00	\$ 1,000.00
630-00003	Uniformed Traffic Control	HOURL	40	\$ 125.00	\$ 5,000.00
630-00006	Uniformed Traffic Control (Vehicle)	HOURL	40	\$ 35.00	\$ 1,400.00
630-00007	Traffic Control Inspection	DAY	41	\$ 90.00	\$ 3,690.00
630-00012	Traffic Control Management	DAY	103	\$ 800.00	\$ 82,400.00
630-80001	Flashing Beacon (Portable)	EACH	9	\$ 150.00	\$ 1,350.00
630-80336	Barricade (Type 3 M-B) (Temporary)	EACH	4	\$ 200.00	\$ 800.00
630-80341	Construction Traffic Sign (Panel Size A)	EACH	37	\$ 50.00	\$ 1,850.00
630-80342	Construction Traffic Sign (Panel Size B)	EACH	4	\$ 70.00	\$ 280.00
630-80355	Portable Message Sign Panel	EACH	2	\$ 6,500.00	\$ 13,000.00
630-80358	Advance Warning Flashing or Sequencing Arrow Panel (C Type)	EACH	3	\$ 1,700.00	\$ 5,100.00
630-80380	Traffic Cone	EACH	25	\$ 10.00	\$ 250.00
630-85040	Impact Attenuator (Truck Mounted Attenuator) (Temporary)	EACH	1	\$ 15,000.00	\$ 15,000.00
FORCE ACCOUNT					
700-70010	F/A Minor Contract Revisions	F A	1.0		\$ 200,000.00
700-70016	F/A Fuel Cost Adjustment	F A	1.0		\$ 3,000.00
700-70019	F/A Asphalt Cement Cost Adjustment	F A	1.0		\$ 7,000.00
700-70023	F/A On-The-Job Trainee	F A	1.0		\$ 3,000.00
700-70031	F/A Interim Surface Repair	F A	1.0		\$ 10,000.00
700-70082	F/A Install Electrical Service	F A	1.0		\$ 10,000.00
700-70320	F/A Sprinklers	F A	1.0		\$ 25,000.00
700-70380	F/A Erosion Control	F A	1.0		\$ 25,000.00

SCHEDULE TOTAL \$ 2,375,653.10

Bid Schedule Total Bid (Written in Words):

Two million three hundred seventy five thousand six hundred fifty three dollars and ten cents

Addendum No. 1 Acknowledged on 3-3-2025 by Terry Alldredge



Exhibit C General Conditions

SECTION 1 SCOPE OF WORK

1.1. PLANS AND SPECIFICATIONS:

- 1.1.1. The Contractor shall perform all items of Work covered and stipulated in the Specifications, Bid Schedule, Contract, General Conditions and Special Provisions, together with any authorized alterations, Extra Work and Change Orders, all in accordance with the Plans. The Contractor shall furnish, unless otherwise provided in the Specifications and/or Special Provisions, all materials, implements, machinery, equipment, tools, supplies, transportation and labor necessary to perform and complete the Work.
- 1.1.2. The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions which can affect the Work or the cost of the Work. Failure by the Contractor to do so will not relieve it from responsibility for successfully performing Work without additional expense to the City. The City will not be responsible for any understanding or representations concerning conditions unless such understanding or representations are expressly stated in the Contract.

1.2. **SPECIAL WORK:** Should any construction or conditions which are not thoroughly stipulated or set forth by the Specifications be anticipated on any proposed Project, Special Conditions for such Work may be prepared and attached hereto as **Exhibit F**, and shall be considered as part of the Specifications, the same as though contained fully therein. Should any Special Conditions conflict with the Specifications, the Special Conditions will govern.

1.3. CHANGES AND INCREASED OR DECREASED QUANTITIES OF WORK:

- 1.3.1. Without invalidating the Contract, the Project Manager and/or City reserves and shall have the right, without notice to any Sureties, by written Change Order, to make any changes, from time to time, to the character and quantity of the Work, including but not limited to, the Drawings, Specifications, Plans or Addenda, as may be considered necessary or desirable to complete fully and acceptably the Work in a satisfactory

manner. Such Change Order shall set forth with specificity the changed Work to be done and shall set forth any changes or extensions to the time of completion.

1.3.2. Increase in Cost and Required Approvals.

- i. Such Change Orders shall not increase the total cost of the Work, based on the original estimate of quantities and unit prices contained in the Bid Schedule, by more than 10% (ten percent) without the approval of the City of Littleton City Manager or authorized designee. Contractor shall be entitled to the cost of said increased units at the original price within the original bid, but not to an adjustment of unit price.
- ii. In the event said Change Order increases the total cost of the Contract based upon the unit price bid by more than 10% (ten percent), an equitable adjustment will be made and the Contract modified accordingly by a written Change Order, to be approved by the City of Littleton City Manager or authorized designee, and subject to City Council approval; provided, however, that except for claims based on errors in the Contract, no claim for change hereunder will be allowed for cost incurred more than twenty (20) days before the Contractor gives written notice as herein required; and in the case of errors in the Contract for which the City is responsible, the adjustment will be increased costs, reasonably incurred by the Contractor in attempting to comply with such errors in the Contract.
- iii. Any Change Order or other amendment that increases the total cost of the Contract to be equal to or greater than five hundred thousand and 00/100 dollars (\$500,000.00) shall require the approval of City Council.
- iv. In case a satisfactory adjustment in price cannot be reached for any item requiring a written Change Order, the City reserves the right to terminate the Contract as to said item as it applies to the terms in question and make such arrangements as may be deemed necessary to complete the Work.
- v. The Contractor shall require subcontractors to certify to the best of their knowledge and belief that the cost and pricing data submitted are accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Change Order.
- vi. The Contractor shall not start Work on any alteration until the agreement, whether by Change Order or more formal amendment, setting forth the adjusted prices has been executed by the City and the Contractor, subject to all requirements of Title 1, Chapter 15 of the City of Littleton Code and the City's procurement policy. All changes or approvals for increasing the Work as required and authorized herein, shall be in written form and approved and signed by the City prior to the Work being done. All such writings and approvals shall be specific as to the nature of the Work and the quantities involved. Any Work performed without prior written approval of the City shall

not be binding on the City.

1.3.3. *Field Order for Minor Changes.* The Project Manager ("Project Manager") may at any time, by issuing a Field Order, order minor changes in the Work not involving an increase or decrease in the Contract amount and not involving a change in the time for completion. If the Contractor believes that any order for minor changes in the Work involves changes in the Contract amount or time for completion, the Contractor shall not proceed with the minor changes so ordered and shall within seven (7) days of the receipt of such order notify the Project Manager in writing of the estimate of the changes in the amount and time for completion. Such estimate shall thereafter be treated as a Change Order Request.

1.3.4. *Equitable Adjustment.*

- i. If the Contractor intends to assert a claim for an equitable adjustment under this Section, the Contractor shall, within 30 (thirty) days after receipt of a written Change Order or the furnishing of a written notice of requested changes by the Project Manager, submit to the Project Manager a written statement setting forth the general nature and monetary extent of such claim. No claim by the Contractor for an equitable adjustment hereunder will be allowed unless asserted as described above.
- ii. In the event the Contractor and the City are unable to agree upon the Contractor's entitlement to an equitable adjustment or upon the amount thereof, or in the event that it is in the best interest of the City to have the Work proceed pending negotiation of amount of an equitable adjustment, the City may direct the Contractor to perform the Work in accordance with the Change Order, direction, instruction, interpretation, or determination, with any Work price adjustments and progress payments for the Work to be determined on a Force Account basis in accordance with Section 7.6 of the General Conditions. The Contractor shall continue diligently to perform the Work in accordance with the City's order, direction, instruction, interpretation, or determination during negotiations with respect to the Contractor's entitlement to an equitable adjustment hereunder or to the amount of any Work price adjustment hereunder or to the amount or any Work price adjustment or time extension. The Contractor and the City may agree on certain aspects of an equitable adjustment and take those aspects out of operation of Force Account provisions.

1.3.5. *Payments for Change Orders.*

- i. Payment will not be made for Work or materials which are required under the Contract Documents and which are not specifically mentioned, indicated or otherwise provided for in the Bid Schedule, if, in the opinion of the Project Manager, the Work or materials are susceptible of classification under or reasonably inferred to be included. in the Bid Schedule.
- ii. In the event the Contractor is ordered to perform Work under this Section for which payments are not determined hereunder, which in the opinion of the

City it is impracticable to have performed by the Contractor's own employees, the Contractor will, subject to the written approval of the Project Manager, be paid the actual cost of such Work and, in addition thereto, an amount of 10% (ten percent) of the actual costs to cover the Contractor's superintendence, administration and other overhead expenses. The terms and conditions of any subcontract which the Contractor may propose to enter into in connection with Work under the provisions of this Section, shall be subject to the written approval of the City before such subcontract is executed.

- iii. In cases other than those described above, the City and the Contractor (on its own behalf and on behalf of its subcontractors) shall endeavor to negotiate a reasonable price and line adjustment in a Change Order on terms appropriate to the changed Work. The Contractor will be required to submit a sufficiently detailed price bid supported with sufficient documentation so that the City can determine that (1) the bid reflects all impacts on the Work from Work additions, deletions and modifications shown in the Change Order; (2) the proposed prices are set out in such a way that their reasonableness can be evaluated against prices based on adequate price competition, unit prices, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, recognized published price lists and indices, independently developed cost estimate and other appropriate price comparisons; and (3) cost-increase provisions relating to Work changes are complied with, including but not limited to City of Littleton City Manager or City Council approvals. If any prices or other aspects are conditional, such as on firm orders being made by a certain date or the occurrence or non-occurrence of an event, the Contractor shall identify these aspects in the Change Order Request. A negotiated Change Order shall set forth prices, scheduling requirements, time extensions and all costs of any nature arising out of the issuance of a Change Order except for those cost and time aspects explicitly reserved on the face of the Change Order.

1.3.6. *Claims for Concealed or Unknown Conditions.* If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing Party shall be given to the other Party promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. Site conditions which an experienced and prudent contractor could have anticipated by visiting the site, familiarizing themselves with the local conditions under which the work is to be performed and correlating observations with the requirements of the Contract Documents, shall not be considered as claims for concealed or unknown conditions, nor shall the locations of utilities which differ from locations provided by the utility companies. The Project Manager will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or the required time for, performance of any part of the Work, will recommend an equitable adjustment in the cost and/or time. If the Project Manager determines that

the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Project Manager shall so notify the Contractor in writing, stating the reasons. Claims by either Party in opposition to such determination must be made within twenty-one (21) days after the Project Manager has given notice of the decision. If the City and Contractor cannot agree on an adjustment in the cost and/or time, the adjustment shall be subject to further proceedings pursuant to Section 1.3.4 and Section 1.3.9 of the General Conditions, which shall apply to claims by either Party, notwithstanding language in said Sections that they apply only to claims brought by the Contractor.

