

This First Amendment to the Design and Construction Contract (this "Amendment") is made, entered into and effective as of December 21, 2017 (the "Amendment Date"), between:

- (1) Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware (the "Developer"); and
- (2) Kiewit Infrastructure Co., a corporation incorporated under the laws of the State of Delaware (the "Construction Contractor").

The Developer and the Construction Contractor are hereinafter referred to collectively as the "Parties", and "Party" means either the Developer or the Construction Contractor.

RECITALS

Whereas:

- (A) The Developer and the Construction Contractor entered into the Design and Construction Contract for the Central 70 Project, dated as of November 21, 2017 (the "Construction Contract"), in connection with the design, construction, and operation and maintenance during construction of a portion of the I-70 East corridor in Greater Denver, Colorado as more fully described in the Construction Contract.
- (B) In connection with the achievement of Financial Close, the Construction Contract contemplates that the Parties execute a Construction Contract Amendment adjusting certain terms of the Construction Contract, and on such basis the Parties have agreed to the terms of this Amendment for purposes of adjusting such terms and for making such other amendments as they have mutually agreed.

Now, therefore, in consideration of their mutual undertakings and agreements hereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties undertake and agree as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. Terms used but not defined herein shall have the respective meanings ascribed to such terms in the Construction Contract.
- 1.2. Part 2, Sections 2 (excluding only Part 2, Section 2.1.3.a) and 42.2 of the Construction Contract are incorporated by reference as if set forth herein.

2. AMENDMENTS

In accordance with Part 2, Section 43.1 of the Construction Contract, with effect on and from the Financial Close Date the Construction Contract shall be amended as provided in this Section 2.

2.1. Amendments to Delay Liquidated Damages

Part 1, Section 8.2 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

"8.2 Subject to Part 1, Article 8.6:

- 8.2.1 If the Construction Contractor fails to achieve a Payment Milestone or Substantial Completion by the applicable target date set forth in Table 8.2.1 below, then the Construction Contractor shall pay to the Developer Delay Liquidated Damages at the daily rate set forth in Table 8.2.1 below, for such Payment Milestone or Substantial Completion, as applicable, for each day or part of a day which shall elapse between the applicable target date and the date on which the Milestone Completion Date for such Payment Milestone or the Substantial Completion Date, as applicable, is actually achieved.

Table 8.2.1 – Delay Liquidated Damages (Daily Rates)

Event	Target Date	Delay Liquidated Damages (per day)
Milestone 1	December 9, 2019	\$7000
Milestone 2	November 10, 2020	\$7000
Milestone 3	October 17, 2020	\$7000
Milestone 4	September 26, 2021	\$7000
Substantial Completion	March 25, 2022	\$90,750

8.2.2 In addition to the Delay Liquidated Damages described in Part 1, Article 8.2.1, if the Construction Contractor fails to achieve a Payment Milestone by the applicable target date set forth in Table 8.2.2 below, then the Construction Contractor shall pay to the Developer the lump sum of Delay Liquidated Damages set forth in Table 8.2.2 below for such Payment Milestone on each June 20 and December 21 of each year following such target date until such Payment Milestone is actually achieved.

Table 8.2.2 – Delay Liquidated Damages (Lump Sums)

Event	Target Date	Delay Liquidated Damages (lump sum payable on June 20 and December 21)
Milestone 1	December 9, 2019	\$2,293,200
Milestone 2	November 10, 2020	\$2,293,200
Milestone 3	October 17, 2020	\$0
Milestone 4	September 26, 2021	\$2,293,200

The damages referred to in this Part 1, Article 8.2 are referred to in this Agreement as “**Delay Liquidated Damages**”.

2.2. Amendments to Delay Liquidated Damages Subcap

Part 1, Article 10.1 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

“10.1 Notwithstanding anything else in this Agreement but subject to Part 1, Article 8.2 and Part 1, Article 8.9, the aggregate liability of the Construction Contractor to the Developer in relation to Delay Liquidated Damages will be limited to an amount equal to 4.08% of the Contract Price, as such percentage may be modified in accordance with Part 1, Article 8.13 (the “**Delay Liquidated Damages Subcap**”). For greater certainty, the Delay Liquidated Damages Subcap is a subset of the CC Liability Cap referred to in this Part 1, Article 10.1.

Subject to Part 1, Article 10.2, the maximum aggregate liability of the Construction Contractor under this Agreement, including for default, breach of contract, negligence, any Delay Liquidated Damages, indemnity obligations or otherwise in connection with the CC Work (inclusive of liability under Part 1, Article 8.2), shall not exceed an amount (the “**CC Liability Cap**”) equal to:

10.1.1 with respect to such liabilities arising from the start of the CC Term until and including the Final Acceptance Date, 30% of the Contract Price;

10.1.2 with respect to such liabilities arising from the first Calendar Day after the Final Acceptance Date until the expiration of the Latent Defect Remedy Period, 15% of the Contract Price.”

2.3. Amendments to Letters of Credit

Part 1, Article 11.3.1 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

“11.3.1 on the TIFIA Effective Date, Letters of Credit in an aggregate amount equal to \$35,405,000, which amount shall be modified on the Financial Close Date to an amount equal to \$33,123,750, as such amount may be further modified in accordance with Part 1, Article 8.13;”.

2.4. Amendment to Payment Date

Part 1, Article 12.14 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

“12.14 Subject to Part 1, Article 12.10 and the other rights of the Developer under this Agreement to set-off or withhold payment, no later than the last day of the month in which the Construction Contractor submitted the CC Monthly Payment Application (or if such day is not a Working Day, the preceding Working Day), the Developer will satisfy the amount set forth on the CC Monthly Payment Certificate by way of cash payment.”

2.5. Amendments to Governmental Approvals and Permits

Part 2, Section 8.4.1 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

“8.4.1 The Construction Contractor acknowledges that the Department Provided Approvals were obtained prior to the Agreement Date by CDOT, with the exception of the Central 70 Reevaluation #2, which will be obtained by CDOT on or prior to the date on which the Developer satisfies the NTP2 Conditions and, subject to Part 2, Section 8.4.3.b, shall be maintained by the Enterprises, acting in coordination with CDOT, at their cost and expense (excluding any cost or expense borne by the Construction Contractor pursuant to Part 2, Section 8.4.3.b). The Developer shall use Reasonable Efforts to ensure the Construction Contractor is able to obtain the benefit of any Department Provided Approval required in connection with the CC Work.”

2.6. Amendments to Definitions

In Part A of Annex A (Definitions and Abbreviations) of the Construction Contract:

- a. Intentionally Omitted.
- b. Intentionally Omitted.
- c. The definition of “Baseline Substantial Completion Target Date” is amended by deleting it in its entirety and replacing it with the following:
““Baseline Substantial Completion Target Date” means March 25, 2022.”
- d. The definition of “Construction Contract Amendment” is amended by deleting it in its entirety and replacing it with the following:
““Construction Contract Amendment” means the First Amendment to the Design and Construction Contract dated as of December 21, 2017 among the Developer and the Construction Contractor.”
- e. The definition of “Milestone Completion Target Date” is amended by deleting it in its entirety and replacing it with the following:

“Milestone Completion Target Date”

means each of:

- a. for Milestone 1, December 9, 2019;
- b. for Milestone 2, November 10, 2020;
- c. for Milestone 3, October 17, 2020; and
- d. for Milestone 4, September 26, 2021.”

2.7. Amendments to Schedule 17 (*Environmental Requirements*)

The Construction Contractor hereby acknowledges that it has received a copy of the Project Agreement Amendment, dated as of the date hereof (the “Project Agreement Amendment”), between the Enterprises and the Developer, which Project Agreement Amendment amends certain terms of Schedule 17 (*Environmental Requirements*) to the Project Agreement. Schedule 17 (*Environmental Requirements*) to the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

“This Agreement contains a number of references to Schedule 17 (*Environmental Requirements*). The Developer and the Construction Contractor hereby acknowledge and agree that Schedule 17 (*Environmental Requirements*) to the Project Agreement, as amended by to the Project Agreement Amendment, is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 17 (*Environmental Requirements*) to the Project Agreement, as amended by the Project Agreement Amendment, shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the Construction Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the Construction Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer’s obligations and liabilities under Schedule 17 (*Environmental Requirements*) to the Project Agreement, as amended by the Project Agreement Amendment, to the extent such obligations and liabilities relate to the CC Work (as if the same were expressly referred to herein as obligations and liabilities of the Construction Contractor *mutatis mutandis*).”

2.8. Schedule of Values

Attachment D (*Schedule of Values*) to the Construction Contract is hereby deleted and replaced in its entirety by Exhibit A (*Schedule of Values*) hereto.

2.9. Proposed Payment Schedule

Attachment E (*Proposed Payment Schedule*) to the Construction Contract is hereby deleted and replaced in its entirety by Exhibit B (*Proposed Payment Schedule*) hereto.

3. DOCUMENTS OTHERWISE UNCHANGED

Except as herein provided, the Construction Contract shall remain unchanged and in full force and effect in accordance with its terms. As of the Amendment Date, each reference to the Construction Contract, and references in the Construction Contract to such agreement itself, shall reference the Construction Contract as amended hereby and as the same may be further amended, modified or supplemented from time to time.

4. CHOICE OF LAW

- 4.1. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado, other than any provision thereof that permits or requires the application of the laws of another jurisdiction, and regardless of any other jurisdiction’s choice of law rules. Any provision incorporated herein by reference which purports to negate this provision, in whole or in part, shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense,

or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Amendment, to the extent capable of execution.

- 4.2. Part 2, Sections 37 and 38 of the Construction Contract are incorporated by reference as if set forth herein.

5. BINDING EFFECT; SUCCESSORS AND ASSIGNS

This Amendment shall be binding upon and inure to the benefit of the Developer and the Construction Contractor and each of their respective permitted successors and assigns.

6. SEVERABILITY

- 6.1. Notwithstanding Part 2, Section 2.4.1 of the Construction Contract (as incorporated herein pursuant to Section 1.2 of this Amendment), if any provision (or part of any provision) of this Amendment is ruled invalid (including due to Change in Law) by a court having proper jurisdiction, then the Parties shall:

- a. promptly meet and negotiate a substitute for such provision or part thereof which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and
- b. if necessary or desirable, apply to the court which declared such invalidity for an interpretation of the invalidated provision (or part thereof) to guide the negotiations.

- 6.2. If any provision (or part of any provision) of this Amendment shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such provision (or part thereof) shall not affect the validity, legality and enforceability of any other provision of (or the other part of such provision) or any other documents referred to in this Amendment, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had never been contained herein.

7. COSTS AND EXPENSES OF THE PARTIES

Except as otherwise expressly provided in the Construction Contract, each Party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and performance of this Amendment.

8. COUNTERPARTS

This Amendment may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each of the Parties shall constitute a full and original instrument for all purposes.

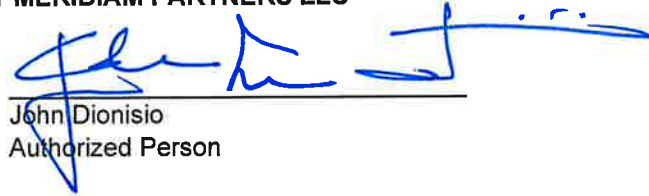
[remainder of page left intentionally blank; signature page follows]

Central 70 Project: First Amendment to the Design and Construction Contract

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first set forth above.

KIEWIT MERIDIAM PARTNERS LLC

By:



John Dionisio
Authorized Person

KIEWIT INFRASTRUCTURE CO.

By:

Craig Briggs
Senior Vice President

Central 70 Project: First Amendment to the Design and Construction Contract

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first set forth above.

KIEWIT MERIDIAM PARTNERS LLC

By: _____
John Dionisio
Authorized Person

KIEWIT INFRASTRUCTURE CO.

By:  _____
Craig Briggs
Senior Vice President

Exhibit A
Schedule of Values

Date	CC Work	Cumulative CC Work
30-Sep-17		
31-Oct-17		
30-Nov-17		
31-Dec-17		
31-Jan-18		
28-Feb-18		
31-Mar-18		
30-Apr-18		
31-May-18		
30-Jun-18		
31-Jul-18		
31-Aug-18		
30-Sep-18		
31-Oct-18		
30-Nov-18		
31-Dec-18		
31-Jan-19		
28-Feb-19		
31-Mar-19		
30-Apr-19		
31-May-19		
30-Jun-19		
31-Jul-19		
31-Aug-19		
30-Sep-19		
31-Oct-19		
30-Nov-19		
31-Dec-19		
31-Jan-20		
29-Feb-20		

31-Mar-20	
30-Apr-20	
31-May-20	
30-Jun-20	
31-Jul-20	
31-Aug-20	
30-Sep-20	
31-Oct-20	
30-Nov-20	
31-Dec-20	
31-Jan-21	
28-Feb-21	
31-Mar-21	
30-Apr-21	
31-May-21	
30-Jun-21	
31-Jul-21	
31-Aug-21	
30-Sep-21	
31-Oct-21	
30-Nov-21	
31-Dec-21	
31-Jan-22	
28-Feb-22	
31-Mar-22	
30-Apr-22	
31-May-22	
30-Jun-22	
31-Jul-22	

Exhibit B
Proposed Payment Schedule

Date	CC Monthly Payment	Cumulative CC Monthly Payments
30-Sep-17		
31-Oct-17		
30-Nov-17		
21-Dec-17		
31-Jan-18		
28-Feb-18		
31-Mar-18		
30-Apr-18		
31-May-18		
30-Jun-18		
31-Jul-18		
31-Aug-18		
30-Sep-18		
31-Oct-18		
30-Nov-18		
31-Dec-18		
31-Jan-19		
28-Feb-19		
31-Mar-19		
30-Apr-19		
31-May-19		
30-Jun-19		
31-Jul-19		
31-Aug-19		
30-Sep-19		
31-Oct-19		
30-Nov-19		
31-Dec-19		
31-Jan-20		
29-Feb-20		

31-Mar-20	
30-Apr-20	
31-May-20	
30-Jun-20	
31-Jul-20	
31-Aug-20	
30-Sep-20	
31-Oct-20	
30-Nov-20	
31-Dec-20	
31-Jan-21	
28-Feb-21	
31-Mar-21	
30-Apr-21	
31-May-21	
30-Jun-21	
31-Jul-21	
31-Aug-21	
30-Sep-21	
31-Oct-21	
30-Nov-21	
31-Dec-21	
31-Jan-22	
28-Feb-22	
31-Mar-22	
30-Apr-22	
31-May-22	
30-Jun-22	
31-Jul-22	

**CENTRAL 70 PROJECT
DESIGN AND CONSTRUCTION CONTRACT**

by and between

KIEWIT MERIDIAM PARTNERS LLC

and

KIEWIT INFRASTRUCTURE CO.

Dated November 21, 2017

PART 1

ARTICLES OF AGREEMENT

Table of Contents

1. DEFINITIONS; INTERPRETATION1

2. THE AGREEMENT1

3. EFFECTIVENESS OF THE AGREEMENT2

4. OBLIGATIONS OF THE PARTIES.....2

5. THE PROJECT AGREEMENT AND PROJECT DOCUMENTS.....3

6. EQUIVALENT PROJECT RELIEF5

7. ENTERPRISE-RELATED PROCEEDINGS12

8. DELAY.....15

9. DEFECTS19

10. LIMITATIONS ON LIABILITY20

11. PERFORMANCE SECURITY23

12. CONTRACT PRICE PAYMENT26

13. INTERFACE WITH O&M CONTRACTOR.....31

14. NOTICES.....31

15. MISCELLANEOUS32

Central 70 Project

This **DESIGN AND CONSTRUCTION CONTRACT** (this “**Agreement**”) is dated as of the 21st day of November, 2017

BETWEEN:

Kiewit Meridiam Partners LLC (the “**Developer**”)

AND:

Kiewit Infrastructure Co. (the “**Construction Contractor**”)

WHEREAS:

A. The Developer has on the date hereof entered into that certain Project Agreement for the Central 70 Project (the “**Project Agreement**”) with the High Performance Transportation Enterprise (“**HPTE**”), a government-owned business within and a division of the Colorado Department of Transportation (“**CDOT**”), and the Colorado Bridge Enterprise (“**BE**”, and together with HPTE, the “**Enterprises**”), a government-owned business within CDOT, for the design, construction, financing, operation and maintenance of a portion of the I-70 East corridor in the greater Denver area (the “**Project**”); and

B. the Developer wishes to contract with the Construction Contractor to perform the CC Work in accordance with the terms of this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. Definitions; Interpretation

1.1 Capitalized terms that are defined in Annex A to Part 2 of this Agreement shall have the meaning set forth in such Annex A whenever used in this Agreement.

1.2 The principles of interpretation and construction set forth in Part 2, Section 2 of this Agreement shall apply in the interpretation of this Part 1 and each other part of or Schedule or Attachment to this Agreement

2. The Agreement

2.1 This Agreement comprises:

2.1.1 this Part 1 (referred to as “**Part 1**” or “**Articles of Agreement**”);

2.1.2 Part 2 (referred to as “**Part 2**”); and

2.1.3 all of the Schedules and Attachments listed in the Table of Contents in Part 2 of this Agreement.

3. Effectiveness of the Agreement

- 3.1 This Agreement shall come into effect when (a) both the Developer and the Construction Contractor have executed this Agreement, and (b) the Project Agreement is in full force and effect, and shall, subject to Part 2, Section 33 continue thereafter until the CC Termination Date (the “CC Term”).
- 3.2 On the execution and delivery of this Agreement, the Construction Contractor shall, and shall cause the Construction Guarantor to, execute and deliver to the Developer the Enterprises’ CC Direct Agreement.

4. Obligations of the Parties

- 4.1 The Construction Contractor shall:
- 4.1.1 carry out and perform the CC Work in accordance with, and subject to the provisions of, this Agreement;
 - 4.1.2 as between the Developer and the Construction Contractor, be responsible for all Construction Contractor-Related Entities in the performance of the CC Work and shall not be relieved of any liability or obligation under this Agreement by the appointment or engagement of any other Construction Contractor-Related Entity; and
 - 4.1.3 comply with and properly perform all of its obligations under the CC Project Documents.

For greater certainty, the Construction Contractor shall have no obligation or responsibility for the Excluded Obligations (hereinafter defined).

- 4.2 Intentionally Omitted.
- 4.3 For greater certainty, but without prejudice to any time relief or compensation available in respect of any Developer Act or pursuant to the provisions of this Part 1 relating to Equivalent Project Relief, any cost overruns with respect to the CC Work shall be the responsibility of the Construction Contractor and not the Developer and any such cost overruns shall not reduce or otherwise affect the limitations on liability referred to or contained in Part 1, Article 10.
- 4.4 The Developer shall pay the Construction Contractor at the times and in the manner specified in Part 1, Article 12.
- 4.5 The Developer shall perform all of its obligations under the Project Agreement (except to the extent that such obligations are to be performed by the Construction Contractor pursuant to this Agreement or by the O&M Contractor pursuant to the O&M Contract), to the extent any failure to do so would or is reasonably likely to adversely affect the Construction Contractor’s rights, or the performance of its obligations, under this

Agreement, and shall at all times have regard to and take account of the obligations of the Construction Contractor under this Agreement in the carrying out of its obligations and the exercise of its rights under such document. The Developer shall use commercially reasonable efforts to enforce its rights under the Project Agreement and, where such rights relate to the CC Work, shall do so in consultation with the Construction Contractor, provided that:

- 4.5.1 where this Agreement includes specific provisions for the exercise or enforcement of rights under the Project Agreement (including, without limitation, the provisions of this Part 1 relating to Equivalent Project Relief) the specific provisions shall apply and this Part 1, Article 4.5 shall not apply; and
 - 4.5.2 nothing in this Agreement shall be construed as a guarantee by the Developer of the performance by the Enterprises of any of their obligations under the Project Agreement.
- 4.6 The Construction Contractor shall have no obligation:
- 4.6.1 to finance or arrange the senior debt, the junior debt (if any) or the equity necessary to finance the Project, except as expressly set forth in this Agreement including providing, or causing the provision of, the security detailed in Part 1, Article 11, executing and delivering the Lenders' CC Direct Agreement, and complying with the obligations set forth in Part 2, Section 6 and Part 2, Section 29;
 - 4.6.2 to carry out any of the O&M Work that does not constitute O&M Work During Construction;
 - 4.6.3 in respect of the Developer's special purpose vehicle management costs;
 - 4.6.4 to ensure that, at the expiration of the Term, any Element complies in whole or in part with the Handback Requirements or
 - 4.6.5 to perform any other obligation which is expressly stated to be the obligation of the Developer under this Agreement.

The obligations referred to in this Part 1, Article 4.6 are referred to in this Agreement as the “**Excluded Obligations**”.

5. The Project Agreement and Project Documents

- 5.1 In the event of any conflict between the provisions of Part 1, Articles 5.2 through 5.5, inclusive, and any specific provision of Part 2 or any Schedule or Attachment to this Agreement, the applicable provisions of Part 2 or the applicable Schedule or Attachment shall govern.

- 5.2 Where in the Project Agreement or any relevant CC Project Document any matter is stated to be required to be notified to or submitted to the Enterprises or any other third party, or is stated to be subject to the consent or approval of the Enterprises or any other third party (or any equivalent procedure), then, to the extent that such matter relates to the performance of the CC Work, the Construction Contractor shall not proceed with such matter until the relevant notification, consent or approval has been given by such party or the Developer or the Construction Contractor is otherwise entitled to proceed in accordance with, the Project Agreement or the relevant CC Project Document.
- 5.3 Except as otherwise set forth in Part 2, where, under this Agreement, the Construction Contractor is required to consult with, or obtain the consent or agreement of, the Developer, each party shall, in respect of such consultation or request for consent or agreement, act promptly under the circumstances, including the nature and urgency of the subject matter, and so as to ensure that the other party has a reasonable amount of time in which to consider the outcome of the consultation or the request for consent or agreement and to respond before any relevant deadline in this Agreement, the Project Agreement or any CC Project Document.
- 5.4 The Developer will forward to the Construction Contractor any notice, request or other communication that it receives that relates to the carrying out of the CC Work or would materially impact the ability of the Construction Contractor to perform its obligations under this Agreement, without undue delay, and in any case within three Working Days of receipt by the Developer (except where a different period is specified in Part 2 of this Agreement, or in an Attachment or Schedule to this Agreement).
- 5.5 Subject to the provisions of Part 2, Schedule 9 and, where applicable, the prior Approval of the Enterprises in accordance with Part 2, Section 57.1.1.c, if any notice, information, consent, claim, request, response, submission or other material communication (a “**Communication**”) is required or permitted under the terms of this Agreement to be given or made by the Construction Contractor directly to the Enterprises or any other third party, the Construction Contractor shall provide the Developer a copy of the same prior to giving or making the Communication to the Enterprises or such third party, to allow Developer reasonable time to review such Communication. In any event, the Construction Contractor shall provide a copy of such Communication not less than three Working Days prior to giving or making the Communication to the Enterprises or such third party. If any Communication is required or permitted under the terms of this Agreement to be given or made by the Construction Contractor to the Developer, in respect of which a corresponding Communication must be given by the Developer to the Enterprises or any other third party under the Project Agreement or any CC Project Document, the Construction Contractor shall:
- 5.5.1 provide such Communication not less than four Working Days prior to the time by which the Developer is required under the Project Agreement or the relevant CC Project Document to submit the same, unless otherwise agreed in writing by the Developer, acting reasonably, or as specifically set forth in this Agreement;
or

- 5.5.2 upon written request from the Developer, submit the Communication directly to the Enterprises or other third party.
- 5.6 The Construction Contractor shall (in addition to any other specific requirements related to the provision of information and documentation in this Agreement) promptly provide to the Developer all information and material documentation relating to the CC Work, the Project and/or the operation of this Agreement:
- 5.6.1 which it receives from any governmental authority, the Enterprises, any official, employee or agent of the Enterprises, a utility company or a railway company;
- 5.6.2 which the Construction Contractor sends to the O&M Contractor or any other O&M Contractor-Related Entity; and
- 5.6.3 which the Developer may otherwise reasonably request from time to time.

The Construction Contractor may satisfy its obligations under this Part 1, Article 5.6 by promptly posting such information or material documentation to a data room accessible to the Developer, and the Developer agrees that any information or material documentation posted to such data room shall be deemed to have been delivered to the Developer.

6. Equivalent Project Relief

- 6.1 To the extent that the Construction Contractor has a right, entitlement, remedy or defense under this Agreement in respect of which the Developer has a corresponding right, entitlement, remedy or defense (such corresponding right, entitlement, remedy or defense, the “**Developer Right**”) under the Project Agreement, the Construction Contractor shall be entitled to receive the benefit of such Developer Right in accordance with and subject to the provisions of this Part 1, Article 6 including, without limitation, the benefit of:
- 6.1.1 any contribution, indemnification, compensation, damages or other additional payment of any kind to the extent the Developer is entitled to such contribution, indemnification, compensation, damages or other additional payment of any kind under the Project Agreement;
- 6.1.2 any other relief (including, without limitation, any extension of time) from the performance of its obligations under, or from termination of, this Agreement to the extent that the Developer is entitled to be relieved from performance of equivalent obligations under, or from termination of, the Project Agreement (including, for the avoidance of doubt, any relief to which the Developer may be entitled as a result of a Supervening Event);
- 6.1.3 any entitlement of the Construction Contractor under this Agreement in respect of which any provision of this Agreement states that:

- 6.1.3.1 this Part 1, Article 6 or the provisions generally relating to Equivalent Project Relief shall apply; or
- 6.1.3.2 the Construction Contractor may make an Equivalent Claim or issue an Equivalent Claim Notice;
- 6.1.4 any certificate, consent or approval granted under this Agreement, the Project Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to the CC Work, including any entitlement of the Developer to request or apply for such certificate, consent or approval from the Enterprises, or any other person under this Agreement or the Project Agreement; and
- 6.1.5 any benefit arising out of any Change Order or Directive Letter issued by the Enterprises pursuant to Schedule 24 to the Project Agreement in respect of the Project,

but excluding, for greater certainty, (a) any payments made by the Enterprises to the Developer in respect of the Project Debt or any other obligation of the Developer under the Financing Agreements, except to the extent that the Developer has received compensation in respect of such amounts by way of Delay Liquidated Damages paid by the Construction Contractor to the Developer and which the Developer is required, pursuant to Part 1, Article 8.8, to reimburse the Construction Contractor therefor from payment received from the Enterprises; (b) any payments made by the Enterprises to the Developer in respect of Milestone Payments or the Substantial Completion Payment, except to the extent that such payments, or a portion thereof, are being used to fund payments to the Construction Contractor; (c) any payments made by the Enterprises to the Developer in respect of Performance Payments; and (d) any other payments made by the Enterprises to the Developer in respect of amounts specifically claimed by the Developer (and for certainty not corresponding to amounts claimed by the Construction Contractor) in respect of costs, expenses or liabilities incurred by the Developer. The Developer Rights under the Project Agreement, when and to the extent such Developer Rights are exercised for the Construction Contractor's benefit, are referred to in this Agreement as "**Equivalent Project Relief**".

- 6.2 If an event or circumstance occurs which gives rise to an entitlement on the part of the Construction Contractor to claim or receive the benefit of any Equivalent Project Relief, the Construction Contractor may upon the occurrence of such event or circumstance give notice (an "**Equivalent Claim Notice**") of the same to the Developer. Such Equivalent Claim Notice shall include full details of the relevant event or circumstance, to the extent reasonably available at the time such Equivalent Claim Notice is submitted and having regard to the formal requirements set forth in this Agreement and the Project Agreement, and such supporting documentation and information as the Developer may reasonably require.
- 6.3 The Construction Contractor shall provide the relevant Equivalent Claim Notice to the Developer as soon as reasonably practicable after it becomes aware of the fact that an

event or circumstance gives rise to a claim for Equivalent Project Relief (an “**Equivalent Claim**”) (having regard to any time limit for submission of such Equivalent Claim by the Developer to the Enterprises under the Project Agreement).