- 1.3.7. *Inspection, Recordkeeping.* For any Change Orders, the Contractor shall maintain, and the City or the City's representatives shall have the right to examine 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 the Contract changes. At the request of the City, the Contractor shall submit any documents reasonably necessary to permit adequate evaluation of the cost or pricing data submitted including, but not limited to, computations, projections, price competition, catalog and market prices, etc. If inadequate or incomplete documentation is submitted, the City may refuse to complete negotiation until such a time that satisfactory documentation is submitted. The requirements of Section are in addition to other audit, inspection and record keeping provisions elsewhere in the Contract Documents.
- 1.3.8. Changes involving aggregate increases and decreases in excess of one hundred thousand dollars and 00/100 (\$100,000.00) shall be subject to the following:
- a. A change, defined for the purposes of this Section, involves aggregate increases and decreases in excess of one hundred thousand dollars and 00/100 (\$100,000.00) if the total value of Work affected, without regard to any increases or decreases, exceeds this amount. For example, a Change Order adding Work in the amount of seventy-five thousand dollars and 00/100 (\$75,000.00) and reducing Work in the amount of fifty-thousand dollars and 00/100 (\$50,000.00) will be considered to involve aggregate increases and decreases of \$125,000.00.
 - b. The Contractor shall submit, in support of all items not based upon unit prices or lump sum prices contained in the Contract or upon the established prices at which commercial items are sold in substantial quantities to the public, statements by vendors that the prices charged the Contractor are not greater than the prices charged by the respective vendors to their most favored customers for the same items in similar quantities.
 - c. Pricing shall be reduced accordingly, and the Contract shall be modified in writing accordingly to reflect such reduction, if any price (including profit and fee) negotiated in connection with any price adjustment was increased by any significant sums because:

- (1) The Contractor furnished cost or pricing data which were not complete, accurate, or current as certified in the Contractor's pricing data; or
- (2) Adjustments or any subcontract provisions therein required, furnished costs or pricing data which were not complete, accurate, and current as certified in the subcontractor's pricing data.

Any reduction in the Contract price due to defective subcontractor data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided the actual subcontract price was not affected by defective cost or pricing data; or the Contractor shall require subcontractors to certify to the best of their knowledge and belief that the cost and pricing data submitted are accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Change Order.

- 1.3.9. In case a satisfactory adjustment in price cannot be reached for any item requiring a Change Order, the City reserves the right to terminate the Contract as to said item as it applies to the terms in question and make such arrangements as may be deemed necessary to complete the Work.

1.4. **OMITTED ITEMS:** The Project Manager may, in writing, order omitted from the Work any item other than Major Items, which are found by the Project Manager or City to be unnecessary to the Project and such omission shall not be a waiver of any condition of the Contract nor invalidate any of the provisions thereof. Major Items may be omitted by amendments to the Contract. The Contractor will be paid for all Work performed toward the completion of the item prior to such omission as provided in Section 7.5 of the General Conditions.

1.5. **EXTRA WORK:**

- 1.5.1. When additional Work is necessary for the proper completion of the Project for which no quantities or prices were given in the Contract, the same shall be called "Extra Work" and shall be performed by the Contractor when so directed in writing by the Project Manager. Extra Work shall be performed by the Contractor in accordance with these Specifications in a skillful and workmanlike manner and as may be directed by the Project Manager.
- 1.5.2. Prices for Extra Work shall be itemized and covered by a Change Order. Pricing shall be submitted by the Contractor and approved by the City prior to the actual starting of such Work, in accordance with Section 1.3 of the General Conditions. Should the Parties be unable to agree on unit prices for the Extra Work or if this method of pricing is impractical, the Project Manager may instruct the Contractor to proceed with the Work by day labor or Force Account as hereinafter provided in Section 7.6. of the General Conditions. Claims for Extra Work not authorized in writing by the Project

Manager prior to the Work being performed will be rejected and the Contractor shall not be compensated for.

- 1.5.3. Extra Work shall not include materials, labor or equipment which is incidental or appurtenant to the Work indicated on the drawings and in the Specifications. Such Work shall be completed and paid for as part of the Work to which it is appurtenant.

1.6. **UNAUTHORIZED WORK:** Work performed beyond the lines and grades shown on the Contract drawings, approved Work and Shop Drawings and Extra Work done without written authorization will be considered unauthorized work and the Contractor will receive no compensation therefore. If required by the City, unauthorized work shall be remedied, removed or replaced by the Contractor at the Contractor's expense. Upon failure of the Contractor to remedy, remove or replace unauthorized Work, the City may take action as provided in Section 2.11 of the General Conditions.

1.7. **MAINTENANCE AND CONTROL OF TRAFFIC:**

- 1.7.1. Unless the Contract specifically provides for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings or intersections with roads and highways.
- 1.7.2. The Contractor will provide their own traffic control, including flagging, traffic control supervisor, and traffic control devices for the duration of the Project per the most current edition of the Manual on Uniform Traffic Control Devices ("MUTCD"). Traffic control plans will be required for City review and approval prior to commencement on Work.
- 1.7.3. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Work to be done under this Contract, and of constructing and maintaining such approaches, crossings, intersections and any accessory features without direct compensation, except as otherwise provided.

1.8. **REMOVAL AND DISPOSAL OF STRUCTURES AND OBSTRUCTIONS:** All structures or obstructions found on the site and shown on the Plans which are not to remain in place or which are not to be used in the new construction shall be removed as directed by the Project Manager. Unless specified in the Contract, this Work will not be paid for separately but will be included in the price bid for that portion of the Work requiring the removal of the obstruction. All material found on the site or removed therefrom shall become the property of the Contractor unless otherwise indicated. Materials determined by the Project Manager to be unsuitable for backfill shall be disposed of off the site at the Contractor's expense.

1.9. **USE OF MATERIALS FOUND ON THE WORK:**

- 1.9.1. The Contractor, with the approval of the Project Manager, may use in the proposed construction, any stone, sand, or gravel found on the site. The Contractor will not be

paid for such excavation unless specifically stated in the Contract, and the Contractor shall replace with other suitable material, without compensation, all of that portion of the material so removed and used as was contemplated for use in the embankments or otherwise. If it was intended that any or all of the material so excavated and used was to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate any material from the site which is not within the excavation as indicated by the slope and grade lines, without being authorized in writing by the Project Manager.

- 1.9.2. Specific job mix designs conforming to specifications for any Work shall be submitted for Project Manager approval within 10 (ten) days of the Notice to Proceed, or a minimum of seven (7) days prior to use of the material. This material approval applies to asphaltic concrete paving materials, concrete, aggregate base course, and fine grading material.

1.10. FINAL CLEAN UP:

- 1.10.1. During the Project's final cleanup, the Contractor shall remove from the site(s) all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. The streets and adjacent properties in the Project shall be repaired to as good or better condition than existed prior to construction. This shall include removal of all dirt or mud from streets and lawns. No extra payment shall be made for these items. The Contractor shall leave the site(s) in a neat and presentable condition.

- 1.10.2. The Contractor shall provide written notification to the Project Manager that the Work is complete and the site is ready for final inspection. If the Project Manager determines that the Work is not complete, they will immediately notify the Contractor in writing stating the reasons. If the Project Manager determines the Work is complete, the City will inspect the Work within seven (7) r days and prepare a final cleanup list. When the final cleanup list is completed by the Contractor and inspected by the Project Manager, the Project Manager will initiate the acceptance and final payment procedures as set forth in Section 7.9 of the General Conditions. The final cleanup shall be completed before the expiration of the Contract's term as set forth in the Contract Documents.

- 1.11. **DELAYS:** No payment, compensation, damages, or adjustment of any kind, other than extension of time if received in writing from the City shall be made to, or claimed by, the Contractor because of hindrances or delays from any cause in the commencement, prosecution, or completion of the Work, whether caused by the City or any other party and whether avoidable or unavoidable other than as set forth in a Change Order described fully above.

SECTION 2 CONTROL OF THE WORK

- 2.1. AUTHORITY OF PROJECT MANAGER:** The Project Manager shall decide any

and all questions which may arise as to the quality and acceptability of the materials furnished, the Work performed, the manner of performance and the rate of progress of the Work. The Project Manager shall decide all questions which may arise as to the interpretation of the Plans and Specifications, all questions as to acceptable fulfillment of the Contract, all disputes and mutual rights by the contractors if there be more than one contractor on the Work, and all questions as to compensation. The decision of the Project Manager shall be final and shall have executive authority to make effective such decisions and to enforce the Contractor to carry out all orders promptly.

2.2. PLANS AND SHOP DRAWINGS:

This Section 2.2 shall be included in all subcontracts hereunder at all times.

- 2.2.1. The Contractor shall bring discrepancies between different Plans, or between Plans and Specifications, or regulations and codes covering the Work to the attention of the Project Manager in writing. In the event such discrepancies exist and the Project Manager is not so notified, the Project Manager shall reserve the right to exercise sole arbitration authority. It is mutually agreed that all authorized alterations affecting the requirements and information given on the approved Plans shall be in writing and approved by the Project Manager.
- 2.2.2. The Plans will be supplemented by Shop Drawings as necessary to adequately control the Work or as specified. Shop Drawings are not part of the Contract Documents. Shop Drawings may consist of drawings, diagrams, illustrations, schedules, calculations, and other data prepared by the Contractor, subcontractor, manufacturer, supplier, or distributor, which illustrate how specific portions of the Work shall be fabricated and/or installed in accordance with the Plans and Specifications. Any Work performed prior to the City's approval of Shop Drawings will be at the Contractor's risk and expense.
- 2.2.3. The Project Manager may request additional details and require the Contractor to make changes in the design which are necessary to conform to the provisions and intent of these Specifications without additional cost to the City.
- 2.2.4. Approval of the Shop Drawings by the Project Manager shall not be construed as a complete check and verification but will indicate that general conformance with the design concept and general compliance with the information given in the Contract has been achieved. Any information or action to be taken as set forth in the Shop Drawings is subject to the requirements of the Plans and Specifications. The Contractor shall be responsible for all dimensions and quantities shown on the Shop Drawings. The Project Manager shall be notified in writing and shall take appropriate action for any information in the Shop Drawings that deviates from the requirements of the Contract Documents.
- 2.2.5. Approval by the Project Manager of the Contractor's Shop Drawings shall not relieve the Contractor of its obligation to meet all requirements of the Plans and Specifications and shall not relieve the Contractor of its responsibility for the correctness of the Shop Drawings.

2.2.6. Five (5) sets of Shop Drawings shall be submitted to the Project Manager either in hard copy format or electronic format. No faxed copies will be accepted. After inspection, two sets will be returned to the Contractor; one for the Contractor's use and the other for the fabricator or supplier's use. Shop Drawings being returned will be stamped to indicate the following:

- i) Shop Drawings approved for use in construction will have one of the following statements checked: Approved; No Exception Taken; or Approved as Noted; or
- ii) Shop Drawings to be corrected or redrawn and resubmitted for approval will have one of the following statements checked: Revise as Noted; Resubmit; or Rejected.

If Shop Drawings are returned for correction, corrections shall be made and the corrected drawings shall be resubmitted by the Contractor in the same manner as the first submittal. The time required for approval of each submittal will not exceed four (4) weeks after Shop Drawings are received by the Project Manager.

It is the intent that no more than two submittals will be required. If, however, additional submittals are required by actions of the Contractor, the additional time for Shop Drawing approval will be borne by the Contractor. If additional submittals are required, or if Shop Drawing approval is delayed by actions of the Project Manager, and if the Contractor's controlling operations are delayed or interfered with by reason of the delay in Shop Drawing reviews, an extension of time commensurate with the delay in completion of the Work thus caused will be granted as provided herein.

Specifications for the Shop Drawings:

- i) Electronic Shop Drawings and work drawings are preferred.
- ii) All manually-drafted Shop Drawings shall be 34 inches long and 22 inches wide overall. There shall be a two-inch margin on the left side of the sheet and one-half inch margin on the other three sides. A blank space, six inches by three inches, shall be left near the lower right-hand corner for an approval stamp. Computer drafted 11-inch by 17-inch drawings may be submitted.
 - a. Where design notes or catalogue cuts are required, they may be submitted on 8 1/2 inch by 11-inch sheets in lieu of the size mentioned above.
- ii) There shall be a title block in the lower right-hand corner of each sheet. The title block shall show the City's name, structure number, the location of the structure, and the contents of the sheet.
- iii) The Contract price will include the cost of furnishing all Shop Drawings. Shop Drawings and working drawings submitted to the Project Manager by the Contractor, subcontractor or any lower tier subcontractor pursuant to the Work, may be duplicated by the City and the City may use and disclose in any manner and for any purpose such Shop Drawings and working drawings delivered under this Contract.

2.3. **OPERATING MANUALS AND PARTS LISTS:** The Contractor shall submit four

(4) complete operating manuals and parts lists to the Project Manager for all items of mechanical and electrical equipment incorporated into the Work.

2.4. **AS-BUILT DRAWINGS:** The Contractor shall maintain a set of drawings at the site, with all changes or deviations from the original drawings neatly marked thereon in brightly contrasting color. This shall be a separate set of drawings, not used for construction purposes, which shall be kept up-to-date as the job progresses and shall be made available for inspection by the Project Manager at all times. Upon completion of the Contract, this set of drawings shall be delivered to the Project Manager.

2.5. **CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS:** Finished surfaces shall conform with lines, grades, cross sections and dimensions shown on the approved Plans. Any deviation from the approved Plans and working drawings, as may be required by the demands of construction, will in all cases be determined by the Project Manager and authorized in writing.

2.6. **COORDINATION OF SPECIFICATIONS, PLANS AND SPECIAL PROVISIONS:** The Specifications, Plans, Special Provisions, and all supplementary Plans and documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. In case of discrepancy, figured dimensions, unless obviously incorrect, shall govern over scaled dimensions. Plans shall govern over Specifications and Special Provisions shall govern over both Plans and Specifications. The Contractor shall not use to its advantage any apparent error or omission in the Plans or Specifications. In the event the Contractor discovers any apparent error or discrepancy, the Contractor shall immediately request the Project Manager's interpretation and decision, and such decision shall be final. In the event contradiction and/or conflicts occur in the Specifications not otherwise covered by Special Provisions, the Specifications deemed by the Project Manager to be most restrictive shall govern.

2.7. **CONSTRUCTION SURVEYING:** The Contractor will furnish and set all construction stakes. The Project Manager will review the stakes. The Contractor shall be held responsible for the proper preservation of all marks and stakes. If, in the opinion of the Project Manager, any marks or stakes have been willfully or carelessly disturbed or destroyed by the Contractor, its employees, or subcontractors, the cost of replacing them will be charged against the Contractor and be deducted from the final payment.

2.8. **RIGHT OF ENTRY:** At all times, the City shall have the right to enter and inspect the Project premises.

2.9. **AUTHORITY AND DUTIES OF INSPECTORS:**

2.9.1. All Work shall be subject to inspection and testing by the City at all reasonable times and at all places prior to acceptance. Inspectors, employed by the City, are authorized to inspect all Work done and all material furnished. Such inspection may extend to all of any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. The Inspector is not authorized to revoke, alter, or waive any requirements of the Plans and Specifications. The Inspector is

authorized to call to the attention of the Contractor any failure of the Work or materials to conform to the Specifications and Contract Documents.

- 2.9.2. The Inspector shall have the authority to reject materials or suspend the Work until any question at issue can be referred to and decided by the Project Manager. If the Contractor refuses to suspend operations on verbal order, the Inspector shall issue a written order giving the reason for shutting down the Work. Work performed during the absence of the Inspector will not be accepted nor paid for by the City.
- 2.9.3. Inspections by the City or others shall not relieve the Contractor from its obligations to perform the Work in accordance with the requirements of the Contract Documents and to also inspect its own Work.
- 2.9.4. Any plan of action, method of work or construction procedure suggested to the Contractor by the City or City contractors, whether orally or in writing, if adopted or followed by the Contractor in whole or in part, shall be at the sole risk and responsibility of the Contractor.
- 2.9.5. The Inspector shall neither act as foreman or perform other duties for the Contractor nor interfere with the management of the Work by the Contractor. Any advice which the Inspector may give the Contractor shall, in no way, be construed as binding to the Project Manager in any way or releasing the Contractor from fulfilling any of the terms of the Contract.

2.10. **INSPECTION:**

- 2.10.1. Until final payment, all parts of the work may be subject to inspection and testing by the City. The Contractor shall furnish, at its own expense, all reasonable access, assistance, and facilities required by the City for such inspection and testing. The Contractor shall furnish the Project Manager with every reasonable facility for ascertaining whether the Work performed and materials used are in accordance with the requirements and intent of the Specifications and Contract. In the event of night Work, the Contractor shall furnish proper lighting to adequately perform and inspect the Work being performed.
- 2.10.2. Upon request from the Project Manager, the Contractor shall, at any time before acceptance of the Work, remove or uncover such portion of the finished Work as may be directed. After examination, the Contractor may restore said portions of the Work to the standard required by the Specifications. Should the Work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the coverage or making good of the parts removed, may be paid for as Extra Work; but should the Work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed, shall be at the Contractor's expense. Any Work performed or materials used by the Contractor without suitable supervision or inspection by the City shall be ordered removed and replaced at the Contractor's expense.

2.10.3. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the City may (a) by separate Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor; or (b) terminate the Contractor's right to proceed in accordance with this Agreement pursuant to Section 4.10 of the General Conditions. Such inspection and test is for the sole benefit of the City and shall not relieve Contractor of the responsibility of providing quality control measures to assure that the Work strictly complies with the Contract. No inspection or test by the City shall be construed as constituting or implying acceptance. Inspection or test shall neither relieve Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the City after acceptance of the completed Work.

2.10.4. Any Work outside the normal five (5) day, forty (40) hour week will require the Project Manager or Inspector on the job. All inspection so required shall be done at the Contractor's expense and the cost thereof may be deducted from the final payment. Overtime inspection may be conducted by the City at the Contractor's expense at one hundred dollars and 00/100 (\$100.00) per hour. The payment by the Contractor of overtime inspection fees shall not relieve the Contractor from the liquidated damages provisions as specified in Section 4.8 of the General Conditions.

2.11. REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK:

2.11.1. All Work which has been rejected or condemned by the City shall be repaired, or if it cannot be satisfactorily repaired, be removed and replaced at the Contractor's expense. At the Project Manager's discretion, the following unauthorized work shall neither be measured nor paid for by the City, and may need to be removed at the Contractor's sole expense:

- i. Work performed beyond the lines and grades shown on the Plans, or as given, except as herein provided; or
- ii. Work performed without giving timely notice to the Project Manager so the Project Manager may elect to be present to observe the Work in progress; or
- iii. Any Extra Work or unclassified Work performed without prior City written authority and price agreement.

2.11.2. If directed by the City, should the Contractor fail to satisfactorily repair or remove and replace rejected, unauthorized, or condemned Work immediately after receiving formal notice from the Project Manager, the City may, at its sole discretion, recover for such defective Work on the Contractor's Bond or by action in a court having proper jurisdiction over such matters, or the City may employ labor and equipment and satisfactorily repair or remove and replace such Work and charge the cost of the same to the Contractor, which cost will be deducted from any payments due to the Contractor.

2.12. SUPERVISION AND SUPERINTENDENCE:

2.12.1. The Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall be responsible to see that the completed work complies with the Contract Documents.

- 2.12.2. The Contractor shall designate and keep on any work site at all times during its progress, a competent superintendent who shall not be replaced without prior written notice to the Project Manager. The Contractor shall provide contact information for the superintendent who may be reached twenty-four (24) hours per day. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. During periods when the Work is suspended, the Contractor shall make appropriate arrangements for any emergency work which may be required.
- 2.12.3. Whenever the superintendent is not present on any particular part of the Work where the Project Manager may desire to inform the Contractor relative to interpretation of the Plans and Specifications or to disapprove or reject materials or Work performed, the Project Manager may so inform the foreman or other worker in charge of the particular part of the Work in reference to which the information is given. Information so given shall be as binding as if given to the superintendent.
- 2.12.4. The Contractor will be supplied with four (4) copies of the Plans, and three (3) copies of the Specifications and Special Provisions. The Contractor shall have available on the work site at all times one copy each of said Plans, Specifications and Special Provisions, exclusive of the set designated for as-built drawings in - Section 2.4 of the General Conditions. Additional copies of Plans, Specifications and Special Provisions can be obtained by the Contractor at the cost of reproduction.

SECTION 3 CONTROL OF MATERIAL

- 3.1. Standards regarding control of materials shall be in accordance with the CDOT Field Materials Manual, as amended.

SECTION 4 PERFORMANCE AND PROGRESS

4.1. SUBCONTRACTING OR ASSIGNMENT OF WORK:

- 4.1.1. No contractual relationship will be recognized under the Contract other than the contractual relationship between the City and Contractor.
- 4.1.2. No portion of the Contract shall be subcontracted, assigned or otherwise disposed of except with the written consent of the City and Surety, which consent shall not be unreasonably withheld.
- 4.1.3. Requests for permission to subcontract, assign or otherwise dispose of any portion of the Contract shall be in writing to the Project Manager and shall be accompanied by documents demonstrating the organization which will perform the Work is particularly experienced and equipped for such Work. Consent to subcontract, assign

or otherwise dispose of any portion of the Contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract.

4.2. **COMMENCEMENT OF WORK:** The Contractor shall begin the Work within the prescribed amount of days set by the City in the written Notice to Proceed. The Contractor shall notify the Project Manager at least forty-eight (48) hours in advance of the time it intends to begin Work. Work shall be completed in the prescribed amount of days set by the City in the Contract Documents, including any Change Orders or amendment. The Contractor shall conduct Work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to ensure its completion within the time limit set forth in the Contract. Should the prosecution of Work for any reason be discontinued by the Contractor, with the consent of the Project Manager, the Contractor shall notify the Project Manager at least forty-eight (48) hours in advance of resuming operations.

4.3. **LIMITATION OF OPERATIONS:** Each item of Work shall be performed to completion without delay and in no instance will the Contractor be permitted to transfer its force from uncompleted Work to new Work without the permission of the Project Manager. The Contractor shall not open up Work to the prejudice of Work already started.

4.4. **PROGRESS SCHEDULE:**

4.4.1. The Contractor shall prepare and submit to the Project Manager for approval five (5) days prior to the Preconstruction Conference, a practicable schedule, showing the order in which the Contractor proposes to carry on the Work, the date on which it will start the several salient features (including procurement of materials and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion at any time. The Contractor shall enter on the chart the actual progress at such intervals as directed by the Project Manager and shall immediately deliver three (3) copies thereof. If the Contractor fails to submit a progress schedule within the time herein prescribed, the Project Manager may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedule.

4.4.2. The Contractor shall perform the Work in accordance with the latest approved progress schedule. If the progress of items along the critical path is delayed, the Contractor shall revise its planning to include additional forces, equipment, shifts or hours as necessary to meet the time or times of completion specified in this Contract. Additional costs resulting therefrom will be borne by the Contractor. The Contractor shall make such changes when progress at any check period does not meet at least one of the following two tests:

- i. The percentage of dollar value of completed Work with respect to the total amount of the Contract is within 10% (ten percent) of the percentage of the Contract time elapsed; or
- ii. The percentage of dollar value of completed Work is within 10% (ten percent) of the dollar value which should have been performed according to the Contractor's network analysis previously approved by the Project Manager.