6.4 If the Construction Contractor submits an Equivalent Claim Notice to the Developer, then, subject to the provisions of Part 1, Article 6.13:

6.4.1 the Developer shall, promptly following receipt of such Equivalent Claim Notice, submit to the Enterprises an Equivalent Claim reflecting the Construction Contractor’s Equivalent Claim Notice;

6.4.2 the Construction Contractor shall provide such additional details and/or information as may be reasonably requested by the Developer or by the Enterprises through the Developer in relation to the Equivalent Claim;

6.4.3 the Developer shall, at its option, either:

6.4.3.1 subject to Part 1, Article 7.4, use its reasonable commercial efforts to pursue the Equivalent Claim with the Enterprises, provided that the Construction Contractor shall: (i) provide all assistance which the Developer acting reasonably considers necessary to substantiate any Equivalent Claim, including the collection of information and details relating to the relevant Equivalent Claim and the making available of personnel to assist the Developer in the pursuit of the Equivalent Claim; and (ii) keep the Developer informed at all times (including providing copies of any documentation reasonably requested) of any matter relevant to the pursuit of the Equivalent Claim of which the Construction Contractor becomes aware; or

6.4.3.2 subject to Part 2, Section 57.1.1.c and Section 6 of Schedule 25 (*Dispute Resolution Procedure*), elect not to pursue the relevant Equivalent Claim with the Enterprises, in which case the Developer shall, within five Working Days of receipt of the Equivalent Claim Notice (or such other reasonable period, having regard to any time limit for submission of such Equivalent Claim by the Developer to the Enterprises under the Project Agreement), notify the Construction Contractor in writing that it has elected not to pursue such Equivalent Claim, and the Construction Contractor shall be authorized to pursue the Equivalent Claim with the Enterprises in the name of and on behalf of the Developer (in furtherance of which, the Developer shall execute such documents as may be reasonably required to give effect to this provision), provided that the Construction Contractor shall: (i) keep the Developer informed at all times (including providing copies of any documentation reasonably requested) of the progress and outcome of such Equivalent Claim; and (ii) comply with all applicable provisions of the Project Agreement; or

- 6.4.3.3 where the Equivalent Claim is in respect of an amount less than \$5,000,000, inform the Construction Contractor that the Developer does not wish to pursue such Equivalent Claim and that the Construction Contractor shall not be authorized to pursue the Equivalent Claim pursuant to Part 1, Article 6.4.3.2, but that the Construction Contractor shall be entitled to recover from the Developer the full benefit of the Equivalent Project Relief pursuant to the provisions of Part 1, Article 6.13.
- 6.4.4 if the Developer elects to pursue the Equivalent Claim pursuant to Part 1, Article 6.4.3.1:
- 6.4.4.1 the Construction Contractor and any other relevant Construction Contractor-Related Entities shall be entitled (if and to the extent permitted by the Enterprises), and may be required by the Developer, to attend any meetings between the Enterprises and the Developer at which the Equivalent Claim is to be discussed and the Construction Contractor may, at its sole cost and expense, appoint counsel for such purpose;
- 6.4.4.2 the Developer shall consult with the Construction Contractor with respect to the appointment of counsel (other than counsel appointed by the Construction Contractor pursuant to Part 1, Article 6.4.4.1) and other third party advisors, provided that the Developer shall not appoint counsel who are not acknowledged experts in dealing with the subject matter of the Equivalent Claim, but shall otherwise have sole discretion in such appointments after reasonable consultation with the Construction Contractor; and
- 6.4.4.3 the Developer shall not be entitled to settle any Equivalent Claim, or waive any contractual right to an Equivalent Claim if such settlement or waiver would adversely affect any right of the Construction Contractor, without the prior written consent of the Construction Contractor, such consent not to be unreasonably withheld, conditioned or delayed.
- 6.4.5 if the Developer authorizes the Construction Contractor to pursue the Equivalent Claim pursuant to Part 1, Article 6.4.3.2:
- 6.4.5.1 the Developer shall be entitled to attend any meetings between the Enterprises and the Construction Contractor at which the Equivalent Claim is to be discussed and the Developer may, at its sole cost and expense, appoint counsel for such purpose; and
- 6.4.5.2 the Construction Contractor shall not be entitled to settle any Equivalent Claim, or waive any contractual right under the Project

Agreement if such settlement or waiver would adversely affect any right of the Developer, without the prior written consent of the Developer, such consent not to be unreasonably withheld, conditioned or delayed.

- 6.5 The Construction Contractor shall only be entitled to the benefit of any Equivalent Project Relief if and to the extent that the Developer is or becomes entitled to any entitlement or benefit under the Project Agreement as provided in Part 1, Articles 6.1 and 6.6, but in any event to no greater extent than the Developer's entitlement or benefit under the Project Agreement determined pursuant to either:
- 6.5.1 an agreement between the Developer (or the Construction Contractor where the Construction Contractor has been authorized to pursue the Equivalent Claim pursuant to Part 1, Article 6.4.3.2) and the Enterprises effected in accordance with Part 1, Article 6.4.4.3 and subject to the provisions of Part 1, Article 6.6; or
 - 6.5.2 a determination made pursuant to the Project Agreement Dispute Resolution Procedure which is binding upon the Developer and the Enterprises.
- 6.6 Subject to Part 1, Article 6.13, the Construction Contractor shall not be entitled to receive any entitlement or benefit in respect of any Equivalent Project Relief under this Part 1, Article 6 (including without limitation any payment or other compensation) until the Developer has actually received such entitlement or benefit from the Enterprises. In addition, the Construction Contractor's entitlement or the benefit of any Equivalent Project Relief under this Part 1, Article 6 shall:
- 6.6.1 where the agreement or determination referred to in Part 1, Article 6.5 expressly separately identifies the amount, nature or extent of the Developer's entitlement attributable to the Construction Contractor or the CC Work, be the amount, nature or extent so identified; or
 - 6.6.2 where the agreement or determination referred to in Part 1, Article 6.5 does not separately identify the amount, nature or extent of the Developer's entitlement attributable to the Construction Contractor or the CC Work, be proportionate to the extent applicable to the Construction Contractor's rights, benefits or entitlements under this Agreement, it being acknowledged between the Developer and the Construction Contractor that the party(ies) bearing the risks and costs associated with an entitlement shall be entitled to a proportionate amount of the benefit arising therefrom.
- 6.7 If the parties are unable to agree, pursuant to Part 1, Article 6.6.2 on what is a fair and reasonable proportion of such entitlement within 15 Working Days of a written request by either party to agree on the same, either party may refer the matter to the Dispute Resolution Procedure.

- 6.8 Following agreement or determination of the entitlement of the Construction Contractor under Part 1, Article 6.6 or 6.7, as the case may be:
- 6.8.1 where such entitlement consists of relief from performance of obligations, the Construction Contractor shall be relieved from the performance of its obligations under this Agreement to the extent of such entitlement;
 - 6.8.2 where such entitlement consists of an extension of time, the Construction Contractor shall be entitled to a corresponding extension of time under this Agreement; and
 - 6.8.3 where such entitlement consists of a positive adjustment to payments due to the Developer under the Project Agreement or the payment of a lump sum by the Enterprises to the Developer, as the case may be, the Developer shall pay to the Construction Contractor the amount of such entitlement no later than five Working Days, after receipt of the corresponding payment from the Enterprises (and in accordance with the provisions of Part 1, Article 6.6). The Developer shall not pay the Construction Contractor for such entitlement other than on a lump sum or progress basis as the work is performed, without the prior consent of the Construction Contractor, such consent not to be unreasonably withheld, conditioned or delayed.
- 6.9 Pending the determination, agreement or resolution of the Construction Contractor's entitlement to Equivalent Project Relief, the Construction Contractor shall continue to perform its obligations under this Agreement and shall take no steps to enforce any right under this Agreement whether by set-off against sums otherwise payable to the Developer, by commencing proceedings of any kind, by counterclaiming in any proceedings or otherwise howsoever, to the extent that, pursuant to the terms of this Agreement, such right depends upon or is related to the relevant agreement or determination of Equivalent Project Relief. Notwithstanding the foregoing, the parties agree that nothing contained in this Part 1, Article 6.9 will preclude the Construction Contractor from commencing legal proceedings in an applicable state or federal court if such proceedings are necessary to preserve any applicable limitation period.
- 6.10 Following the final determination, agreement or resolution of the Construction Contractor's entitlement to the benefit of any Equivalent Project Relief, the Construction Contractor shall be conclusively deemed to have waived any rights under or in connection with this Agreement in excess of those arising from such determination, agreement or resolution, but without prejudice to the Construction Contractor's rights and remedies with respect to a Developer Act. Accordingly, except as provided in the preceding sentence, the Construction Contractor shall not take any steps, under the Dispute Resolution Procedure or otherwise, to argue that any entitlement of the Construction Contractor under Part 1, Article 6.1 should be resolved other than by reference to the resolution of the Construction Contractor's entitlement to the benefit of any Equivalent Project Relief and the Construction Contractor hereby waives any right to do so.

6.11 If, in relation to any Equivalent Project Relief, the Developer fails to comply with its obligations under this Agreement, including, without limitation, failure to comply with Part 1, Article 6.12, and as a consequence of such failure the entitlement of the Construction Contractor is likely to be reduced or lost, then, unless such failure was caused by any act or omission by the Enterprises, any person for whom the Enterprises is responsible, the Construction Contractor, any other Construction Contractor-Related Entity, the O&M Contractor or any other O&M Contractor-Related Entity, the Construction Contractor may give notice to the Developer specifying the failure and the likely reduction in or loss of the entitlement of the Construction Contractor and requiring the Developer to remedy the relevant failure.

6.12 If the Developer fails:

6.12.1 to remedy such failure within 15 Working Days of the date of receipt of notice pursuant to Part 1, Article 6.11;

6.12.2 to provide the Construction Contractor with proposals for remedying such failure which are acceptable to the Construction Contractor, acting reasonably, within 15 Working Days of the date of receipt of notice pursuant to Part 1, Article 6.11 (and any disputes relating to any such determination by the Construction Contractor shall be resolved pursuant to the Dispute Resolution Procedure); or

6.12.3 to fulfill the terms of an acceptable proposal provided to the Construction Contractor in accordance with Part 1, Article 6.12.2,

then the Construction Contractor may serve a further notice upon the Developer that the Construction Contractor is no longer bound by the provisions of Part 1, Articles 6.4 to 6.10 in relation to the entitlement concerned and the provisions of Part 1, Article 6.13 shall apply.

6.13 If:

6.13.1 the provisions of Part 1, Articles 6.4 to 6.10 are disapplied in accordance with Part 1, Article 6.12; or

6.13.2 the Developer has elected not to proceed with an Equivalent Claim pursuant to Part 1, Article 6.4.3.3,

then the Construction Contractor shall be entitled to recover from the Developer the full benefit of the Equivalent Project Relief it would have been entitled to claim as if the Developer had succeeded in obtaining the full amount of the claim from the Enterprises under the Project Agreement. The Construction Contractor shall have no right or recourse whatsoever directly to the Enterprises and shall bring no claim whatsoever against the Enterprises in respect of the benefit of such entitlement and its rights and remedies in respect of such entitlement shall be limited to the right to recover from the Developer

under this Part 1, Article 6.13. If the parties are unable to agree upon the nature or amount of such entitlement within 15 Working Days of a written request by either party to agree on the same, either party may refer the matter to the Dispute Resolution Procedure.

- 6.14 Subject to Part 1, Article 6.15, the provisions of this Part 1, Article 6 set forth the sole and exclusive rights and remedies of the Construction Contractor in relation to the entitlements referred to in Part 1, Article 6.1 and the Construction Contractor shall not be entitled to any other right or remedy of any kind whatsoever (whether in contract, tort, breach of statutory duty or under any other theory of law or equity) in respect of the same.
- 6.15 The provisions of Part 1, Articles 6.1 to 6.14, inclusive, are without prejudice to the rights and remedies available to the Construction Contractor in respect of any Developer Act.

7. Enterprise-Related Proceedings

- 7.1 This Part 1, Article 7 applies where the Enterprises assert or exercise any right against the Developer under or in connection with the Project Agreement, in regard to any matter in respect of which the Developer asserts or exercises a right against the Construction Contractor under or in connection with this Agreement, or to the extent that such right is related to the CC Work or to the rights or obligations of the Construction Contractor under this Agreement, including, without limitation, reductions in or deductions from payments under the Project Agreement, claims for indemnification and claims for damages for breach of such agreement (an assertion or exercise of such rights by the Enterprises being referred to in this Part 1, Article 7 as an “**Enterprise Claim**”).
- 7.2 If an Enterprise Claim is made:
- 7.2.1 the Developer shall promptly notify the Construction Contractor of such Enterprise Claim and use commercially reasonable efforts to challenge and defend the Enterprise Claim under and in accordance with the Project Agreement and in accordance with the Construction Contractor’s reasonable directions;
- 7.2.2 the Construction Contractor shall prepare and each of the Construction Contractor and the Developer shall endeavour in good faith to agree on a protocol for challenge to, and/or defence of, any Enterprise Claim, which shall conform to the principles set forth in this Part 1, Article 7.2 and shall comply with and be consistent with the provisions of the Project Agreement and the Construction Contractor and the Developer will follow and observe any protocol so agreed;
- 7.2.3 the Developer shall consult with the Construction Contractor regarding any proposal to make any compromise or admission in relation to any Enterprise Claim, and shall not make any such compromise or admission without first

obtaining written consent from the Construction Contractor, such consent not to be unreasonably withheld, conditioned or delayed (and any disputes relating to any such consent shall be resolved pursuant to the Dispute Resolution Procedure) and if the Construction Contractor unreasonably withholds, conditions or delays its consent to any compromise or admission in respect of an Enterprise Claim so that the Developer is required to continue to defend or challenge such Enterprise Claim, then, in addition to the Construction Contractor's obligations under Part 1, Article 7.4, the Construction Contractor shall be liable for and shall indemnify and hold harmless the Developer from and against the value to the Developer of any lost compromise or agreement previously available to the Developer plus additional costs and expenses incurred by the Developer should the defense or challenge to the Enterprise Claim prove unsuccessful, provided always that the Developer shall not be entitled to double recovery;

- 7.2.4 during the course of any dispute in relation to an Enterprise Claim, the Construction Contractor will continue to perform the CC Work (including any CC Work that is the subject of the Enterprise Claim) in a diligent manner and without delay and will be governed by all applicable provisions of this Agreement, and the Developer shall continue to make payments of any amounts not in dispute pursuant to the terms of this Agreement. The Construction Contractor shall keep complete records of extra costs and time incurred in relation to the CC Work subject to such dispute, and shall provide access to such records to the Developer and any person given jurisdiction to resolve such dispute;
- 7.2.5 where the Construction Contractor challenges or defends any Enterprise Claim pursuant to the provisions of Part 1, Article 7.2.8, the Construction Contractor shall consult with the Developer regarding any proposal to make any compromise or admission in relation to any Enterprise Claim, and shall not make any such compromise or admission without first obtaining written consent from the Developer, such consent not to be unreasonably withheld, conditioned or delayed (and any disputes relating to any such consent shall be resolved pursuant to the Dispute Resolution Procedure) and if the Developer unreasonably withholds, conditions or delays its consent to any compromise or admission in respect of an Enterprise Claim, so that the Construction Contractor is required to continue to defend or challenge such Enterprise Claim, then, the Developer shall be liable for and shall indemnify and hold harmless the Construction Contractor from and against the value to the Construction Contractor of any lost compromise or agreement previously available to the Construction Contractor plus additional costs and expenses incurred by the Construction Contractor should the defense or challenge to the Enterprise Claim prove unsuccessful, provided always that the Construction Contractor shall not be entitled to double recovery;