4.4.3. Failure of the Contractor to comply with the requirements under this Section will be grounds for determination that the Contractor is not performing the Work with such diligence as will ensure completion within the time of completion specified in this Contract. Upon such determination, the City may terminate the Contractor's right to proceed with the Work, or any separate part thereof, in accordance with the provisions contained herein. The City may extend the time periods reflected by Section 4.4.2 (i) or (ii) above, if it does not reasonably reflect upon the Contractor's prosecution of the Work.

4.5. **CHARACTER OF WORKMEN AND EQUIPMENT:**

4.5.1. The Contractor shall employ such superintendents, foremen, and workmen as are careful and competent, and the Project Manager may demand the dismissal of any person employed or subcontracted by the Contractor in, about, or upon the Work who misconduct themselves or act incompetently or negligently in the proper performance of their duties, or neglects or refuses to comply with the directions given. Such person or subcontractor shall not be employed again thereon without the written consent of the Project Manager. Should the Contractor continue to employ, or again employ such person or subcontractor, the Project Manager may withhold all payments which are or may become due, or the Project Manager may suspend the Work until such orders are complied with.

4.5.2. In the employment of labor, preference shall be given, other conditions being equal, to residents of the area wherein the Work is being performed, but no other preference (except as may be required by special labor provisions) or discrimination among citizens of the United States shall be made. No convict labor shall be employed.

4.5.3. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Project Manager and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no injury to the Work, roadways, adjacent property, or other objects will result from its use. The Contract may be terminated if the Contractor fails to provide adequate equipment for the Work.

4.6. **TEMPORARY SUSPENSION OF WORK:** The City shall have the right to suspend, delay or interrupt the Work wholly or in part for such period as he may determine to be appropriate because of the failure on the part of the Contractor to properly perform the Work in accordance with the Contract, to carry out orders, or to remove defective material or Work. The Contractor shall not suspend the Work without written order given by the Project Manager, and prior to resuming Work shall give the Project Manager forty-eight (48) hours' prior notice to afford opportunity to reestablish supervision.

4.7. **DETERMINATION AND EXTENSION OF CONTRACT TIME FOR COMPLETION:**

- 4.7.1. The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work, within the number of days stipulated in the Contract. Time will be assessed against the Contractor beginning with the actual date the Work is started in accordance with the Notice to Proceed. If the Contractor does not begin the Work within the limit as designated in the Notice to Proceed, the days shall start on the first day after the expiration of the limit as stated in the Notice to Proceed.
- 4.7.2. In adjusting the Contract time for the completion of the Project, all strikes, lockouts, unanticipated delays in transportation or any condition over which the Contractor has no control, and any suspensions ordered by the City for causes not the fault of the Contractor, shall be excluded from the computation of the Contract time for completion of the Work and the City may extend the time for completion in such amount as the conditions justify. In order to secure an extension of time for delays beyond its control, the Contractor, shall within 10 (ten) days from the beginning of any such delay, notify the Project Manager in writing of the causes of delay, where upon the Project Manager shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in their judgment, the findings of fact justify such an extension, and their finding of fact thereon shall be final and conclusive. No allowances will be made for delays or suspensions of the performance of the Work which are in the control of the Contractor.
- 4.7.3. If the satisfactory execution and completion of the Contract shall require Work or materials in greater amounts or quantities than those set forth in the Contract, then the Contract time shall automatically be increased in the same proportion as the cost of the additional Work bears to the original Work contracted for.

4.8. FAILURE TO COMPLETE WORK ON TIME:

- 4.8.1. The City and Contractor agree and recognize that time is of the essence for every time period set forth in the Contract Documents and that the City will suffer financial loss if the Work is not substantially complete within the time set forth in the Contract Documents. If the Contractor fails to fully perform and complete the Work in conformity with the provisions and conditions of the Contract within the specified time limit for such performance and completion, or within such further time as, in accordance with the provision of this Contract, shall be fixed or allowed for such performance and completion, the City and Contractor agree that as liquidated damages, and not as a penalty, for the delay in performance, the Contractor shall pay to the City the amount stipulated below for each and every calendar day that expires after the time set forth in the Contract Documents until the same is finally complete and ready for final payment as provided herein.

Original Contract Amount	Amount of Liquidated Damages Per Day
Less than \$100,000	\$300.00
\$100,000 and less than \$500,000	\$600.00
\$500,000 and less than \$1,000,000	\$1,000.00
\$1,000,000 and over	\$1,500.00

4.8.2. The City shall recover inspection charges and damages by deducting the amount thereof out of any moneys which may be due or may become due to the Contractor, and/or by an action at law against the Contractor or its Surety. It is understood and agreed that aside from any other penalty or damage, all costs of the Project Manager and inspection on behalf of the City may be charged to the Contractor and be deducted from any estimate or payment otherwise due and payable.

4.8.3. If the Contractor fails to pay such liquidated damages promptly upon demand therefor, the Surety shall pay such damages. In addition, and at the City's option, the City may withhold all or any part of such liquidated damages from any payment due the Contractor.

4.8.4 For CDOT-funded Work, CDOT's liquidated damages shall govern over this Section 4.8. In the event that CDOT does not stipulate liquidated damages, this Section 4.8 shall govern.

4.9. ADJUSTMENT FOR SUSPENDED WORK:

4.9.1. In the event the Contractor is ordered by the City, in writing, to suspend Work for some unforeseen cause not provided for in the Contract, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of shutdown. No allowance will be made for lost profits. The period of shutdown shall be computed from the date set out in the written order for Work to cease until the date of the written order for Work to resume. Claims for such compensation shall be filed with the City within 10 (ten) days of the date of written order to resume Work, or such claims will not be considered. The Contractor shall submit with its claim substantiating papers covering the entire amount shown on the claim. The City shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim and such decision shall be final.

4.9.2. Notwithstanding any provisions of this Contract to the contrary, no provision of this Section shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure of the Surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the Contract Documents, Specifications, Special Provisions, Bid Schedule, Contract, Change Order or Field Order.

4.10. TERMINATION OF CONTRACT FOR DEFAULT:

4.10.1. The occurrence of any one or more of the following shall constitute an "Event of Default" of the Contract, for which the City may, at the City's option, terminate the Contract upon written notice to the Contractor:

- i. The Contractor fails to start the Work on the date given in the Notice to Proceed, or the Contractor in any way abandons the Work;
- ii. The Contractor's progress is insufficient to complete the Work within the specified time;

- iii. The Contractor's willful or deliberate failure or violation to comply with any requirement of the Contract, including the Plans and Specifications and Special Provisions, or execution of Work by the Contractor in bad faith or otherwise not in accordance with its obligations;
- iv. The Contractor fails to maintain any required Bonds, licenses, permits, and/or insurance as required in the Contract;
- v. The Contractor fails to promptly repair, replace or remove any defects in materials or Work or any defects in materials or Work of any other nature, the correction of which has been directed in writing by the Project Manager;
- vi. Substantial evidence of the Contractor's collusion for the purpose of illegally procuring a Contract or perpetrating fraud in the construction of Work;
- vii. The Contractor files a voluntary petition in bankruptcy if a receiver is appointed for the Contractor or any of its property, or the insolvency of the Contractor;
- viii. The Contractor allows any final judgment against it unsatisfied for a period of 10 (ten) days or longer, and makes an assignment for the benefit of creditors;
- ix. The Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, anti-trust, fraud, undue influence, theft, extortion, or any offense of similar nature, in connection with the Contractor's business;
- x. Other just causes for termination as determined by the City.

4.10.2. The City shall provide the Contractor and Surety with written notice of the City's intent to terminate. The Contractor and/or Surety shall have 10 (ten) days from receipt of notice to cure any default or to provide to the City a detailed plan, in writing, of how the Contractor will cure the causes for termination listed within the written notice. If a satisfactory effort has not been made by the Contractor or its Surety to correct the default within the prescribed period in the notice, or, if in the judgment of the City, any submitted written plan does not ensure satisfactory performance of the Work, the City may declare the Contract terminated and notify the Contractor and its Surety accordingly. Upon receipt of notice from the City that the Contract has been terminated, the Contractor shall immediately discontinue all operations. The City may then proceed with the Work in any lawful manner that it elects until completion.

4.10.3. The City reserves the right to take possession of any machinery, implements, tools, or materials of any description that shall be found upon the Work, to account for said equipment and materials, and to use the same to complete the Project. When the Work is thus finally completed, the total cost of the same will be computed. If the total cost is more than the Contract price, the difference shall be paid to the City either by the Contractor or its Surety. In case of termination, all expenses incident to ascertaining and collecting losses under the Bond, including City project management and legal services, shall be assessed against the Bond.

4.11. TERMINATION FOR CONVENIENCE OF THE CITY: This Contract and the performance of the Work hereunder may be terminated at any time, in whole or in part, for convenience. Any such termination shall be effected by delivery to the Contractor of a written notice ("Notice of Termination") specifying the extent to which performance of Work

is terminated, the date upon which termination becomes effective, and any necessary actions to be taken by the Contractor to effectuate termination and close-out the Contract. If the Contract is terminated, the Contractor shall be paid on a prorated basis of Work satisfactorily completed, under the Work. The portion of Work satisfactorily completed but not yet accepted by the City shall be determined by the City.

4.12. COOPERATION WITH OTHER CONTRACTORS: In connection with the improvements under this Contract, the right is reserved by the City to award any Work not included in the Contract to another contractor for performance during the progress of this Contract, or to perform such Work with the City's forces, and the Contractor shall cooperate and so conduct its operation as to minimize the interference therewith, as directed by the Project Manager.

4.13. TERMINATING OF CONTRACTOR'S RESPONSIBILITY: This Contract will be considered complete when all Work and final cleanup has been finished, the Work has been accepted by the City, and all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled for by the Contractor or its Surety. The Contractor will then be released from further obligation except as set forth in the Bond and for its responsibility for injury to persons or property arising from its duties and obligations under Section 7 of the General Conditions.

SECTION 5 ASSURANCE

5.1 The Contractor affirms that the Work and all of its components shall be free from defects and flaws in design, workmanship, and materials; shall strictly conform to the requirements of this Contract; and shall be fit, sufficient and suitable for the purposes expressed in, or reasonably inferred from, this Contract. In all emergencies the Contractor shall immediately remedy, repair, or replace, without cost to the City and to the entire satisfaction of the City, defects, damages or imperfections due to faulty materials or workmanship appearing in said Work. Payment to the Contractor will not relieve the Contractor of any obligation under this Contract.

5.2 The Contractor, at no additional expense to the City, shall also remedy damage to equipment, the site, or the buildings or the contents thereof which is the result of any failure or defect in the Work, and restore any Work damaged in fulfilling the requirements of the Contract. Should the Contractor fail to remedy any such failure or defect within a reasonable time after receipt of notice thereof, the City will have the right to replace, repair, or otherwise remedy such failure or defect at the Contractor's expense.

5.3 Subcontractors', manufacturers', and suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and any material used therein shall be deemed obtained and shall be enforced by the Contractor for the benefit of the City without the necessity of separate transfer or assignment thereof.

5.4 The rights and remedies of the City provided in this Section are in addition to and do not limit any rights and remedies afforded by the Contract or by law. The Contractor

specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, C.R.S. regarding defects in the Work under the Contract.

5.5 If, within five (5) business days after the City gives the Contractor notice of any defect, damage, flaw, unsuitability, nonconformity, or failure subject to correction by the Contractor, or if the Contractor neglects to make, or undertake with due diligence to make the necessary corrections, then the City shall be entitled to make, either with its own forces or with contract forces, the corrections and to recover from the Contractor all resulting costs, expenses, losses, or damages, including attorneys' fees and administrative expenses.