-
- 7.2.6 the Developer and the Construction Contractor shall keep each other informed as to the progress of the relevant Enterprise Claim and shall provide each other with copies of all the documents relating thereto;
- 7.2.7 the Construction Contractor shall, and shall cause each other Construction Contractor-Related Entity to, provide the Developer with such information as is in its control or possession and as the Developer may reasonably require to defend the Enterprise Claim, including, without limitation, providing information and making available relevant personnel (and if the Developer permits the Construction Contractor to challenge or defend an Enterprise Claim on its behalf pursuant to Part 1, Article 7.2.8, the Developer shall, and shall cause the other Developer-Related Entities to, provide such information and make available relevant personnel to the Construction Contractor); and
- 7.2.8 subject to Part 2, Section 57.1.1.c and Section 6 of Schedule 25 (*Dispute Resolution Procedure*), notwithstanding anything else in this Part 1, Article 7.2, the Developer may, on terms to be mutually agreed, permit the Construction Contractor to challenge or defend an Enterprise Claim for and on behalf of and in the name of the Developer.
- 7.3 Subject to the Developer being in compliance with its obligations under Part 1, Article 7.2, any determination or agreement made or reached under the Project Agreement as to the amount, nature and extent of the Developer's liability in relation to any Enterprise Claim shall be binding on the Construction Contractor. For greater certainty, where such liability consists of a negative adjustment to payments due to the Developer under the Project Agreement or the payment of a lump sum by the Developer to the Enterprises, as the case may be, the Construction Contractor shall pay to the Developer the Construction Contractor's proportion of such liability promptly and, in any event, no later than three Working Days prior to the date upon which such amounts are due to be paid by the Developer to the Enterprises under the Project Agreement.
- 7.4 Subject to Part 2, Section 35.6, the Construction Contractor shall bear and discharge on a current basis, and shall indemnify the Developer against all Losses reasonably and properly incurred by the Developer in complying with Part 1, Articles 6 or 7, not including the costs of the Developer's own personnel (but including, without limitation, any out of pocket expenses of such personnel and including, without limitation, costs and expenses of the Enterprises or other persons where the Construction Contractor or the Developer becomes liable to pay the same) arising from operation of Part 1, Articles 6 or 7, except to the extent that:
- 7.4.1 they arise from any Developer Act; or
- 7.4.2 the benefit of an Equivalent Claim or the liability for an Enterprise Claim will be shared by the parties, in which case each party shall bear a fair and reasonable proportion of the related costs and expenses.

8. Delay

8.1 The Construction Contractor shall be entitled to an extension of time in respect of the Project Schedule, including in respect of the Milestone Completion Target Dates, the Baseline Substantial Completion Date, the Final Acceptance Deadline Date, and the CC Longstop Date:

8.1.1 to the extent available pursuant to the provisions of Part 1 relating to Equivalent Project Relief; and

8.1.2 to the extent attributable to a Developer Act, calculated in accordance with Part 1, Article 8.6,

provided, that, notwithstanding any other provision of this Agreement, under no circumstances shall the CC Longstop Date be extended beyond the PA Longstop Date.

2.1. Amendments to Delay Liquidated Damages

Part 1, Section 8.2 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

“8.2 Subject to Part 1, Article 8.6:

8.2.1 If the Construction Contractor fails to achieve a Payment Milestone or Substantial Completion by the applicable target date set forth in Table 8.2.1 below, then the Construction Contractor shall pay to the Developer Delay Liquidated Damages at the daily rate set forth in Table 8.2.1 below, for such Payment Milestone or Substantial Completion, as applicable, for each day or part of a day which shall elapse between the applicable target date and the date on which the Milestone Completion Date for such Payment Milestone or the Substantial Completion Date, as applicable, is actually achieved.

Table 8.2.1 – Delay Liquidated Damages (Daily Rates)

Event	Target Date	Delay Liquidated Damages (per day)
Milestone 1	December 9, 2019	\$7000
Milestone 2	November 10, 2020	\$7000
Milestone 3	October 17, 2020	\$7000
Milestone 4	September 26, 2021	\$7000
Substantial Completion	March 25, 2022	\$90,750

- 8.2.2 In addition to the Delay Liquidated Damages described in Part 1, Article 8.2.1, if the Construction Contractor fails to achieve a Payment Milestone by the applicable target date set forth in Table 8.2.2 below, then the Construction Contractor shall pay to the Developer the lump sum of Delay Liquidated Damages set forth in Table 8.2.2 below for such Payment Milestone on each June 20 and December 21 of each year following such target date until such Payment Milestone is actually achieved.

Table 8.2.2 – Delay Liquidated Damages (Lump Sums)

Event	Target Date	Delay Liquidated Damages (lump sum payable on June 20 and December 21)
Milestone 1	December 9, 2019	\$2,293,200
Milestone 2	November 10, 2020	\$2,293,200
Milestone 3	October 17, 2020	\$0
Milestone 4	September 26, 2021	\$2,293,200

The damages referred to in this Part 1, Article 8.2 are referred to in this Agreement as “**Delay Liquidated Damages**”.

- 8.3 The Developer and the Construction Contractor agree that the Delay Liquidated Damages are payable as liquidated and agreed damages and are not a penalty. The Developer and Construction Contractor agree that the Delay Liquidated Damages represent a reasonable estimate of the potential actual damages, at the time this Agreement was made, that the Developer will suffer as a result of the happening of the specified event, and the Construction Contractor agrees with the Developer that it would be difficult to ascertain, at the time this Agreement was made, the amount of actual damages that would result upon the occurrence of the specified event. The Construction Contractor agrees with the Developer that Delay Liquidated Damages shall be payable whether or not the Developer incurs or mitigates Delay Liquidated Damages, and that the Developer shall not have any obligation to mitigate any such Delay Liquidated Damages. The Construction Contractor agrees with the Developer that the Construction Contractor has taken into account such Delay Liquidated Damages in its pricing of its compensation hereunder, that such Delay Liquidated Damages are integral to the provisions of this Agreement, and that the Developer has relied on such Delay Liquidated Damages in entering into this Agreement.
- 8.4 Without prejudice to the Developer’s rights under Part 2, Section 32, Delay Liquidated Damages shall be the sole and exclusive damages payable by the Construction Contractor in respect of delay, and are in lieu of any damages that may be claimed by the Developer for delay; provided, however that this Part 1, Article 8.4 is without prejudice to any right of the Developer to (a) claim the applicable Delay Liquidated Damages under any Letter of Credit or other performance security provided under Part 1, Article 11, (b) set-off any amounts of Delay Liquidated Damages in accordance with Part 1, Article 8.5, (c) terminate this Agreement pursuant to Part 2, Section 32 and claim the applicable damages and payments for a Construction Contractor Default, or (d) without duplication of any of

the foregoing, claim against the Construction Contractor in respect of any payment deduction incurred by the Developer under Section 3(b) of Schedule 5 to the Project Agreement and Part 1 of Schedule 6 to the Project Agreement.

- 8.5 Delay Liquidated Damages described in Part 1, Article 8.2.1 shall accrue daily and shall be payable monthly on the third to last Working Day of each month during which they are incurred. Delay Liquidated Damages described in Part 1, Article 8.2.2 shall be paid in accordance with Part 1, Article 8.2.2. For the avoidance of doubt, no Delay Liquidated Damages shall be payable by the Construction Contractor pursuant to Part 1, Article 8.2, where a delay is caused by a Developer Act and the Construction Contractor is entitled to an extension of time pursuant to Part 1, Article 8.6. The Developer's rights of set-off under Part 2, Section 44 hereof and Section 5(a) of Part 3 of Schedule 4 (*Payments*) expressly apply to any amounts of Delay Liquidated Damages not timely paid to the Developer hereunder.
- 8.6 If the Construction Contractor becomes aware of any Developer Act which is likely to cause a delay, it shall notify the Developer as soon as reasonably practicable after it becomes aware of the same and the Parties will, within five days of such notification, meet and seek to agree in good faith to the period of time by which the relevant event is reasonably likely to delay the achievement of Substantial Completion, as applicable (the "**Interim Agreement**"). As soon as reasonably practicable after the impact of the Developer Act can be determined with reasonable certainty the Parties will again meet and seek to agree in good faith the actual period of time by which the relevant event delayed the achievement of Substantial Completion (the "**Final Agreement**"). Any dispute as to the anticipated or actual length of delay will be referred to the Dispute Resolution Procedure.

The deadline for the achievement of Substantial Completion shall be extended on an interim basis by the delay caused by the relevant Developer Act in accordance with the Interim Agreement, or as determined pursuant to the Dispute Resolution Procedure. Where the actual impact of the Developer Act varies from the extension agreed in the Interim Agreement, or determined pursuant to the Dispute Resolution Procedure, then as soon as reasonably practicable after the impact of the Developer Act can be determined with reasonable certainty, the deadline for the achievement of Substantial Completion shall be finally adjusted by a period of time equal to the delay caused by the relevant Developer Act in accordance with the Final Agreement, or as determined pursuant to the Dispute Resolution Procedure. To the extent that there is any dispute as to the length of the delay attributable to any Developer Act, the Construction Contractor will be entitled to relief for the undisputed portion of such delay, with the balance to be determined in accordance with the Dispute Resolution Procedure.

- 8.7 If the Construction Contractor is entitled to an extension of time under Part 1, Article 8.6 beyond the corresponding dates in the Project Agreement, the Developer may require the Construction Contractor to accelerate the CC Work, to the extent that it is reasonably practicable, in order to achieve a Payment Milestone by the applicable Milestone Completion Target Date or Substantial Completion by the original Baseline Substantial

Completion Date, as the case may be (in each case, as it was prior to the extension pursuant to Part 1, Article 8.6). Upon request from the Developer, the Construction Contractor shall in a timely manner provide its best estimate of the damages, costs and expenses of such acceleration. If the Developer elects to accelerate the CC Work pursuant to this Part 1, Article 8.7, it shall pay to the Construction Contractor an amount equivalent to the reasonable damages, costs and expenses of the Construction Contractor of accelerating the CC Work in accordance with this Part 1, Article 8.7, such payment to be made as the relevant damages, costs or expenses in respect of the acceleration are incurred, in accordance with a schedule of additional payments to be agreed upon by the Parties, acting reasonably.

8.8 Where:

- 8.8.1 any Supervening Event, or any other event for which the Construction Contractor is responsible under this Agreement, has delayed the achievement of a Payment Milestone or Substantial Completion (a “**Delay Event**”); and
- 8.8.2 the Developer has received or has set-off Delay Liquidated Damages (as calculated and specified in Part 1, Article 8.2) from the Construction Contractor in respect of such Delay Event; and
- 8.8.3 the Developer receives any insurance proceeds under delay in start up insurance or any compensation in respect of Delay Financing Costs or Milestone Payment Delay Costs under the Project Agreement, in respect of such Delay Event (“**Delay Proceeds**”);

then the Developer shall, after deducting from such Delay Proceeds any reasonable out-of-pocket costs incurred or likely to be incurred by the Developer to obtain such Delay Proceeds pursuant to Part 1, Article 8.10, pay any balance of such Delay Proceeds to the Construction Contractor up to the amount of the Delay Liquidated Damages received or set-off by the Developer in respect of such Delay Event.

- 8.9 The amount paid by the Developer to the Construction Contractor under Part 1, Article 8.8 shall reduce commensurately the amount accrued towards the Delay Liquidated Damages Subcap and CC Liability Cap under Part 1, Article 10.
- 8.10 The Developer shall use reasonable efforts, and the Construction Contractor shall provide such assistance as the Developer may reasonably require, to recover any insurance proceeds from the relevant insurer. If the Construction Contractor requires the Developer to commence any legal proceedings to recover any insurance proceeds, the Construction Contractor shall indemnify the Developer against all liabilities, costs, losses and expenses incurred by the Developer arising out of or relating to any such proceedings. To the extent requested by the Construction Contractor and agreed by the Developer, the Developer shall assign any and all recovery rights to the Construction Contractor for the Construction Contractor to pursue on behalf of both Parties. Any recovery shall be allocated consistent with the terms of this Agreement.

- 8.11 Notwithstanding Part 2, Section 44 or Section 5(b) of Part 3 of Schedule 4 (*Payments*), the Construction Contractor shall not be entitled to set-off any liability to the Developer for Delay Liquidated Damages against any liability of the Developer for any amount which is or may become due to the Construction Contractor from the Developer under this Agreement.
- 8.12 Payment of Delay Liquidated Damages is without prejudice to the Construction Contractor's obligation to complete the CC Work. The damages described in Part 1, Article 8.2 shall continue (subject to the limitation in Part 1, Article 10.1) notwithstanding the exercise of any step-in rights or termination (but there shall be no double recovery alongside termination compensation amounts payable under Schedule 7 (*Compensation on Termination*) of this Agreement).
- 8.13 If at the Construction Contractor's request (which the Developer may grant or deny at its sole discretion), the Developer grants an extension of the CC Longstop Date (to which extension the Construction Contractor is not otherwise entitled under this Agreement), the Construction Contractor shall (i) continue to be responsible for Delay Liquidated Damages for failure to achieve Substantial Completion by the Baseline Substantial Completion Target Date until Substantial Completion is achieved (at the same daily rate for up to the number of additional days by which the CC Longstop Date is so extended), (ii) increase the aggregate amount of the Letter(s) of Credit to fully cover such Delay Liquidated Damages that would be payable until the CC Longstop Date (as extended) and (iii) increase the Delay Liquidated Damages Subcap to fully cover such Delay Liquidated Damages that would be payable until the CC Longstop Date (as extended); provided, however, that (1) in no event shall such increase in the aggregate amount of such Letter(s) of Credit exceed the amount of Delay Liquidated Damages that would be payable for the number of additional days by which the CC Longstop Date is so extended, and (2) such increase in the aggregate amount of such Letter(s) of Credit will only be necessary if and to the extent the aggregate amount of the Letter(s) of Credit then in effect is not already sufficient to fully cover the Delay Liquidated Damages that would be payable from the time of such increase until the CC Longstop Date (as so extended).

9. Defects

- 9.1 The Construction Contractor shall comply with its obligations under Part 2, Section 9.4 with respect to the Warranties.
- 9.2 The Construction Contractor shall, in a timely manner, correct, at its expense, all Defects and Latent Defects which are notified to the Construction Contractor or of which it or any other Construction Contractor-Related Entity otherwise has knowledge within the Warranty Period (or within such extended period as is referred to in Part 1, Article 9.3) or the Latent Defect Remedy Period, as applicable. The Construction Contractor shall promptly notify the Developer of any Defect or Latent Defect of which the Construction Contractor or any other Construction Contractor-Related Entity is or becomes aware. If the Construction Contractor does not remedy within a reasonable time any Defect or Latent Defect referred to above, the Developer, acting reasonably, may upon giving 10

Working Days' notice, in its discretion have such remediation work carried out by its own labor forces (including day labor retained by the Developer or the Enterprises) or by a third party contractor, in which event all reasonable costs of and associated with such Defect or such Latent Defect, as applicable, and any remedial or other works required as a result of such Defect or such Latent Defect, as applicable, shall be borne by the Construction Contractor, unless, in the determination of the Developer, it is economically advantageous to carry out such repairs as part of a planned maintenance program, in which case the Construction Contractor will bear the incremental cost of such major maintenance work attributable to such Defects or Latent Defects, as applicable.

- 9.3 If the Construction Contractor is obliged to carry out work to remedy any Defects referred to in Part 1, Article 9.2 during the second year of the Warranty Period, such Warranty Period shall be extended in respect of the work required to be carried out to remedy the relevant Defect and any asset or element of the CC Work affected by the Defect from the date on which the relevant remedial work is completed for an additional one year period. For greater certainty, the additional one year period referred to in this Part 1, Article 9.3 shall only apply once and the Construction Contractor's obligations under Part 1, Article 9.2 shall cease upon the expiry of such additional one year period.
- 9.4 the Developer shall give to the Construction Contractor written notice of any Latent Defect within sixty (60) days following the date the Developer first having determined that a Latent Defect has occurred.
- 9.5 Without relieving the Construction Contractor of any of its primary obligations under this Agreement with respect to Defects or Latent Defects, the Construction Contractor shall comply with its obligations under Part 2, Section 9.4.6.
- 9.6 Without in any way limiting the Construction Contractors' obligations under Part 1, Articles 9.1 to 9.5, the Construction Contractor does not warrant against: (i) the effects of Force Majeure Events or ordinary wear and tear, upon any Element; or (ii) failure of any Element; in each case due to faulty operations or maintenance by the Enterprises, the Developer or the O&M Contractor.
- 9.7 For greater certainty, the sole obligation of the Construction Contractor to remedy Defects and Latent Defects is set forth in this Part 1, Article 9, including Part 1, Article 9.1, which requires the Construction Contractor to comply with its obligations under Part 2, Section 9.4.

10. Limitations on Liability

“10.1 Notwithstanding anything else in this Agreement but subject to Part 1, Article 8.2 and Part 1, Article 8.9, the aggregate liability of the Construction Contractor to the Developer in relation to Delay Liquidated Damages will be limited to an amount equal to 4.08% of the Contract Price, as such percentage may be modified in accordance with Part 1, Article 8.13 (the “**Delay Liquidated Damages Subcap**”). For greater certainty, the Delay Liquidated Damages Subcap is a subset of the CC Liability Cap referred to in this Part 1, Article 10.1.

Subject to Part 1, Article 10.2, the maximum aggregate liability of the Construction Contractor under this Agreement, including for default, breach of contract, negligence, any Delay Liquidated Damages, indemnity obligations or otherwise in connection with the CC Work (inclusive of liability under Part 1, Article 8.2), shall not exceed an amount (the “**CC Liability Cap**”) equal to:

10.1.1 with respect to such liabilities arising from the start of the CC Term until and including the Final Acceptance Date, 30% of the Contract Price;

10.1.2 with respect to such liabilities arising from the first Calendar Day after the Final Acceptance Date until the expiration of the Latent Defect Remedy Period, 15% of the Contract Price.”

10.2 The limitations of liability in Part 1, Article 10.1 shall not apply to, nor shall the calculation thereof include:

10.2.1 any liabilities or obligations to the extent that:

10.2.1.1 the amount thereof is paid from the proceeds of insurance maintained by the Enterprises or the Developer or the proceeds of insurance required to be maintained by the Developer or the Construction Contractor under this Agreement (but excluding any amount above the maximum insured amount required of the Construction Contractor under this Agreement); or

10.2.1.2 the amount is paid by the Construction Contractor and subsequently recovered by the Construction Contractor from any insurance proceeds up to the maximum amount required to be maintained by the Construction Contractor, the O&M Contractor or the Developer under this Agreement or the O&M Contract, as applicable; or

10.2.1.3 the amount is paid by the Construction Contractor and subsequently recovered by the Construction Contractor from the Enterprises or any third party (which excludes any entity providing insurance); or

10.2.1.4 the same would have been recovered through insurance if the Construction Contractor had maintained the coverage required to be maintained by it under this Agreement or if the Construction Contractor had otherwise complied with its obligations under applicable insurance policies and taken commercially reasonable steps to pursue the relevant insurance claim,

- provided that, to the extent that amounts are recoverable by the Construction Contractor through insurance required to be maintained under this Agreement with respect to a liability or obligation of the Construction Contractor to the Developer, but such insurance proceeds have not actually been recovered by the Construction Contractor as at the date that a claim of the Developer is finally determined, the Construction Contractor shall, at the request of the Developer, assign to the Developer all rights to receive such insurance proceeds;
- 10.2.2 liabilities that arise out of third party claims (which for clarity does not include claims from the O&M Contractor, the Enterprises or the Lenders) associated with the CC Work or the performance by the Construction Contractor or any other Construction Contractor-Related Entity of any obligations under this Agreement (including, without limitation, any third party claims for any damage or destruction of property, death or personal injury or third party Intellectual Property);
- 10.2.3 liabilities that arise out of abandonment (other than as a consequence of a Developer Act or exercise by the Construction Contractor of suspension or termination rights in accordance with this Agreement);
- 10.2.4 liabilities that arise out of gross negligence, willful misconduct or fraud, or any fraudulent misrepresentation, of the Construction Contractor or any other Construction Contractor-Related Entity;
- 10.2.5 interest, late charges, fees, transaction fees and charges, penalties and similar charges that the CC Project Documents expressly state are due from the Construction Contractor to the Developer in respect of any failure of the Construction Contractor to pay any amount as and when required by the CC Project Documents;
- 10.2.6 fines and penalties under statute (including, for the avoidance of doubt, Environmental Laws) or any costs reasonably incurred by the Developer in complying with statutory obligations that arise out of any breach by the Construction Contractor or any other Construction Contractor-Related Entity of any applicable laws, regulations, or rules or guidelines having the force of law (including breaches relating to workman's compensation, employment or health and safety laws or regulations); and/or
- 10.2.7 any amount paid to the Developer by the Construction Contractor, to the extent that same is subsequently recovered by the Construction Contractor from the O&M Contractor pursuant to the terms of the Interface Agreement or otherwise from the Developer or any other Developer-Related Entity, or any amount refunded to the Construction Contractor in accordance with Part 1, Article 8.8.
- 10.3 Notwithstanding anything to the contrary in this Agreement, neither party may bring any action against the other party in any way arising out of, or relating directly or indirectly

to, this Agreement, including, without limitation, any action in any way arising out of, or relating directly or indirectly to, any breach of contract or negligence in the performance of its obligations or of any indemnity obligation under this Agreement, after the expiry of the time periods established by C.R.S. Section 13-80-104(2). The limitation period in this Part 1, Article 10.3 shall not, for the purposes of this Agreement, be altered by any amendment or re-enactment of C.R.S. Section 13-80-104(2) or any successor statute.

11. Performance Security

11.1 On the execution and delivery of this Agreement, the Construction Contractor shall cause to be delivered to the Developer the Construction Guarantee in the form attached to this Agreement as Attachment A, pursuant to which the Construction Guarantor shall guarantee all of the obligations of the Construction Contractor under this Agreement.

11.2 On or before the TIFIA Effective Date:

11.2.1 the Construction Contractor shall execute and deliver to the Developer the Lenders' CC Direct Agreement in the form attached to this Agreement as Attachment B; and

11.2.2 the Construction Contractor shall cause the Construction Guarantor to execute and deliver to the Developer the Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.) in the form attached to this Agreement as Attachment F.

11.3 The Construction Contractor shall, on the date set forth in Part 1, Article 11.3.1, and the Construction Contractor may, on the date set forth in Part 1, Article 11.3.2, deliver to the Developer, and thereafter maintain, a letter of credit or multiple letters of credit in substantially the form set forth in Attachment C (Form of Letter of Credit) from an Eligible Financial Institution securing the performance of the obligations of the Construction Contractor under this Agreement (the "**Letters of Credit**") as follows:

11.3.1 on the TIFIA Effective Date, Letters of Credit in an aggregate amount equal to \$35,405,000, which amount shall be modified on the Financial Close Date to an amount equal to \$33,123,750, as such amount may be further modified in accordance with Part 1, Article 8.13;".

11.3.2 on the first Working Day after the Final Acceptance Date, the Construction Contractor may replace the Letter of Credit delivered pursuant to Part 1, Article 11.3.1 by delivery of Letters of Credit in an aggregate amount equal to 2% of the Contract Price, and upon receipt of such replacement Letters of Credit the Developer shall promptly return to the Construction Contractor the Letters of Credit provided by the Construction Contractor pursuant to Part 1, Article 11.3.1;

11.3.3 the Letters of Credit shall be released on the second anniversary of the Final Acceptance Date, provided that if the Warranty Period is extended pursuant to Part 1, Article 9.3 because the Construction Contractor has performed any repair works with respect to the relevant Defect(s) then:

11.3.3.1 the Construction Contractor may replace the Letters of Credit on the second anniversary of the Final Acceptance Date with Letters of Credit in an aggregate amount equal to one hundred and ten percent (110%) of the value of such repair works (or be maintained at 2% of the Contract Price if the value of such repair works equals or exceeds 2% of the Contract Price), and upon receipt of such replacement Letters of Credit the Developer shall promptly return to the Construction Contractor the Letters of Credit provided by the Construction Contractor pursuant to Part 1, Article 11.3.1 or Part 1, Article 11.3.2, as applicable; and

11.3.3.2 be released at the end of the extended Warranty Period.

The Developer and the Collateral Agent shall be co-beneficiaries of any Letter of Credit provided by the Construction Contractor.

11.4 The Developer may draw upon any Letter of Credit upon the occurrence of any Construction Contractor Default and otherwise as expressly provided in this Agreement provided that, in relation to a Construction Contractor Default which is curable, the Developer shall not be entitled to draw upon any Letter of Credit until the expiry of the applicable cure period described in this Agreement and provided further that the Developer shall not draw upon the Letters of Credit in excess of the amounts required (as determined by the Developer, acting reasonably and, for greater certainty any dispute regarding such determination by the Developer shall be dealt with after the applicable draw in accordance with the Dispute Resolution Procedure) to remedy the applicable Construction Contractor Default or as otherwise expressly set forth in this Agreement. Notwithstanding the foregoing sentence, the Developer may draw upon any Letter of Credit immediately upon a failure of the Construction Contractor to pay Delay Liquidated Damages or in the circumstances referred to in Part 1, Articles 11.6.1 and 11.6.2 without waiting for expiry of the applicable cure period. For greater certainty, it will not be a breach of this Agreement for the Developer to draw upon any Letter of Credit in the circumstances set forth in the draw certificate attached to the relevant Letter of Credit. The Construction Contractor acknowledges and consents to the Developer assigning, pledging or otherwise granting a security interest in any Letter of Credit in favour of the Collateral Agent as security for the Developer's obligations under the Financing Documents.

11.5 The Developer may make multiple calls on the Letters of Credit and multiple demands against the Construction Guarantee. In the event of any call on any Letter of Credit, the Construction Contractor shall not be required to replenish the Letter of Credit to the extent drawn. In the event of the Lenders exercising their step-in rights under the

Lenders' CC Direct Agreement (or in the other specific circumstances expressly set forth in the Lenders' CC Direct Agreement), any performance security provided by the Construction Contractor pursuant to this Agreement shall be equally available to the Collateral Agent or its designee or assignee in accordance with the terms of the Lenders' CC Direct Agreement.

11.6 If at any time:

11.6.1 any Letter of Credit required to be maintained hereunder is not renewed by the date that is 15 Working Days before its expiry; or

11.6.2 any Letter of Credit fails to meet the requirements of this Part 1, Article 11 (including, without limitation, in relation to the credit rating of the issuing bank referred to in the definition of Eligible Financial Institution) and the Construction Contractor fails to provide a replacement Letter of Credit which meets the requirements of this Part 1, Article 11 within 20 days,

then the Developer or the Collateral Agent shall be entitled to draw upon the full amount of such Letter of Credit and hold the proceeds as cash security in accordance with the following:

11.6.3 the cash security shall be held as security for the same purpose as the Letter of Credit that such cash security replaces and the Developer and/or the Collateral Agent shall be entitled to withdraw amounts in the Cash Security Account in the same circumstances and in the same amounts that the Developer and/or the Collateral Agent would have been entitled to draw on the Letter of Credit that has been replaced by amounts in the Cash Security Account;

11.6.4 the Developer shall deposit, or cause to be deposited, such proceeds into a segregated interest bearing account in the name of the Developer (the "**Cash Security Account**"), which account shall be subject to a security interest in favor of the Collateral Agent over the rights held by the Developer in the Cash Security Account. The Cash Security Account will be subject to a blocked account agreement (as provided for under the Financing Documents). Any balance (including interest) in the Cash Security Account shall be paid out directly to the Construction Contractor at the same time that the Letter of Credit that such cash security replaces would have been released or would have expired pursuant to Part 1, Article 11.3;

11.6.5 any interest earned on the amounts held in the Cash Security Account shall be deposited in the Cash Security Account; and

11.6.6 in the event that the Construction Contractor at any time delivers an eligible substitute or replacement Letter of Credit which complies with the requirements of this Agreement to the Developer as a replacement for the cash security, the Developer shall immediately release the cash security to the Construction

Contractor, to the full extent (on a dollar for dollar basis) of such replacement or substitute Letter of Credit.