SECTION 6 LEGAL RELATIONSHIP AND RESPONSIBILITY TO THE PUBLIC

6.2 LAWS TO BE OBSERVED: The Contractor shall at all times observe and comply with all Federal, State and local laws, codes, ordinances, and regulations, which pertain to and affect the conduct of the Work, and the Contractor and its Surety shall indemnify and save harmless the City and all its officers, agents, employees, or any of their heirs, successors or assigns against any claim, judgment, demand, costs, liability or expenses, including but not limited to attorney's fees and costs of suit arising from or based on the violation of any such law, ordinance, regulations, order, or decree, whether such claim, judgment, demand, costs, liability or expenses arises from actions by the Contractor, its employees, agents or subcontractors. Nothing contained herein shall be deemed to create liability for the Contractor for any design defects not managed by the Contractor.

6.3 PERMITS AND LICENSES: The Contractor shall, at its own expense, procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Any costs incurred for these permits must be included in the unit costs.

6.4 PAYMENT OF TAXES:

6.4.1 With the exception of being exempt from City of Littleton Sales and Use taxes, the Contractor shall pay all sales and use taxes required to be paid, shall maintain such records in respect to its Work, which shall be separate and distinct from all other records maintained by the Contractor and shall be available for inspection by the City at any and all reasonable times, and shall furnish the City with such data, as may be necessary to enable the City to obtain any refunds of such taxes which may be available to the City under the laws, ordinances, rules or regulations applicable to such taxes. The Contractor shall require each of its subcontractors to pay all sales and use taxes required and to maintain such records and furnish the Contractor with such data as may be necessary to enable the City to obtain a refund of the taxes paid by such subcontractors.

6.4.2 In accordance with C.R.S. §§ 39-26-114 and 39-26-203, and the related regulation of the State of Colorado Department of Revenue, the Contractor shall apply to the State of Colorado Department of Revenue and secure prior to commencing Work, an exemption certificate which when issued by the State of Colorado Department of Revenue will enable the Contractor to purchase all materials free of State Sales and

Use Taxes and Regional Transportation District ("RTD") Tax, provided that any building permit fee shall be included in any Bid Schedule with respect to the Work. Further, no Littleton sales and/or use tax shall be included in any billing with respect to the Work. This provision shall apply to all contractors, subcontractors and material suppliers. When Littleton sales tax is paid to licensed Littleton vendors for materials, which become part of the Work by a Contractor, the City of Littleton will refund that tax to the Contractor upon receipt of an application from the Contractor at the conclusion of the Contract. Accompanying the application must be the material receipt(s) displaying a description of the item(s) purchased, date of purchase, amount of purchase, tax paid and any other documentation and information which may be required by the City to substantiate the payment and validate a refund.

- 6.4.3 Contractors who purchase materials that become part of the Work that do not honor the exemption, and thereby who pay sales tax, will not be reimbursed for that tax payment by the City. The Contractor shall bear the risk of any added or increased taxes occurring during the performance of the Work. A change in taxes shall under no circumstances entitle the Contractor to an adjustment under the Contract.

6.5 PATENTED DEVICES, MATERIALS AND PROCESSES: If the Contractor is required or desires to use any design, device, material or processes covered by patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or patent owner. The Contractor shall warrant that the materials, equipment or devices used on or incorporated in the Work shall be delivered free of any rightful claim of any third-party for infringement of any United States patent or copyright. If notified promptly in writing and given authority, information and assistance, the Contractor shall defend, or may settle, at its expense, any suit or proceeding against the City so far as based on a claimed patent or copyright infringement which would result in a breach of this warranty, and the Contractor shall pay all damages and costs awarded therein against the City due to such breach. In case any use of any materials, equipment or devices is in such suit held to constitute an infringement and such use is enjoined, the Contractor shall, at its expense and option, either procure for the City the right to continue using said materials, equipment or devices, or replace same with non-infringing materials, equipment or devices, or modify the same so it becomes non-infringing. The Contractor shall report to the City promptly and in reasonable written detail each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge. In the event of any claim or suit against the City as a result of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or Work or services performed hereunder, the Contractor shall furnish to the City when requested by the City, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the City except where the Contractor has agreed to indemnify the City. This clause shall be included in all subcontracts.

6.6 SANITARY PROVISIONS: The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health and the Occupational Safety and Health Administration ("OSHA"). As stated in OSHA Construction Standard 1926.51 C, the Contractor shall supply temporary sanitary facilities as per the

following table:

<u>Number of Employees</u>	<u>Minimum Toilet Facilities</u>
20 or less	1 Toilet
21 to 50	1 Toilet and 1 Urinal per 40 workers
51 or more	1 Toilet and 1 Urinal per 50 workers

This requirement to provide sanitary facilities will neither be measured nor paid for separately by the City, but shall be considered incidental to and included in the cost of the Work.

6.7 PUBLIC CONVENIENCE AND SAFETY:

- 6.7.1 The Contractor shall be solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. The Contractor shall fully comply with all applicable Federal, State and local laws, and rules and regulations governing safety of the public and workers. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions on its own responsibility 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. Materials stored on the site shall be so placed and the Work shall, at all times, be so conducted as to cause no greater obstruction to traffic than is considered necessary by the Project Manager.
- 6.7.2 The Contractor shall not close any road to the public except by the express permission of the City. When the improvement under construction is being used by the traveling public, special attention shall be paid to keeping both the sub-grade and surfacing in such condition that the public can travel in comfort and safety. The Contractor shall cooperate with the Project Manager in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, the Contractor's responsibility for accidents shall include the roadway approaches as well as the structures of such crossing.
- 6.7.3 The right of the Project Manager to conduct construction review or observation of the Contractor's performance will not include review or observation of the adequacy of the Contractor's safety measures in, on, or near the Work site.

6.8 BARRICADES, SIGNS AND HAZARD MARKINGS:

- 6.8.1 The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights for the protection of the Work and the safety of the public. All barricades, signs and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept illuminated from sunset to sunrise.
- 6.8.2 The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchman to protect it, and whenever evidence of such

damage is found prior to acceptance, the Project Manager may order the damaged portion immediately removed and replaced by the Contractor without cost to the City if, in the opinion of the Project Manager, such action is justified. The Contractor's responsibility for the maintenance of barricades, signs and lights shall not cease until Work has been accepted.

6.9 USE OF EXPLOSIVES: When the use of explosives is necessary for the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed by the Project Manager the number and size of the charges shall be reduced. The Contractor shall notify the proper representatives of any public services corporation, the City, any company, or any individual at least eight (8) hours in advance of any blasting which may damage property on, along, or adjacent to the site. The Contractor shall comply with the requirements of Title 9, Article 7 of the C.R.S., as amended, titled "Explosive Permits". The Contractor shall also be required, at a minimum, to notify the Littleton Fire Department and the Littleton Police Department. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "DANGEROUS EXPLOSIVES," and shall be in care of competent watchmen at all times.

6.10 PROTECTION AND RESTORATION OF PROPERTY:

6.10.1 The Contractor shall not enter upon private property for any purpose without first obtaining permission, and shall be responsible for the preservation of all public and private property, sod, trees, fences, monuments, underground structures, etc., on and adjacent to the site(s) and shall use every precaution necessary to prevent damage or injury thereto. The Contractor shall protect carefully, from disturbance or damage, all land monuments and property markers until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

6.10.2 The Contractor shall be responsible for all damage or injury to property of any character resulting from any act, omission, neglect or misconduct in his manner, or method of executing said Work, or due to its non-execution of said Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the Work has been completed and accepted by the City.

6.10.3 The Contractor's attention is directed to the importance of protecting all public utilities encountered on all projects. Such utilities may include, but are not limited to, telephone, telegraph and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities, cable television lines and facilities. Before any excavation is to begin in the vicinity of water lines, railroad tracks or structures, sewer lines, cable television lines, gas lines or telephone conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility company concerned is on the ground and has designated the location of their facilities.

6.10.4 When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the

execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor, the Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed; or the Contractor shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property, or to have started action to make good such damage or injury, the City may upon forty-eight (48) hours' notice, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted from any moneys due or which may become due the Contractor under the Contract or prosecuted as a claim against the Contractor's Bond.

6.10.5 The cost of insurance for damages due to Contractor's operation or cost of protecting utilities where required to permit construction under this Contract shall be included in the original Contract prices for the Work.

6.11 **INDEMNIFICATION AND HOLD HARMLESS:** The Contractor and its Surety shall indemnify and save harmless the City, its officers, agents, employees, successors and assigns from all suits, demands, actions, or claims of any nature whatsoever brought or made against the City, its officers, agents, employees, successors or assigns from any injuries or damages sustained by any person, firm or corporation or property or resulting from or arising out of any neglect in safeguarding the Work; or through the use of unacceptable materials in the construction of the improvement; or as a result of any act or omission by the Contractor; or from the use, misuse, storage or handling of explosives; or on account of any claims or amounts recovered for any infringement of patent, trademark or copyright; or from any claims or amounts arising or recovered under Worker's Compensation laws, or any other law, by-law, ordinance, order or decree. Moneys due to the Contractor under and by virtue of the Work, as shall be considered necessary by the City, may be retained, or in case no money is due, the Contractor's Bond shall be held until such suit(s), action(s), or claim(s) for injuries or damages have been settled and satisfactory evidence has been furnished to the City.

6.12 **NO PERSONAL LIABILITY OF THE PROJECT MANAGER:** The Project Manager is an agent of City, and the Project Manager, its agents, heirs, successors and assignees shall have no liability to any third-party as a result of performance of this Contract.

6.13 **NO WAIVER OF LEGAL RIGHTS:** Inspection by the Project Manager or authorized City representatives, payment of money, payment for or acceptance of any Work or any extension of time, or possession taken by the City shall not operate as a waiver of any provision of the Contract, or any power therein provided. A waiver of any breach or term of the Contract shall not be deemed to be a waiver of any other or subsequent breach. The City reserves the right to correct any error that may be discovered in any estimate that may have been paid, and to adjust the same to meet the requirements of the Contract and Specifications. The City reserves the right to claim and recover, by process of law, sums as may be sufficient to correct any error or make good any deficit in the Work resulting from such error, dishonesty, or collusion discovered in the Work after the final payment has been made.

6.14 RIGHTS-OF-WAY: The City shall furnish all lands and rights-of-way required for completion of the Work. In acquiring rights-of-way, the City will proceed as expeditiously as possible, but in the event all rights-of-way or easements are not acquired prior to the beginning of construction, the Contractor shall begin Work on such lands and rights-of-way as have been acquired. No claim for damage will be allowed or shall be made by reason of the City's delay in obtaining lands, easements or rights-of-way. In the event of litigation or other delays in acquiring rights-of-way, the time allowed herein for completion will be extended to compensate for the time actually lost by such delay.

SECTION 7 MEASUREMENT AND PAYMENT

7.2 BONDS.

7.2.1 Contemporaneous with the Contractor's execution of this contract, the Contractor shall provide a Performance Bond and a Labor and Material Payment Bond as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. All bonds shall be in the form prescribed by the City, executed by a surety company i) licensed to do business in the State of Colorado; ii) with a general rating of A and a financial size category of Class X or better in Best's Insurance Guide, each in the penal sum of the contract price; and iii) in conformance with C.R.S. §§ 38-26-105 and 106 ("Bonds"). All Bonds signed by an agent or attorney-in-fact shall be accompanied by a certified copy of the signatory's authority to act. The Contractor shall, at all times while providing, performing, or completing the Work including without limitation at all times while correcting any failure pursuant to Section 5 of the General Conditions, maintain and keep in force the Bonds at the Contractor's expense.