For greater certainty, to the extent that the Developer is holding amounts as cash security pursuant to this Part 1, Article 11.6, the Construction Contractor shall not be considered to be in breach of its obligation to provide a Letter of Credit with respect to the same amounts under Part 1, Article 11.3.

- 11.7 In the event that the Developer obtains funds (the “**Draw Amount**”) as a result of a call on the Letter(s) of Credit contemplated in this Agreement where the Developer called on such Letter(s) of Credit, and it is subsequently determined pursuant to the Dispute Resolution Procedure that such call was in breach of this Agreement, the Developer shall repay such Draw Amount to the Construction Contractor within 10 Working Days of such final determination together with the reasonable cost and any lost interest of the Construction Contractor for which the Developer is determined to be responsible for pursuant to the aforementioned Dispute Resolution Procedure; provided that, such repayment shall be conditional upon (and take place concurrently with) the restoration of such Letter(s) of Credit (if and to the extent such Letter(s) of Credit have not been released by such date in accordance with this Agreement) by a face amount equal to the Draw Amount.

12. Contract Price Payment

- 12.1 The contract price is _____ inclusive of all applicable Taxes and shall not be subject to indexation, but shall be subject to adjustment as set forth in this Agreement (the “**Contract Price**”).
- 12.2 For the purposes of payment, the Contract Price is divided into monthly payments (each, a “**CC Monthly Payment**”) that (except in relation to the initial payment, which shall be in an amount of _____ and paid no later than 5 Working Days after Financial Close and shall not require certification by the Lenders’ Technical Adviser but shall be subject to confirmation by the Lenders’ Technical Adviser that such initial payment shall be applied towards the Project Costs, correspond to the Construction Contractor’s progress as measured against the schedule of values attached as Attachment D (the “**Schedule of Values**”), in accordance with this Part 1, Article 12, such that the sum of the CC Monthly Payments equals the Contract Price. Subject to Part 1, Articles 12.3, 12.5, 12.6, 12.7, 12.8, 12.9, 12.10, and the Pay-if-Paid Provisions, the Developer agrees to make the CC Monthly Payments to the Construction Contractor.
- 12.3 In respect of each calendar month the Construction Contractor will prepare and submit to the Developer, with a copy to the Lenders’ Technical Advisor, a payment application dated as of and delivered on or before the fifth Calendar Day of the following calendar month (the “**CC Monthly Payment Application**”).
- 12.4 The CC Monthly Payment Application submitted in respect of a particular month will contain the following information in respect of such month:

-
- 12.4.1 the past and current percentage completion and value earned of each item of CC Work listed in the Schedule of Values, as compared to the Construction Contractor’s anticipated progress for that month;
- 12.4.2 the amount of the CC Monthly Payment being applied for that month, based on the CC Work performed, provided that the aggregate amount of CC Monthly Payments up to and including such month shall not exceed the amount with respect to such month set forth in Attachment E (the “**Proposed Payment Schedule**”);
- 12.4.3 any amount claimed with respect to CC Change Orders (which amount, for greater certainty, shall not alter the Proposed Payment Schedule and shall be paid in addition to the CC Monthly Payment, subject to the provisions of this Agreement); and
- 12.4.4 the estimated date of the achievement of Substantial Completion.
- 12.5 Subject to Part 1, Article 12.7, where Attachment D, in the columns entitled “Monthly Payments”, contemplates payment of the Construction Contractor’s invoices utilizing Milestone Payments, the Construction Contractor shall be paid out of the relevant Milestone Payment identified for the corresponding invoice date in Attachment D. Subject to the Pay-if-Paid Provisions, upon receipt of the relevant Milestone Payment from the Enterprises, the Developer shall utilize such portion of the Milestone Payment to make payment of Construction Contractor’s approved invoices submitted for the invoice date identified in Attachment D until such time as such Milestone Payment is utilized in full.
- 12.6 Each CC Monthly Payment shall be subject to adjustment by any unpaid Monthly Noncompliance Deductions related to the CC Noncompliance Events and any unpaid Monthly Construction Closure Deductions related to Non-Permitted Construction Closures.
- 12.7 The CC Monthly Payment to be paid using a portion of the Milestone Payment to be paid upon achieving Substantial Completion shall be subject to adjustment by the total amount of the Substantial Completion Deduction Amount in respect of CC Noncompliance Events in accordance with the terms of this Agreement. The Construction Contractor acknowledges that such adjustments to the Milestone Payments are reasonable liquidated damages in order to compensate the Developer for damages it will incur by reason of the Construction Contractor’s failure to comply with the requirements set forth in Part 2, Section 9 to this Agreement. The Construction Contractor further acknowledges that the damages set forth in this Part 1, Article 12.7 would be difficult and impracticable to measure and prove because, among other things, (a) the Project is of a unique nature and no substitute for it is available; (b) the costs of monitoring and oversight prior to increases in the level thereof will be variable and extremely difficult to quantify; (c) the nature and level of increased monitoring and oversight will be variable depending on the circumstances; and (d) the variety of factors that influence use of and demand for the

Project make it difficult to determine causation of the matters that will trigger these damages and to quantify actual damages.

- 12.8 The CC Monthly Payment Application (except with respect to the initial payment referred to in Part 1, Article 12.2 above) shall be accompanied by:
- 12.8.1 a certificate signed by the Construction Contractor that:
- 12.8.1.1 the Construction Contractor has performed the applicable elements of the CC Work required for such CC Monthly Payment in accordance with the terms of this Agreement and attaching reasonable documentary evidence of the performance of the applicable elements of the CC Work sufficient for the Developer and the Lenders' Technical Advisor to reasonably determine that such performance has occurred and such payment is due;
 - 12.8.1.2 all Governmental Approvals necessary as of the time of such certificate for the Construction Contractor to carry out the CC Work have been issued and are in full force and effect (and are not subject to any notice of violation, breach or revocation);
 - 12.8.1.3 (A) each of the CC Insurance Policies is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider, (B) all premiums required to have been paid with respect to the CC Insurance Policies have been paid in full, and (C) to the extent requested by the Developer prior to the date of such certificate, the Construction Contractor shall have provided evidence of such payment of premiums to the Developer;
 - 12.8.1.4 (A) no Construction Contractor Default hereunder and no event of default under any other CC Project Document shall have occurred and be continuing and (B) no event that with the giving of notice or the passage of time or both would constitute a Construction Contractor Default hereunder or an event of default under any other CC Project Document shall have occurred and be continuing; and
 - 12.8.1.5 the Construction Security is in compliance with requirements of this Agreement and is in full force and effect; and
- 12.8.2 lien waivers from the Construction Contractor satisfying the requirements of Section 4(c) of Schedule 5.
- 12.9 To the extent that the Construction Contractor fails to produce any portion of the documentation required pursuant to Part 1, Articles 12.4, 12.5 and 12.8.1, such that the

Developer and the Lenders' Technical Adviser are unable to certify all or a portion of the CC Monthly Payment Application, the Developer and the Lenders' Technical Adviser shall be entitled to withhold certification of that portion of the applicable CC Monthly Payment Application until such time as the relevant documentation and information have been provided and at such time shall issue a CC Monthly Payment Certificate for such amounts in accordance with Part 1, Article 12.12.

12.10 Payments made to the Construction Contractor will be net of any withholding Taxes and other withholdings, which the Developer is permitted to make pursuant to this Construction Contract or otherwise required by Law to deduct before making payment to the Construction Contractor.

12.11 The provisions set forth in this Part 1, Article 12.11 shall collectively be referred to as, the “**Pay-if-Paid Provisions**”.

12.11.1 Unless otherwise expressly stated to the contrary in this Agreement, whenever a provision in this Agreement provides that such provision is subject to the Pay-if-Paid Provisions or the Construction Contractor shall only be entitled to compensation in the event and only to the extent (or words of similar effect) that the Developer actually receives the corresponding compensation under the Project Agreement or the Construction Contract, as the case may be, or that the Construction Contractor's entitlement to compensation shall be conditional upon and only to the extent (or words of similar effect) that the Developer receives the corresponding compensation under the Project Agreement or the Construction Contract, as the case may be, then payment of the amount in question to the Developer will be a strict condition precedent to the obligation of the Developer to make a payment to the Construction Contractor under the relevant provision of this Agreement. The Construction Contractor acknowledges that it is familiar with Section 11, Section 22, Section 33, and Part 1 of Schedule 6 of the Project Agreement and, except as provided otherwise in this Agreement, fully assumes the risk of non-payment by the Enterprises to the Developer for any such compensation owed by the Developer to the Construction Contractor under this Agreement, except where such failure by the Enterprises arises as a consequence of a Developer Act. Except as provided otherwise in this agreement, the Construction Contractor shall have no separate right to claim against the Developer, and the Developer accepts no liability towards the Construction Contractor for any payment obligation of the Developer that is subject to the Pay-if-Paid Provisions.

12.11.2 With respect to any payment owed by the Developer to the Construction Contractor under this Agreement that is subject to these Pay-if-Paid Provisions: (i) the Developer will comply with the requirements of, and enforce against the Enterprises, its rights to payment under the Project Agreement in order to ensure that any corresponding payments owed by the Enterprises under the Project Agreement are paid to the Developer as and when contemplated by the Project Agreement, (ii) the Construction Contractor shall provide the

Developer, along with any request for such payment as required by this Agreement, all necessary certifications, invoices, reports, affidavits and information required to be delivered by the Developer to the Enterprises pursuant to the Project Agreement for the disbursement of the corresponding payment from the Enterprises to the Developer under the Project Agreement, and (iii) any failure of the Developer to pay any such payment to the Construction Contractor shall not constitute a breach or default by the Developer under this Agreement to the extent resulting from the failure by the Enterprises to make the corresponding payment to the Developer under the Project Agreement at the time and in the amounts contemplated by the Project Agreement, and the Construction Contractor fully assumes the risk of non-payment by the Enterprises to the Developer, except where such failure by the Enterprises arises as a consequence of a Developer Default, for any such payment owed by the Developer to the Construction Contractor under this Agreement.

- 12.12 Subject to Part 1, Article 12.9, within 20 Calendar Days of receipt of a CC Monthly Payment Application by the Developer, the Developer will issue to the Construction Contractor a payment certificate, which shall be countersigned by the Lenders' Technical Adviser, (the "**CC Monthly Payment Certificate**") for amounts owing in accordance with this Part 1, Article 12 by the Developer to the Construction Contractor for the CC Work performed in the applicable month.
- 12.13 If the Developer or the Lenders' Technical Adviser disagrees with any amount payable in connection with a CC Monthly Payment Application submitted by the Construction Contractor, then, without prejudice to the Construction Contractor's rights to have the disagreement determined under the Dispute Resolution Procedure, the Developer will without delay:
- 12.13.1 advise the Construction Contractor of the reasons for the disagreement; and
- 12.13.2 issue the CC Monthly Payment Certificate to the Construction Contractor in the amount that the Developer and the Lenders' Technical Adviser determine is correct (which, for greater certainty, may be zero).
- "12.14 Subject to Part 1, Article 12.10 and the other rights of the Developer under this Agreement to set-off or withhold payment, no later than the last day of the month in which the Construction Contractor submitted the CC Monthly Payment Application (or if such day is not a Working Day, the preceding Working Day), the Developer will satisfy the amount set forth on the CC Monthly Payment Certificate by way of cash payment."
- 12.15 Any amount payable under this Agreement and not paid when it becomes due shall bear interest at 2.0% over the Prime Rate, without compounding, from the due date of the amount payable until the date (or dates) of payment.

13. Interface with O&M Contractor

- 13.1 On the execution and delivery of this Agreement, the Construction Contractor shall enter into the Interface Agreement.
- 13.2 Other than with regard to the O&M Contractor and its Subcontractors, in which case the provisions of the Interface Agreement shall control, the Construction Contractor shall:
- 13.2.1 subject to compliance by the Developer and the Subcontractors, as applicable, with (i) the health and safety rules and instructions of the Construction Contractor, and (ii) the work coordination schedule determined by the Construction Contractor, permit the Developer and the other Subcontractors to carry out their work;
 - 13.2.2 fully cooperate with the Developer and the other Subcontractors so as to avoid disruptions and in order to facilitate the timely performance by all parties of their respective obligations under the Project Agreement, the O&M Contract, or Subcontract, as applicable; and
 - 13.2.3 carefully coordinate and interface the CC Work with the work and services carried out or to be carried out by the Developer and the other Subcontractors.
- 13.3 Where the Construction Contractor is liable to make a payment to the Developer (including, without limitation, by way of indemnity), the Construction Contractor shall not be entitled to withhold, reduce or avoid any such payment in reliance only on the fact that the Developer is entitled to recover some or all of such amount from the O&M Contractor.

14. Notices

- 14.1 All notices, consents, approvals or written communications given pursuant to the terms of this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:
- 14.1.1 if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Working Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Working Day;
 - 14.1.2 if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Working Day, during

business hours, upon the commencement of business hours on the next Working Day following confirmation of the transmission; or

- 14.1.3 if delivered by electronic mail during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Working Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Working Day.

- 14.2 Notices required to be given to the Developer shall be addressed as follows:

Kiewit Meridiam Partners LLC
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112
Attention: Christopher Hodgkins
Email: I70E@meridiam.com
Telephone No.: (212) 798-8686

- 14.3 Notices required to be given to the Construction Contractor shall be addressed as follows:

Kiewit Infrastructure Co.
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112
Attention: Craig Briggs
Email: craig.briggs@kiewit.com
Telephone No.: (303) 325-0304


15. Miscellaneous

- 15.1 The completion of the CC Work shall be concurrent with and accomplished in the manner set forth respecting inspections and completions under the Project Agreement, with the effect that each of the Milestone Completion Dates, Substantial Completion and Final Acceptance will be deemed to have occurred when the Enterprises determine the same to have occurred in accordance with the Project Agreement.
- 15.2 Without limiting and in addition to all other obligations to mitigate required of the Parties under this Agreement, the Interface Agreement or the Lenders' CC Direct Agreement, or at law or in equity, in all cases where a party is entitled to receive from the other party (including, without limitation, in the case of the Construction Contractor, pursuant to the provisions relating to Equivalent Project Relief but specifically excluding Delay Liquidated Damages) any compensation, losses or an extension of time or other relief, the party so entitled will use all commercially reasonable efforts and all due diligence to mitigate and reduce the amount required to be paid by the other party and the length of the extension of time or the extent of other relief.