7.2.2 If the Surety for any Bond furnished by the Contractor is placed in a receivership or declared bankrupt, or its rights to do business in Colorado are terminated, or it ceases to meet the requirements specified herein, the Contractor shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to the City.

7.3 MEASUREMENT OF WORK PERFORMED: The determination of the amount of Work acceptably completed under the terms of the Contract, or as directed by the Project Manager in writing, will be made by the Project Manager based on measurements taken by them or their authorized representatives. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on Plans or otherwise specified. Structures shall be measured to the neat lines as shown on the Plans, or as directed in writing by the Project Manager.

7.4 SCOPE OF PAYMENT:

7.4.1 The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, equipment, labor, tools, and incidentals necessary to

complete the Work and for performing all Work contemplated and embraced under the Contract; for loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the completion of the Work until the final acceptance by the City; for all risks of every description connected with the completion of the Work; for all expenses incurred in consequence of the suspension or discontinuance of the Work as herein specified; for any infringement of patent, trademark, or copyright; and for completing the Work according to the Plans and Specifications. Neither the payment of any partial payment nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective Work or material. No moneys payable under the Contract or any part thereof, except the partial payment for the first month period, shall become due and payable until the Contractor satisfies to the City that it has fully settled or paid for all materials and equipment used in or upon the Work and labor done in connection therewith. The City, if it so elects, may pay any or all such bills, wholly or in part, and deduct the amount or amounts so paid from any monthly or final partial payment excepting the first estimate.

7.5 PAYMENT FOR INCREASED OR DECREASED QUANTITIES: When alterations in the Plans or quantities of Work are ordered and performed without a written Change Order or amendment, the Contractor shall accept payment in full at the Contract unit price for the actual quantities of Work done, and only upon the City's review and approval of said Work. No allowance will be made for lost profits. Increased or decreased Work without a written Change Order will be paid for as stipulated herein.

7.6 PAYMENT FOR OMITTED ITEMS:

7.6.1 For any item omitted from the Work, the City will pay the Contractor a fair and equitable amount for costs incurred directly related to such item prior to the date of the City's order to omit the item, subject to Section 1.4 of the General Conditions. No allowance will be made for lost profits in reimbursements to the Contractor for omitted items of Work. Acceptable materials ordered by the Contractor or delivered to the Work site prior to the date of cancellation, alteration, or suspension of the Work by order of the Project Manager will be paid for at the actual cost to the Contractor and shall thereupon become the property of the City.

7.6.2 The Contractor shall immediately submit certified statements covering all money expended in preparation for any omitted item, and shall be reimbursed for any money expended in preparation for Work on any omitted item when such preparation has no value to the remaining items of the Contract, or for a proportionate amount based on the total Contract price over which such preparation would ordinarily be distributed when other items are included in such preparation.

7.7 EXTRA AND FORCE ACCOUNT WORK:

7.7.1 Extra Work, for which no price is provided in the Bid Schedule, shall be covered by Change Order to be signed by both Parties before such Work is commenced. Extra Work will be paid for either at a lump sum, or unit prices agreed upon, or on a Force Account basis, subject to Section 1.5 of the General Conditions. For all labor, teams,

and foremen in direct charge of the specific operations accomplished on a Force Account basis, the Contractor shall receive the current local rate of wage, to be agreed upon before starting the Work, to which shall be added 15% (fifteen percent) of the sum thereof to cover cost of supervision, the rental of small tools and ordinary equipment, additional Bond, Unemployment Insurance, all overhead and any other costs not specifically stated. In addition, the Contractor shall be paid a sum equal to the Worker's Compensation insurance premium, the actual costs of Social Security taxes computed on the base rate for the class of Work involved for the actual amount of the payroll, and the public liability and property damage insurance premium; provided, however, that nothing in this Section will change the legal status of the relationship between the Parties to this Agreement. For all materials furnished and used by the Contractor on a Force Account basis, the Contractor shall receive the actual cost of such materials, including transportation charges as shown by original receipted bills, to which shall be added 15% (fifteen percent) of said actual cost.

- 7.7.2 For machine power tools or equipment, including fuel and lubricant, used on Force Account Work, payment for the same will be made on a rental basis at the rate agreed upon between the Contractor and the Project Manager, to which rate no percentage shall be added.
- 7.7.3 The compensation as herein provided shall be received by the Contractor as payment for Extra Work done on a Force Account basis and subject to any conditions or limitations as specified in Section 1.5 of the General Conditions. The Contractor shall make no claim for Force Account Work, unless performed on written order and in accordance therewith. The Contractor's representative and the Inspector shall compare records of Extra Work done on a Force Account basis at the end of each day. Copies of these records shall be made upon suitable forms provided for this purpose and signed by both the Inspector and the Contractor's representative, one copy being forwarded to the Project Manager and one copy to the Contractor.
- 7.7.4 All claims for Extra Work done on a Force Account basis shall be submitted each month to the Project Manager by the Contractor upon certified statements, or upon forms furnished by the City. Work performed prior to a written order by the Project Manager will not be paid for.

7.8 PARTIAL PAYMENTS:

- 7.8.1 Partial progress payments shall be made by the City to the Contractor for the percentage of the Work completed, subject to inspection and approval by the Project Manager. The City shall determine when work has been completed, and progress payments shall not constitute a waiver of the City's right to require fulfillment of all terms of the Contract Documents and the delivery of all Work contemplated herein, complete and satisfactory to the City.
- 7.8.2 Once per month as the Work progresses, the Project Manager will make an estimate of the value of the Work performed and materials completed and in-place or delivered to the Work site in accordance with the Contract. Upon the Project Manager's request, the Contractor shall furnish a detailed estimate of the total Contract price

showing the amount included therein for each category of Work, to provide a basis for determining the amount of progress payments. The market value of materials and equipment delivered to the Work site but not yet incorporated in the Work may, at the discretion of the City, be included with a progress payment. However, payment by the City for such materials and equipment shall not relieve the Contractor of the responsibility for the care of such materials and equipment; the City shall not be deemed to have assumed ownership of the materials or equipment until incorporated into the completed and accepted Work. Such increases to progress payments, if authorized, are intended only to reduce the cost of doing business with the City.

7.8.3 In accordance with C.R.S. § 24-91-103, where the Contract price exceeds one hundred fifty thousand dollars (\$150,000.00), partial payments shall be authorized at the end of each calendar month, or as soon thereafter as practicable, to the Contractor upon satisfactory performance of the Contract. The City shall, from the total of the Contract estimate so ascertained, deduct an amount equivalent to five (5) percent of the whole, to be retained by the City until acceptance of the entire Contract and the balance of the sum equivalent to 95% (ninety-five percent) of the whole, shall be certified to by the Project Manager for payment.

7.8.4 The City shall retain from all progress payments an amount equal to all statutory claims filed against the Contractor pursuant to C.R.S. § 38-26-107. No partial payments except final payment will be made for a sum less than one thousand dollars (\$1,000.00). The estimates will be approximate only, and all partial or monthly estimates and payments shall be subject to correction in the estimate and payment rendered following discovery of an error in any previous estimates or payments. Should any defective Work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the Work completed previous to the final acceptance and payment, the costs shall be deducted from the first payment rendered after the discovery of such Work an amount equal in value to the defective or questioned Work, and this Work will not be included in a subsequent estimate or payment until the defects have been remedied or the causes for doubt removed.

7.9 PUNCH LIST AND FINAL ACCEPTANCE. The Work shall be finally accepted when, and only when, the whole and all parts thereof shall have been completed to the satisfaction of City in full compliance with, and as required by or pursuant to, this Contract. Upon receipt of the Contractor's Written Notice of Completion, the City shall make a review of the Work and notify the Contractor in writing of all Punch List Work, if any, to be completed or corrected. Following the Contractor's completion or correction of all Punch List Work, the City shall review the Work and prepare and deliver to the Contractor either a written notice of additional Punch List Work to be completed or corrected or a written notice of Final Acceptance of the Work.

7.10 ACCEPTANCE AND FINAL PAYMENT:

7.10.1 Two (2) weeks after acceptance of the Work including final cleanup, the City shall initiate the acceptance and final payment procedures. All prior partial estimates and payments shall be subject to correction in the final estimate and payment. Upon completion of the acceptance and final payment procedures, the Work will be

considered accepted, the Contract considered complete, and, upon compliance with the provisions of State law, the final payment shall be executed and submitted to the Contractor.

7.10.2 The acceptance by the Contractor of the last payment as aforesaid shall operate as and shall be a release of the City from all claims for liability arising from the performance of the Work under the Contract.

7.11 LIENS.

7.11.1 *Title.* Nothing in this Contract shall be construed as vesting in the Contractor any right of property in any equipment, materials, supplies, and other items provided under this Contract after they have been installed in, incorporated into, attached to, or affixed to, the Work or Work site. All such equipment, materials, supplies, and other items shall, upon being so installed, incorporated, attached or affixed, become the property of the City, but such title shall not release the Contractor from its duty to insure and protect the Work in accordance with the requirements of this Contract.

7.11.2 *Waivers of Lien.* The Contractor shall, from time to time at the City's request and in any event prior to final payment, furnish to the City such receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish, to the reasonable satisfaction of the City, that no lien against the work or the public funds held by the City exists in favor of any person whatsoever for or by reason of any equipment, material, supplies, or other item furnished, labor performed, or other thing done in connection with the Work or this Contract ("Lien"), and that no right to file any Lien exists in favor of any person whatsoever.

7.11.3 *Removal of Liens.* If at any time any notice of any Lien is filed, the Contractor shall, promptly and without charge, discharge, remove, or otherwise dispose of such Lien. Until such discharge, removal, or disposition, the City shall have the right to retain from any money payable hereunder an amount that the City, in its sole judgment, deems necessary to satisfy such Lien and to pay the costs and expenses, including attorneys' fees and administrative expenses, of any actions brought in connection therewith or by reason thereof.

7.11.4 *Protection of City Only.* This Section shall not operate to relieve the Contractor's Surety or Sureties from any of their obligations under the Bonds, nor shall it be deemed to vest any right, interest, or entitlement in any subcontractor or supplier. The City's retention of funds pursuant to this Section shall be deemed solely for the protection of its own interests pending removal of such Liens by the Contractor, and the City shall have no obligation to apply such funds to such removal but may, nevertheless, do so where the City's interests would thereby be served.

7.12 DEDUCTIONS.

7.12.1 *City's Right To Withhold.* Notwithstanding any other provision of this Contract and without prejudice to any of the City's other rights or remedies, the City shall have the right at any time, to deduct and withhold from any progress or final payment that may

be or become due under this Contract, such amount as may reasonably appear necessary to compensate the City for any actual or prospective loss due to:

- i. Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete;
- ii. Claims or liens filed or reasonable evidence indicating probable filing of claims or liens from third-parties, regardless of merit;
- iii. Failure of the Contractor to make payments properly and promptly to subcontractors for material or labor;
- iv. Failure of the Contractor to complete any portion of the Work in compliance with an approved schedule;
- v. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract value;
- vi. Failure of the Contractor to submit on a timely basis, any documentation required by the Contract Documents, including without limitation, monthly reports, schedules, or request for approval of subcontractors;
- vii. Unauthorized Work or deviations by the Contractor from the Contract Documents;
- viii. Damage to the City or to another contractor;
- ix. State or local sales, use, or excise taxes from which the City is exempt;
- x. Any other failure of the Contractor to perform any of its obligations under this contract; or
- xi. The cost to the City, including attorneys' fees and administrative costs, of correcting any of the aforesaid matters or exercising any one or more of the City's remedies set forth within the Contract Documents.