[The remainder of this page intentionally left blank; signature page immediately follows.]

IN WITNESS whereof this Agreement has been executed by the parties and delivered on the date first stated above.

KIEWIT MERIDIAM PARTNERS LLC

By: 
Name: John Dionisio
Title: Authorized Person

KIEWIT INFRASTRUCTURE CO.

By: _____
Name: Craig Briggs
Title: Senior Vice President

IN WITNESS whereof this Agreement has been executed by the parties and delivered on the date first stated above.

KIEWIT MERIDIAM PARTNERS LLC

By: _____
Name: John Dionisio
Title: Authorized Person

KIEWIT INFRASTRUCTURE CO.

By:  _____
Name: Craig Briggs
Title: Senior Vice President



Design and Construction Contract for the Central 70 Project

Part 2

**KIEWIT MERIDIAM PARTNERS LLC,
and
KIEWIT INFRASTRUCTURE CO.**

Dated November 21, 2017

Table of Contents

PART A:	DEFINITIONS AND ABBREVIATIONS; INTERPRETATION; PROJECT INFORMATION	1
1.	DEFINITIONS AND ABBREVIATIONS.....	1
2.	INTERPRETATION OF THIS AGREEMENT.....	1
2.1.	Interpretation of Certain Terms, Phrases and Language.....	1
2.2.	Terminology for Agreements and Assents.....	3
2.3.	Indexation of Amounts	5
2.4.	Resolution of Conflicts Among, and Prioritization of, Terms.....	5
3.	PROJECT INFORMATION, RELIANCE AND DILIGENCE.....	7
3.1.	Limited Reliance on Project Information	7
3.2.	Responsibility for Independent Diligence.....	8
3.3.	Limitations on Site Condition Claims	9
3.4.	Residual Developer Liability.....	9
PART B:	REPRESENTATIONS AND WARRANTIES; FINANCIAL CLOSE; GRANT OF RIGHTS.....	10
4.	INTENTIONALLY OMITTED.....	10
5.	REPRESENTATIONS AND WARRANTIES	10
5.1.	Representations and Warranties	10
5.2.	Mutual Reliance	10
5.3.	Notice of Untrue, Incorrect or Misleading Representations and Warranties.....	10
5.4.	Special Remedies for Mutual Breach of Warranty.....	10
5.5.	Survival of Representations and Warranties	11
6.	FINANCIAL CLOSE	11
6.1.	Financial Close Assistance	11
6.2.	Bring-Down of Construction Contractor and Developer Representation and Warranties at Financial Close	12
6.3.	Failure to Achieve Financial Close.....	12
6.4.	Construction Contract Amendment.....	12
7.	PROJECT LICENSE	12
7.1.	Intentionally Omitted	12
7.2.	Construction Contractor's Project License.....	12
7.3.	Ownership and Liability	14
PART C:	OBLIGATIONS TO DESIGN, CONSTRUCT, OPERATE AND MAINTAIN THE PROJECT	16
8.	CONSTRUCTION CONTRACTOR'S PROJECT OBLIGATIONS	16
8.1.	General Undertakings	16
8.2.	Assumption of Risk and Responsibility	17

8.3.	Federal and State Requirements	18
8.4.	Governmental Approvals and Permits	20
8.5.	Third Party Agreements	23
8.6.	Compliance with Project Standards	24
9.	CONSTRUCTION CONTRACTOR’S CONSTRUCTION PERIOD OBLIGATIONS	25
9.1.	Obligation to Perform Construction Work; Restrictions on Construction Work	25
9.2.	Schedule Management, Completion and Commissioning	25
9.3.	Payment and Performance Security	26
9.4.	Warranties and Liability for Defects	28
9.5.	Assignment of Certain Causes of Action	30
10.	INTENTIONALLY OMITTED	30
11.	INTENTIONALLY OMITTED	30
12.	COOPERATION AND COORDINATION WITH RELATED TRANSPORTATION FACILITIES, ON LIMITED O&M WORK SEGMENTS AND WITH OTHER DEPARTMENT PROJECTS	30
12.1.	Duty to Cooperate and Coordinate	30
12.2.	Compatibility and Integration with Related Transportation Facilities	31
12.3.	Procurement of Other Department Projects	31
12.4.	Enterprises’ Assistance	32
12.5.	Traffic Management	32
13.	INTENTIONALLY OMITTED	33
PART D:	CHANGES AND SUPERVENING EVENTS	34
14.	CHANGE PROCEDURE	34
14.1.	Right to Initiate Changes	34
14.2.	Directive Letters	34
15.	SUPERVENING EVENTS	34
15.1.	Submission of Supervening Event Notices and Submissions	34
15.2.	Limitations on Supervening Event Submissions	36
15.3.	Resolution	37
15.4.	Payment of Change in Costs	39
15.5.	Intentionally Omitted	39
15.6.	Intentionally Omitted	39
15.7.	Compensation Exclusions and Limitations	39
15.8.	Special Provisions for Force Majeure Events	41
15.9.	Developer Acts; Certain Developer Changes	42
PART E:	KEY PERSONNEL, SUBCONTRACTORS AND WORKFORCE	43
16.	PERSONNEL	43
16.1.	Construction Contractor’s Key Personnel Obligations	43

16.2.	Removal or Replacement of Key Personnel	43
16.3.	Construction Contractor’s Personnel Qualifications	43
17.	SUBCONTRACTING REQUIREMENTS	43
17.1.	Subcontracting Terms and Requirements	43
17.2.	Self-Performance	44
17.3.	Subcontracting with Affiliates	44
17.4.	Relationship with Subcontractors.....	44
17.5.	Prompt Payment of Subcontractors	45
17.6.	Notices Regarding the O&M Work During Construction Subcontract	46
PART F:	PROJECT MANAGEMENT	47
18.	DELEGATION OF AUTHORITY	47
18.1.	Intentionally Omitted	47
18.2.	Use of Representatives.....	47
PART G:	PUBLIC OVERSIGHT	49
19.	RECORD KEEPING AND OVERSIGHT	49
19.1.	Project Records.....	49
19.2.	Financial Statements	51
19.3.	Enterprise Board Meeting Attendance	51
20.	COLORADO OPEN RECORDS ACT	51
21.	INSPECTIONS AND AUDITS	52
21.1.	Site Inspections and Annual Survey and Audit Rights.....	52
21.2.	Right to Conduct Physically Intrusive Inspections	54
21.3.	Increased Oversight.....	55
PART H:	PERFORMANCE MANAGEMENT	57
22.	PERFORMANCE-BASED PAYMENT DEDUCTIONS AND PERSISTENT BREACH....	57
22.1.	Performance-based Payment Deductions	57
22.2.	Persistent Breach by Construction Contractor.....	57
23.	SAFETY COMPLIANCE, SUSPENSION OF THE WORK AND PUBLIC SECTOR RIGHTS TO INTERVENE	58
23.1.	Safety Compliance	58
23.2.	Refusal of Access	58
23.3.	Suspension of Work.....	58
23.4.	Enterprises’ Self-Help	59
23.5.	Developer Self-Help.....	59
PART I:	INDEMNIFICATION AND INSURANCE	61
24.	INDEMNIFICATION AND NOTICE AND DEFENSE OF CLAIMS.....	61
24.1.	Developer Indemnity	61

24.2.	Construction Contractor Indemnity	61
24.3.	Exclusions from Construction Contractor Indemnity.....	62
24.4.	Claims by Employees.....	62
24.5.	Notice of Claims and Tender of Defense.....	63
24.6.	Defense of Claims.....	63
25.	INSURANCE	65
25.1.	Obligation to Obtain and Maintain Insurance.....	65
25.2.	General Insurance Requirements.....	65
25.3.	Verification of coverage	68
25.4.	Reporting and Handling of Claims	69
25.5.	Reinstatement.....	70
25.6.	Intentionally Omitted	71
25.7.	Intentionally Omitted	71
PART J:	EQUITY AND PROJECT DEBT.....	72
26.	INTENTIONALLY OMITTED.....	72
27.	INTENTIONALLY OMITTED.....	72
28.	INTENTIONALLY OMITTED.....	72
29.	REFINANCING	72
29.1.	Cooperation.....	72
30.	TAXES.....	72
31.	RESTRICTIONS ON REVENUE GENERATING ACTIVITIES.....	73
31.1.	Restrictions on Tolling.....	73
31.2.	Restrictions on Advertising	74
PART K:	DEFAULTS, REMEDIES AND TERMINATION.....	75
32.	DEFAULTS AND REMEDIES.....	75
32.1.	Construction Contractor Defaults and Cure Periods.....	75
32.2.	Developer Remedies for Construction Contractor Default.....	80
32.3.	Developer Defaults and Cure Periods	80
32.4.	Construction Contractor Remedies for Developer Default.....	82
33.	TERMINATION	82
33.1.	Termination Events	82
33.2.	Consequences of Termination	84
33.3.	No Increased Termination Liabilities.....	84
33.4.	Exclusivity of Remedy	84
34.	HANDOVER PREPARATIONS AND ACTIVITIES	85
34.1.	Preparations for Handover.....	85
34.2.	Assignments and Transfers	86

34.3.	No Contrary Activities	87
PART L:	LIMITATIONS ON LIABILITY	88
35.	REMEDIES AND LIABILITY	88
35.1.	Construction Contractor’s Sole Remedies	88
35.2.	No Double Recovery	88
35.3.	Developer’s Sole Remedy for Certain Construction Contractor Failures to Perform Work	88
35.4.	Non-financial Remedies	88
35.5.	Available Insurance	88
35.6.	Waiver of Consequential Damages	89
PART M:	CHOICE OF LAW, JURISDICTION AND DISPUTE RESOLUTION	90
36.	CHOICE OF LAW	90
37.	JURISDICTION; WAIVER OF JURY TRIAL	90
37.1.	Jurisdiction	90
37.2.	Consent to Service of Process	90
37.3.	Waiver of Jury Trial	90
38.	DISPUTE RESOLUTION	90
PART N:	MISCELLANEOUS	91
39.	ASSIGNMENTS AND TRANSFERS	91
39.1.	Assignments and Transfers by the Construction Contractor	91
39.2.	Assignments and Transfers by the Developer	91
39.3.	Security	91
40.	BINDING EFFECT; SUCCESSORS AND ASSIGNS	91
41.	SURVIVAL	91
42.	CONSTRUING THIS AGREEMENT	92
42.1.	Entire Agreement	92
42.2.	Interpretation	92
42.3.	Severability	92
43.	AMENDMENTS AND WAIVERS	93
43.1.	Amendments	93
43.2.	Rights and Remedies Cumulative	93
43.3.	Waivers	93
44.	SET-OFF AND DEFAULT INTEREST	93
45.	LIMITATION ON THIRD-PARTY BENEFICIARIES	93
46.	INDEPENDENT CONSTRUCTION CONTRACTOR	93
46.1.	Construction Contractor as an Independent Project Contractor	93
46.2.	No Partnership or Similar Relationship	94

46.3.	No Relationship with the Construction Contractor’s Employees and Subcontractors	94
47.	NO PERSONAL LIABILITY	94
48.	NO FEDERAL GOVERNMENT OBLIGATIONS	94
49.	NOTICES	94
49.1.	Methods of Notice Submission	94
49.2.	Intentionally Omitted	95
49.3.	Changes in Address.....	95
50.	FURTHER ASSURANCES	95
51.	COSTS AND EXPENSES OF THE PARTIES	95
52.	INTELLECTUAL PROPERTY RIGHTS	95
52.1.	Grant of License, Ownership and Use	95
52.2.	Right to Purchase.....	96
52.3.	Access to Intellectual Property.....	96
53.	SPECIAL PROVISIONS.....	96
53.1.	Intentionally Omitted	96
53.2.	Intentionally Omitted	96
53.3.	Compliance with Law	96
53.4.	Intentionally Omitted	96
53.5.	Software Piracy Prohibition.....	96
53.6.	Intentionally Omitted	96
53.7.	Intentionally Omitted	96
53.8.	Public Contracts for Services.....	96
54.	COUNTERPARTS	97
55.	CONFIDENTIALITY	97
56.	TIME OF THE ESSENCE	98
57.	MANDATORY TERMS.....	98
57.1.	Project Agreement Mandatory Terms	98
57.2.	TIFIA Requirements	100

ANNEXES

Annex A: Definitions and Abbreviations

SCHEDULES

Commencement and Completion

- Schedule 1: Intentionally Omitted
- Schedule 2: Representations and Warranties
- Schedule 3: Commencement and Completion Mechanics

Payments

- Schedule 4: Payments
- Schedule 5: Intentionally Omitted
- Schedule 6: Performance Mechanism
- Schedule 7: Compensation on Termination

Administrative and Process Requirements

- Schedule 8: Project Administration
- Schedule 9: Submittals

Design, Construction, Operations and Maintenance

- Schedule 10: Design and Construction Requirements
 - Schedule 10A: Applicable Standards and Specifications
 - Schedule 10B: Contract Drawings
- Schedule 11: Operations and Maintenance Requirements
- Schedule 12: Intentionally Omitted

Insurance Requirements

- Schedule 13: Required Insurances

Communications and Compliance Requirements

- Schedule 14: Strategic Communications
- Schedule 15: Federal and State Requirements

Subcontracting Requirements

- Schedule 16: Mandatory Terms

Environmental Requirements

- Schedule 17: Environmental Requirements

Right-of-Way

- Schedule 18: Right-of-Way

Forms

- Schedule 19: Intentionally Omitted
- Schedule 20: Forms of Contractor Bond
- Schedule 21: Forms of Supervening Event Notices and Submissions
- Schedule 22: Intentionally Omitted
- Schedule 23: Intentionally Omitted

Procedures

- Schedule 24: Change Procedure
- Schedule 25: Dispute Resolution Procedure

Proposal Commitments

- Schedule 26: Intentionally Omitted
- Schedule 27: Key Personnel

Schedule 28: Proposal Extracts

Schedule 29: TIFIA Representations and Warranties

ATTACHMENTS

Attachment A: Form of Construction Guarantee

Attachment B: Form of Lenders' CC Direct Agreement

Attachment C: Form of Letter of Credit

Attachment D: Schedule of Values

Attachment E: Proposed Payment Schedule

Attachment F: Form of Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.)