7.12.2 *Release and Use of Withheld Funds.* The City shall be entitled to retain any and all amounts withheld pursuant to Section 7.11.1 above until the Contractor has either performed the obligations in question or furnished security for such performance satisfactory to the City. The City shall be entitled to apply any money withheld or any other money due to the Contractor under this Contract to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, attorneys' fees and administrative expenses incurred, suffered, or sustained by the City and chargeable to Contractor under this Contract.

7.12.3 *Waiver under C.R.S. § 38-26-107.* Execution of the Contract Documents by the Contractor shall constitute waiver by the Contractor to claim any right of payment of interest upon any such retained funds, or to claim any right of payment of interest upon funds withheld under the provisions of C.R.S. § 38-26-107.

SECTION 8 DISPUTES AND REMEDIES

8.2 DISPUTE RESOLUTION PROCEDURE.

8.2.1 *Notice of Disputes and Objections.* If the Contractor disputes or objects to any

requirement, direction, instruction, interpretation, determination, or decision of the City, the Contractor may notify the City in writing of the issue and of the amount of any equitable adjustment to the Contract price or Contract time to which the Contractor claims it will be entitled as a result thereof; provided, however, that the Contractor shall, nevertheless, proceed without delay to perform the Work as required, directed, instructed, interpreted, determined, or decided by the City, without regard to such dispute or objection. Unless the Contractor so notifies the City within two (2) business days after receipt of such requirement, direction, instruction, interpretation, determination, or decision, the Contractor shall be conclusively deemed to have waived all such disputes or objections and all claims based thereon.

8.2.2 *Negotiation of Disputes and Objections.* To avoid and settle without litigation any such dispute or objection, the City and the Contractor agree to engage in good faith negotiations. Within 10 (ten) business days after the City's receipt of the Contractor's written notice of dispute or objection, a conference between the City and the Contractor shall be held to resolve the dispute. Within 10 (ten) business days after the end of the conference, the City shall render its final decision in writing to the Contractor. If the Contractor objects to the City's final decision, then it shall, within 10 (ten) business days give the City notice thereof and, in such notice, shall state its final demand for settlement of the dispute. Unless the Contractor so notifies the City, the Contractor shall be conclusively deemed to have agreed to and accepted the City's final decision and to have waived all claims based on such final decision.

8.3 DISPUTED CLAIMS FOR EXTRA WORK: In case the Contractor deems extra compensation is due for Work or material not covered in the Contract Documents, or not ordered by the Project Manager as Extra Work, the Contractor shall notify the Project Manager in writing of its intention to make claim for such extra compensation before beginning Work on which the Contractor bases the claim, and shall afford the Project Manager every facility for keeping actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Project Manager proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the Project Manager shall not in any way be construed to prove the validity of the claim. When the Work has been completed, the Contractor shall, within 10 (ten) days, file its claim for extra compensation with the Project Manager, who will review for consideration.

8.4 CONTRACTOR'S REMEDIES. If the City fails or refuses to satisfy a final demand made by the Contractor pursuant to Section 8.2 above, or to otherwise resolve the dispute which is the subject of such demand to the satisfaction of the Contractor, within 10 (ten) days following receipt of such demand, the Contractor shall be entitled to pursue such remedies, not inconsistent with the provisions of this Contract, as it may have in law or equity.

8.5 CITY'S REMEDIES. If it should appear at any time prior to final payment that an Event of Default, and has failed to cure any such Event of Default, as defined within Section 4.10 of the General Conditions, the City shall have the right, at its election and without

prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

- i. The City may require the Contractor, within such reasonable time as may be fixed by the City, to complete or correct all or any part of the Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; to remove from the Work site any such work; to accelerate all or any part of the Work; and to take any or all other action necessary to bring the Contractor and the Work into strict compliance with this Contract.
- ii. The City may perform or have performed all work necessary for the accomplishment of the results stated in (i) above and withhold or recover from the Contractor all the cost and expense, including attorneys' fees and administrative costs, incurred by the City in connection therewith.
- iii. The City may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete, or dilatory Work or part thereof and make an equitable reduction in the Contract price.
- iv. The City may terminate this Contract without liability for further payment of amounts due or to become due under this Contract, pursuant to Section 4.10 of the General Conditions.
 - i. Upon any termination of this Contract or of the Contractor's rights under this Contract in accordance with Sections 4.10 or 4.11 of the General Conditions, and at the City's option exercised in writing, any or all subcontracts and supplier contracts of the Contractor shall be deemed to be assigned to the City without any further action being required, but the City shall not thereby assume any obligation for payments due under such subcontracts and supplier contracts for any Work provided or performed prior to such assignment.
- v. The City may withhold from any progress or final payment, whether or not previously approved, or may recover from the Contractor any and all costs including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default or as a result of actions taken by the City in response to any Event of Default.
- vi. The City may recover any damages suffered by the City.

8.6 CITY'S SPECIAL REMEDY FOR DELAY. If the Work is not completed by the Contractor in full compliance with and as required by or pursuant to this Contract, within the time as such time may be extended by Change Order, then the City may invoke its remedies under Section 8.4 of the General Conditions or may, in the exercise of its sole and absolute discretion, permit the Contractor to complete the Work but charge to the Contractor and deduct from any progress or final payments, whether or not previously approved, administrative expenses and costs for each day completion of the Work is delayed beyond the completion date, computed as set forth in Section 4.8 of the General Conditions, as well as any additional damages caused by such delay.

8.7 ATTORNEY FEES: In the event there is any dispute between the the Contractor

or the Surety and the City, its officers, agents or employees, and the City, its officers, agents or employees prevail, the City, its officers, agents or employees shall be granted all of its costs, including but not limited to attorney's fees, court costs and expert witness fees.

SECTION 9 OTHER PROVISIONS

9.2 Wherever a number of days is specified in this Contract it shall mean calendar days unless otherwise specified.

9.3 When a delay on any aspect of the Work occurs, the Contractor, to the maximum extent possible, shall utilize its resources elsewhere in the Work. If the Contractor, after complying the maximum extent possible by the reassignment of its labor force, equipment and materials, alleges to have suffered damages due to delay, and the delay is caused in whole or in part by acts or omissions within the control of the City or persons acting on its behalf, then such a claim shall be treated as a Change Order request and shall be processed in accordance with the Change Order, audit and inspection requirements specified in the General Provisions or it shall be deemed forever waived. Nothing herein contained shall be interpreted so as to allow the Contractor to recover delay damages from the City for delays caused by acts of God, the acts or omissions of the Contractor, its subcontractors, employees or agents, or persons over which the City has no control.

9.4 Work performed by the Contractor under this Contract shall conform to reasonable and normal professional standards and the Contractor shall conduct itself at all times in a manner consistent with industry standards.

9.5 No reports, graphics or other material produced specifically for the City under this Contract shall be the subject of an application for copyright or trademark by or on behalf of the Contractor.

9.6 No assignment of any claim or proceeds under this Contract shall be binding upon the City unless it shall be first notified thereof in writing.

DEFINITIONS

Whenever the following terms or pronouns are used in the Specifications and Contract Documents, the intent and meaning shall be as follows:

AWWA: American Water Works Association.

CHANGE ORDER: A written modification of the Contract, issued after award to the Contractor, authorizing an addition, deletion, or revision to the Work within the general scope of the Contract or authorizing an adjustment in the Contract price or time mutually agreed upon between the City and the Contractor.

CDOT: Colorado Department of Transportation.

CONTRACT OR CONTRACT DOCUMENTS: The written agreement executed between the City and the Contractor covering the performance of the Work and the furnishing of labor and materials, by which the Contractor is bound to perform the Work and furnish the labor and materials and by which the City is obligated to compensate at a mutually established and accepted rate or price.

CONTRACTOR: The individual, partnership, firm, or corporation executing the Contract, acting directly or through lawful agents or employees, primarily liable for the acceptable performance of the Work for which contracted, and for the payment of all legal debts pertaining to the Work.

DRAWINGS: The Plans, profiles, typical cross-sections, general cross-sections, elevations, schedules, and details which show locations, character, dimensions, and details of the Work.

DISTRICT: A legally constituted group of individuals who have joined together in order to facilitate construction of utility systems within the limits of their property. The district shall be represented by its authorized Board of Directors.

PROJECT MANAGER: The duly authorized representative of the City, acting directly or through an assistant or representative.

EQUIPMENT: All machinery, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

EXTRA WORK: Work not provided for in the Contract as awarded but found to be essential to the satisfactory completion of the Contract, within its intended scope.

FIELD ORDER: A written order effecting minor change in the Work not involving an adjustment in the Contract price or an extension of the Contract time, issued by the Project Manager to the Contractor during construction.

FINAL ACCEPTANCE: An acknowledgment made by the City that all Work has been completed.

FORCE ACCOUNT: A method of payment, other than lump sum or unit price, for Work ordered by a Change Order.

INSPECTOR: An authorized representative of the City assigned to make all necessary inspection of the Work performed or being performed, or of the materials furnished or being furnished by the Contractor.

LABORATORY: The official testing laboratories of the City or such other laboratories as may be designated by the Project Manager.

NOTICE TO PROCEED: A written notice to the Contractor of the date on which it is to begin Work.

PAYMENT BOND: The approved form of security furnished by the Contractor and its Surety as a guarantee that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the Work, as provided by law.

PERFORMANCE BOND: The approved form of security furnished by the Contractor and its Surety as a guarantee of good faith and ability of the Contractor to execute the Work in accordance with the terms of the Plans, Specifications, and Contract. In lieu of a separate Performance Bond, a combination Performance, Labor and Material Payment Bond may be supplied by the Contractor.

PERFORMANCE, LABOR AND MATERIAL PAYMENT BOND: Security furnished by the Contractor and its Surety as a guarantee that the Contractor will pay in full all bills and accounts for materials and labor used in the Work and that it will execute the Work in accordance with the Contract.

PLANS: The official Plans, working drawings, or supplemental drawings or exact reproductions thereof, approved by the Project Manager which show the locations, character, dimensions, and details of the Work to be done and which are to be considered as part of the Contract, supplementary to the Specifications.

PROGRESS SCHEDULE: A construction schedule prepared by the Contractor in a bar-chart, critical path or other format acceptable to the Project Manager which includes the start and completion dates of all salient features of the Work.

SHOP DRAWINGS: All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

SPECIAL PROVISIONS: The specific clauses setting forth conditions or requirements particular to the Work, covering work or materials involved in the bid and estimate, which are not thoroughly or satisfactorily stipulated in the General Provisions or Specifications.

SPECIFICATIONS: The directions, provisions, and requirements contained herein, supplemented by Special Provisions, pertaining to the method and manner of performing the Work, or to the quantities or the qualities of materials to be furnished under the Contract. Also includes Technical Specifications, part of the Contract Documents consisting of technical written descriptions for materials, equipment, construction systems, standards and workmanship.

STRUCTURES: Bridges, culverts, sewers, catch basins, retaining walls, manholes, headwalls, buildings, valve vaults and other features which may be encountered in the Work and not otherwise classified herein.

SUBCONTRACTOR: An individual, firm or corporation having a direct contract with the Contractor or the Contractor's subcontractor(s) for the performance of a part of the Work.

SUBSTANTIAL COMPLETION: The Work (or a specified part thereof) has progressed to the point where, in the opinion of the Project Manager, it is sufficiently complete in accordance with the Contract, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. For the purposes of final acceptance of the Work, Substantial Completion shall include cleanup of the Work site and all work areas.

SUPPLIER: Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design.

SURETY: The corporate body or individuals who are bound by the Performance Bond; Payment Bond; or Performance, Labor and Material Payment Bond, with and for the Contractor who is responsible for the entire and satisfactory fulfillment of the Contract and for the payment of all debts incurred in fulfilling the Contract.

UNIT PRICE WORK: Work to be paid for on the basis of unit prices.

Exhibit D

Bond Number: S7A2SU0005662

PERFORMANCE, LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that Wild at Heart Investments, LLC dba TALL Contracting & Consulting Co (Contractor), as Principal (the "Principal") and AMERICAN ALTERNATIVE INSURANCE CORPORATION, a corporation organized under the laws of the State of Delaware, and authorized to transact business in the State of Colorado, as "Surety," jointly and severally, including their heirs, personal representatives, successors and assigns, are held and firmly bound unto the City of Littleton as Obligee, hereinafter called Owner, for the use and benefit of claimants as herein below defined, in the amount of two million three hundred seventy-five thousand six hundred fifty-three dollars and ten cents (\$ 2,375,653.10), , for the payment and interest as provided by law for the performance of the Contract between the Principal and the Owner, dated 2025, for the Mineral Mobility East Improvements Phase 1 Construction project in accordance with drawings and specifications; which the Contract is made a part hereof, and is hereinafter referred to as the Contract, and incorporated by this reference.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal, at all times, shall promptly and faithfully perform said Contract, and shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, any authorized modifications thereof during the original term of the Contract, any extensions thereof that may be granted by the Owner, and during the term of any guarantee or warranty required under the Contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense when the Owner may incur in making good any default, then the Principal and Surety shall have no obligation under this Bond, otherwise it shall remain in full force and effect for a period of one (1) year following execution of the Contract. Upon expiration, this Bond shall be extended by a continuation certificate for an additional one (1) year, and extended thereafter until the warranty period has expired in accordance with the terms of the Contract.

The Surety, for value received, agrees that no extension of time, change in, addition to, or other alteration or modification of the terms of the Contract or work to be performed there under or any other forbearance on the part of either the Owner or the Principal to the other shall in any way release or impact the Surety's liability or obligation on this Bond, and the Surety hereby waives notice of any extension of time, change in, addition to, or other alteration or forbearance.

Whenever the Owner terminates the Contract in accordance with the terms thereof, the Surety shall, within fifteen (15) calendar days after written notice of such termination, notify the Owner in writing of its election to complete the Contract in accordance with its terms and conditions, or notify the Owner that the Surety elects not to complete the Contract. If the Surety fails to provide the written notice within the fifteen

Revised 07.2024

(15) calendar day period, then it will have deemed to have not elected to complete the Contract. Should the Surety elect to complete the Contract, then it shall, within fifteen (15) additional calendar days, following written notice of such election, obtain a bid or bids for submission to Owner for completing the Contract in accordance with its terms and conditions. The Surety shall arrange for a contract between bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs, attorneys fees of the Owner and damages for which the Surety shall be liable hereunder, the amount set forth in the first paragraph hereof. In the event of termination, the Surety may not engage the Principal to complete the Contract, without prior written consent of the Owner, which consent may be withheld in the Owner's sole discretion. If the Surety elects to complete the Contract, then it shall be entitled to receive the balance of the Contract price, less i) any amounts paid by the Owner to the Principal; ii) costs incurred by the Owner in correcting the defective work; iii) any additional legal, design professional or other costs incurred by the Owner resulting from Principal's default; and iv) any liquidated damages caused by the delayed performance or nonperformance of the Principal. Any progress payments, less retainage, due but not paid at the date of termination shall be paid to the Surety so long as the Surety has agreed to indemnify the Owner for the amount thereof and no other claims have been made to such funds by subcontractors or suppliers in accordance with the Contract or any applicable law. In the event that the Surety elects not to complete the Contract, the Owner may then have work completed by such means and in such manner, as it may deem advisable. The Surety, in such event, shall at all times make available, as work progresses under the Contract between the Owner and new contractor, sufficient funds to pay the cost of completion of the Contract pursuant to the its terms together with the other amounts set forth above, but in no event shall the Surety be responsible for the payment of any sums to the Owner until the Owner has paid in full its total obligation under the terms of the original Contract, plus Change Orders or amendments less deductions and claims chargeable by law or by the Contract, if any, and less the retainage which will be disbursed as provided by the Contract and any applicable law.

Any proceeding, whether legal or equitable, under this Bond, except for claims for payment of labor and material, or copyright or patent infringement, must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

Further, the above named Principal and Surety hereby jointly and severally agree with the Owner that the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such Contract ("claimant"), and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, repairs or machinery, equipment and tools, consumed or used in connection with the construction of such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

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The above-named Principal and Surety hereby jointly and severally agree with the Owner that every claimant, who has not been paid in full at any time up to and including the time of final settlement for the work contracted to be done, file with the Owner, a verified statement of the amount due and unpaid in accordance with Section 38-26-107, C.R.S. Provided, further, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied. The Owner shall not be liable for the payment of any costs, attorney fees, or other expenses of any such legal remedies a claimant may have against the Principal or Surety.

SIGNED this _____ day of _____ 2025.

In the presence of:

WILD AT HEART INVESTMENTS LLC DBA
TALL CONTRACTING & CONSULTING CO.

Terry O'Connell
(Contractor / Principal)

AMERICAN ALTERNATIVE INSURANCE CORPORATION

Douglas J. Rothery
(Surety) Douglas J. Rothery, Attorney-in-Fact

(Accompany this Bond with Attorney in-fact's authority from the Surety to execute the Bond, certified to include the date of the Bond.)

APPROVED FOR THE OWNER:

DocuSigned by:

Brent Soderlin

BRENT SODERLIN

DIRECTOR OF PUBLIC WORKS AND UTILITIES

Revised 07.2024

CERTIFIED COPY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the AMERICAN ALTERNATIVE INSURANCE CORPORATION, a corporation organized and existing by virtue of the laws of the State of Delaware ("Corporation") with offices at 555 College Road East, Princeton, N.J. 08543, has made, constituted and appointed, and by these presents, does make, constitute and appoint:

Douglas J. Rothey; Cynthia M. Burnett; Kim Payton; Wesley J. Butorac; and Zach Rothey

its true and lawful Attorneys-in-Fact, at Princeton, in the State of New Jersey, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety or Co-surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate said Company for any portion of the penal sum thereof in excess of the sum of **One Hundred Million Dollars (\$100,000,000)**. Such bonds and undertakings for said purposes, when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary. This appointment is made under and by authority of a certain Resolution adopted at a meeting of the Board of Directors of said Company duly held on the 27th day of August, 1975, a copy of which appears below.

IN WITNESS WHEREOF, the AMERICAN ALTERNATIVE INSURANCE CORPORATION has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officers this 24th day of September, 2021.



By:

Michael G. Kerner
Michael G. Kerner
President

Attest:

Ignacio Rivera
Ignacio Rivera
Deputy General Counsel & Secretary

STATE OF NEW JERSEY, COUNTY OF SOMERSET

The foregoing instrument was acknowledged before me by means of online notarization this 24th day of September, 2021, by Michael G. Kerner and Ignacio Rivera, who are personally known to me.



Jillian Sanfilippo
Jillian Sanfilippo, Notary Public
State of New Jersey
My Commission Expires February 8, 2026

SECRETARY'S CERTIFICATE

The undersigned, Ignacio Rivera, hereby certifies:

1. That the undersigned is Secretary of American Alternative Insurance Corporation, a corporation of the State of Delaware;
2. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of said Corporation on the day of its date, and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with said original power of attorney, and that the same is a true and correct copy of said original power of attorney and of the whole thereof;
3. That the original resolution of which the following is a copy was duly adopted at, and recorded in the minutes of, a regular meeting of the Board of Directors of said Corporation duly held on August 4, 1998, and has not since been revoked, amended or modified.

RESOLVED, that each of the following officers of this Corporation, namely, the President, the Executive Vice President, the Senior Vice Presidents, and the Vice Presidents, be, and they hereby are, authorized, from time to time in their discretion, to appoint such agent or agents or attorney or attorneys-in-fact as deemed by them necessary or desirable for the purpose of carrying on this Corporation's business, and to empower such agent or agents or attorney or attorneys-in-fact to execute and deliver, in this Corporation's name and on its behalf, and under its seal or otherwise, surety bonds, surety undertakings or surety contracts made by this Corporation as surety thereon.

RESOLVED, that the signature of any authorized officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney and revocation of any power of attorney or certificate of either given for the execution of any surety bond, surety undertaking, or surety contract, such signature and seal, when so used being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed.

FURTHER RESOLVED, that any prior appointments by the Corporation of MGAs are, in all respects, hereby ratified, confirmed and approved.

FURTHER RESOLVED, that the Secretary or any Assistant Secretary of this Corporation is hereby authorized to certify and deliver to any person to whom such certification and delivery may be deemed necessary and desirable in the opinion of such Secretary or Assistant Secretary, a true copy of the foregoing resolution.

4. The undersigned has compared the foregoing copies of said original resolutions as so recorded, and they are the same true and correct copies of said original resolutions as so recorded and of the whole thereof.

Witness the hand of the undersigned and the seal of said Corporation this ____ day of ____ 20 25.



AMERICAN ALTERNATIVE INSURANCE CORPORATION

Ignacio Rivera
Ignacio Rivera
Deputy General Counsel & Secretary
54 of 73

TRS-1001-1



Surescape Insurance Services
7800 S. Elati Street, Suite 100
Littleton, CO 80120

(303) 225-8030 Phone
(303) 225-8034 Fax



April 29, 2025

City of Littleton
2255 West Berry Ave
Littleton, Colorado 80120

Re: Tall Contracting & Consulting Co.

City Project No.: 21-39
Project Name: Mineral Mobility East Improvements Phase 1 Construction
Contract Amount: \$2,375,653.10
Performance and Payment Bond No.: S7A2SU0005662

The Performance and Payment Bonds covering the above-captioned project were executed by this agency, through American Alternative Insurance Corporation, on April 29, 2025.

We hereby authorize the City of Littleton to date all bonds and Powers of Attorney to coincide with the date of the contract.

If you should have any additional questions or concerns, please do not hesitate to give me a call at (303) 225-8030.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Douglas J. Rothey".

Douglas J. Rothey
President



NOTICE TO PROCEED
[Project Name and Number]

Date: _____

TO: **[Type Contractor Name]**
[Type Contractor Address]

You are hereby authorized to proceed on this date, **[Date]** with the work covered in the contract documents titled **[Project Name and Number]**. Work must commence within **[Number of Days in which construction must commence]** days of acceptance of this Notice to Proceed.

OWNER, CITY OF LITTLETON

By: _____ Title: _____

CONTRACTOR ACCEPTANCE OF NOTICE TO PROCEED

By: _____
this _____ day of _____, 20____.
Title: _____

CONTRACTOR'S RECEIPT FOR FINAL PAYMENT

[Project Name and Number]

Date: _____

TO: [Type Contractor Name]
[Type Contractor Address]

The undersigned has accepted the City of Littleton's Check No. _____ dated _____, 20 _____ in the amount of _____ Dollars (\$ _____), as final payment of all sums due for work done under the Contract Documents titled **[Project Name and Number]**, as amended, and as complete performance by the Contractor of all obligations to be performed by it pursuant thereto. The Contractor acknowledges and agree that no future claims for additional payments shall be made.

CONTRACTOR

By: _____ Title: _____

Exhibit E

Drawings and Specifications

Exhibit F

Special Conditions

Exhibit G

FHWA-1273 – Revised October 23, 2023

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 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.

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/WHDL/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 contractor). "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.