Attachment G: Additional Obligations

PART A: DEFINITIONS AND ABBREVIATIONS; INTERPRETATION; PROJECT INFORMATION

1. DEFINITIONS AND ABBREVIATIONS

Except as otherwise specified herein or as the context may otherwise require:

- a. terms set out in Part A of Annex A (*Definitions and Abbreviations*) have the respective meanings set out therein for all purposes of this Agreement;
- b. terms defined in either the CDOT Standard Specifications or the Standard Special Provisions have the respective meanings set out in the CDOT Standard Specifications and the Standard Special Provisions for purposes of the Construction Standards, provided that, if any term used in any Construction Standard is defined in both:
 - i. Part A of Annex A (*Definitions and Abbreviations*); and
 - ii. either the CDOT Standard Specifications or the Standard Special Provisions,then such term shall have the meaning set out in Part A of Annex A (*Definitions and Abbreviations*); and
- c. abbreviations set out in Part B of Annex A (*Definitions and Abbreviations*) are provided as references for purposes of the Technical Requirements, Table 6A.1 and Table 6A.2 only.

2. INTERPRETATION OF THIS AGREEMENT

2.1. Interpretation of Certain Terms, Phrases and Language

2.1.1. Headings and other internal references

- a. Headings are inserted for convenience only and shall not affect interpretation of this Agreement.
- b. Except as the context may otherwise provide, the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of it.
- c. Except as otherwise expressly provided or as the context may otherwise provide, a reference to any Section within this Agreement (including in Part A of Annex A (*Definitions and Abbreviations*) and the Schedules) is a reference to such Section of this Agreement (excluding the Schedules).
- d. Any reference to “Part X, Section Y of the Design and Construction Contract” (where “X” and “Y” are numbers) in any Schedule is a reference to the corresponding numbered Part and Section in this Agreement (including Annex A (*Definitions and Abbreviations*), but excluding the Schedules).

2.1.2. Common terms and references

- a. The singular includes the plural and vice versa.
- b. Words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words that follow.
- c. The verb “will” has the same meaning and effect as the verb “shall.”
- d. The word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances.

2.1.3. References to agreements, documents, Law, Governmental Approvals and Permits

Except as otherwise expressly provided in this Agreement, and subject to Part 2, Section 8.6.2 with respect to the Project Standards, a reference:

- a. to an agreement or other document shall be construed to be a reference to such agreement or other document (including any schedules, annexes or exhibits thereto) as it may be amended, modified or supplemented from time to time pursuant to its terms; and
- b. to any Law, Governmental Approval or Permit shall be construed as a reference to such Law, Governmental Approval or Permit as amended, replaced, consolidated or re-enacted (as applicable) from time to time.

2.1.4. References to Persons

Except as otherwise expressly provided in this Agreement:

- a. a reference to a Person includes such Person's permitted successors, assigns and transferees;
- b. the feminine includes the masculine and vice-versa; and
- c. the words "they", "them", "themselves" and "their" when used to refer to a single Person or a grammatically singular antecedent shall be construed to mean an individual of unknown gender or whose gender is irrelevant.

2.1.5. Professional language and terms of art

Except as otherwise expressly provided in this Agreement:

- a. words and phrases not otherwise defined herein:
 - i. that have well-known technical, insurance or construction industry meanings shall be construed pursuant to such recognized meanings; and
 - ii. of an accounting or financial nature shall be construed pursuant to GAAP, in each case taking into account the context in which such words and phrases are used;
- b. all statements of, or references to, dollar amounts or money, including references to "\$" and "dollars", are to the lawful currency of the United States of America;
- c. all references to "digital" or "electronic" media or communications shall include all technology or services having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities that are used to facilitate the storage or dissemination of data and information as of the Setting Date, and all other successor forms of technology that serve the same or equivalent purposes which come into existence or widespread use after the Setting Date; and
- d. all references to reimbursement of another Person's "cost and expense" or "costs and expenses" shall be deemed to be references to reimbursement of all relevant third-party fees, costs and expenses incurred by such Person, including for those of external legal counsel and other external advisors.

2.1.6. Deadlines occurring on Calendar Days

Whenever this Agreement requires either Party to make any payment, or provide or deliver any Acceptance, Approval, consent, approval or like assent, notice, Deliverable, comment or any information or material, or otherwise complete any action or performance, in each case on or no later than a date that is a Calendar Day that is not also a Working Day, then such deadline shall automatically be extended to the next Working Day to occur after such Calendar Day.

2.2. Terminology for Agreements and Assents

2.2.1. Agreements and determinations

Where this Agreement provides that a matter shall be “Agreed or Determined”, such reference shall mean either that:

- a. the Parties have agreed to the matter in writing; or
- b. that the matter has been finally determined pursuant to the Dispute Resolution Procedure.

2.2.2. Consents, approvals and like assents

Except as otherwise expressly provided in this Agreement and subject to Part 2, Section 2.2.4, where this Agreement provides that any consent, approval or like assent:

- a. shall not be “unreasonably withheld” by a Person, then it shall not be unreasonably withheld, delayed or made subject to the imposition of unreasonable conditions by such Person, and “unreasonably withhold” shall be similarly construed; and
- b. is to be made or given in the “discretion” of a Person, it shall be made or given only in the sole and absolute discretion of such Person (which discretion includes the ability to refrain from giving, or to impose conditions on, such consent, approval or like assent), which discretionary decision regarding any consent, approval or like assent shall be final and binding and not subject to the Dispute Resolution Procedure other than with respect to:
 - i. a good faith dispute concerning whether the consent, approval or like assent was discretionary; or
 - ii. a breach of the implied covenant of good faith and fair dealing.

2.2.3. Acceptance, Approval and Information

The Construction Contractor acknowledges and accepts that where this Agreement provides that any matter or information shall be submitted to the Enterprises (or to CDOT acting as their designee pursuant to Section 18.1.2 of the Project Agreement) for their Acceptance, Approval or Information, the Enterprises shall be entitled to make their determination with respect to such matter or information in accordance with Section 2.2.3 of the Project Agreement.

Where this Agreement provides that any matter or information shall be submitted to the Developer for its:

- a. “Acceptance”, then the Developer shall give its determination in writing and may not unreasonably withhold its Acceptance, after having reasonably sufficient opportunity, which shall not be less than 30 Calendar Days, to review and comment on such submission, where the only bases for withholding such Acceptance shall be if:
 - i. the Enterprises has withheld its Acceptance of the equivalent matter or information pursuant to Section 2.2.3 of the Project Agreement; or
 - ii. the Developer determines, acting reasonably, that the subject-matter of such submission:
 - A. does not comply with this Agreement;
 - B. does not comply with any Law, Governmental Approval or Permit;
 - C. is not made pursuant to, or otherwise is not compliant with, Good Industry Practice;
 - D. would give rise to a material risk to the health or safety of any person, the Environment or Improvements, the community or property; and/or

- E. would have an adverse impact on:
 - I. the performance by the Construction Contractor of its obligations under this Agreement;
 - II. the rights of the Developer under this Agreement; and/or
 - III. the Project,

(where any failure to respond within a time period expressly provided in this Agreement shall be deemed an Acceptance of such submission by the Developer);

- b. “Approval”, then the Developer shall give their determination in writing and may reject such submission in its discretion (where any failure to respond within a time period expressly provided in this Agreement shall be deemed a rejection of such submission by the Developer), provided that when the Enterprises exercise their discretion, grant or refuse to grant an approval, accept or refuse to accept a request or makes a determination under the Project Agreement, then the Developer will exercise its discretion, judgment, grant or refuse to grant an approval, accept or refuse to accept a request or make a determination in a manner consistent with the discretion exercised, approval granted or refused, request accepted or refused or determination made by the Enterprises under the Project Agreement; and
- c. “Information”, then no Acceptance, Approval, or other consent, approval or like assent, is required and the matter or information is being submitted for the Developer’s information, review and comment only.

2.2.4. Default standards for consents, approvals and like assents; consent on equivalent matters

Unless indicated to the contrary, all determinations, consents or approvals of the Developer shall not be unreasonably withheld, conditioned or delayed; however, the Developer shall not be deemed to have unreasonably withheld, conditioned or delayed any determination, consent or approval on any matter in circumstances where the Enterprises have withheld their determination, consent or approval to any equivalent matter under the Project Agreement. The Construction Contractor acknowledges and agrees that where, under this Agreement, any determination, consent or approval is required from the Developer, it shall be legitimate for the Developer in considering whether to make such determination, consent or approval to take into account any determination, consent or approval which the Developer, in turn, would need to obtain from the Enterprises under the Project Agreement.

2.2.5. Limited Construction Contractor reliance

- a. The Construction Contractor acknowledges Section 2.2.5.a. of the Project Agreement and accepts that it may rely on Acceptances and Approvals, any other consent, approval or like assent, and any notice, from the Developer or which are passed on by the Developer to the Construction Contractor from the Enterprises (including from CDOT acting as the Enterprises’ designee pursuant to Section 18.1.2 of the Project Agreement) only for the limited purpose of establishing that the Acceptance or Approval, or any other consent, approval or like assent, occurred, or any notice was given.
- b. The Construction Contractor acknowledges Section 2.2.5.b. of the Project Agreement. Except as otherwise expressly provided in this Agreement, the Interface Agreement or arising from a Developer Act, no:
 - i. Acceptance or Approval, other consent, approval or like assent, or notice;
 - ii. comment, review, certification, concurrence, verification or oversight; or
 - iii. payment,

or the absence of any of the foregoing, shall in any case:

- iv. constitute acceptance of materials, CC Work or any Element as satisfying the requirements of this Agreement;
- v. relieve the Construction Contractor from, or diminish the Construction Contractor's liability for, the performance of its obligations under this Agreement;
- vi. prevent the Developer from subsequently exercising its rights under this Agreement or the Enterprises from exercising their rights under the Project Agreement without being bound by the manner in which they previously exercised (or refrained from exercising) such rights; or
- vii. constitute a waiver of any rights (i) under this Agreement of any legal or equitable right of the Developer or of any other Person or (ii) under the Project Agreement of any legal or equitable right of the Enterprises or of any other Person.

2.3. Indexation of Amounts

2.3.1. Contract Year Indexation

Subject to Part 2, Section 2.3.2, where in this Agreement an amount is expressed to be “indexed”, such expression means that the relevant amount will be changed on the first Calendar Day of each Contract Year (the “Relevant Contract Year”) by applying the following formula:

$$V_{new} = V_{old} \times (1 + (I_{new} - I_{old}) / I_{old})$$

Where:

- a. V_{new} is the new amount for the Relevant Contract Year;
- b. V_{old} is the amount for the Contract Year immediately preceding the Relevant Contract Year;
- c. I_{new} is the value for CPI most recently published prior to the first Calendar Day of the Relevant Contract Year; and
- d. I_{old} is the value for CPI most recently published prior to the first Calendar Day of the Contract Year immediately prior to the Relevant Contract Year, or, in the case of the first occasion on which this calculation is carried out, the value of CPI most recently published prior to July 1, 2017,

provided that, if I_{new} is less than or equal to I_{old} , then no calculation shall be carried out and V_{new} shall be deemed to be equal to V_{old} .

2.3.2. Intentionally Omitted

2.4. Resolution of Conflicts Among, and Prioritization of, Terms

2.4.1. Integrated and binding agreement

- a. Subject to Part 2, Section 42.3, the Developer and the Construction Contractor agree and expressly intend that this Agreement, which includes Part 1, this Part 2 and its Annex, Schedules and Attachments, and any valid amendments, constitutes a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.
- b. Subject to Part 2, Sections 2.4.2 and 2.4.3 and the express terms of this Agreement, any term, condition, requirement, criteria or specification set out or referenced in any part of this Agreement is a binding contractual obligation.

2.4.2. Standards for resolving conflicts and inconsistencies

- a. If there is any conflict, ambiguity or inconsistency between or among any provision(s) of (A) this Agreement (including Annex A (Definitions and Abbreviations), but excluding the Schedules) and/or (B) any provision(s) of the Schedules and/or (C) any provision(s) of the Project Standards, in each case that cannot be reconciled by reading all relevant

provisions of this Agreement, the Schedules and/or the Project Standards as mutually explanatory of one another, then the order of precedence shall be as follows:

- i. Part 1 of this Agreement shall prevail over Part 2 of this Agreement, any of the Schedules and any of the Project Standards;
- ii. Part 2 of this Agreement (including Annex A (Definitions and Abbreviations) but excluding the Schedules to this Agreement) shall prevail over any of the Schedules and any of the Project Standards;
- iii. Schedule 17 (Environmental Requirements) shall prevail over any other Schedule and any of the Project Standards;
- iv. subject to Part 2, Section 2.4.2.a.iii, Schedules 3 (Commencement and Completion Mechanics), 4 (Payments), 5 (Milestone Payments), 6 (Performance Mechanism), 8 (Project Administration), and 9 (Submittals) shall prevail equally over all remaining Schedules;
- v. Part B of Schedule 28 (Proposal Extracts) shall prevail over all other remaining Schedules;
- vi. subject to Part 2, Sections 2.4.2.a.iii, iv, and v, all Schedules (including the Project Special Provisions) shall prevail equally over any of the Project Standards (excluding the Project Special Provisions); and
- vii. the Project Agreement.

provided that:

- viii. if there is any conflict, ambiguity or inconsistency between or among any provision(s) of the Construction Standards, the order of precedence set out in Section 105.09 of the CDOT Standard Specifications shall apply;
- ix. Changes made pursuant to any Change Order or Directive Letter and amendments made pursuant to Part 2, Section 43.1 shall prevail over such portions of this Agreement that they modify or amend;
- x. in the event of any conflict, ambiguity or inconsistency between or among the provisions of this Agreement (including, for certainty, the Schedules) with an equal order of precedence, the most stringent requirement shall take precedence;
- xi. notwithstanding anything to the contrary contained in this Agreement, in the event of any conflict, ambiguity or inconsistency between or among any applicable requirement under Law and any other requirement of this Agreement, the applicable requirement under Law shall take precedence;
- xii. except where expressly referred to in this Agreement, the Financial Model and its contents shall not be used to interpret this Agreement and shall not otherwise affect the meaning of this Agreement; and
- xiii. additional or supplemental requirements that the Construction Contractor is required to comply with pursuant to this Agreement (including such requirements pursuant to any of the Project Standards) with a lower order of precedence relative to other parts of this Agreement (including, for certainty, the Schedules) as determined pursuant to this Part 2, Section 2.4.2 shall be given effect except to the extent such requirements conflict or are inconsistent with, or otherwise create an ambiguity in relation to, the provisions contained in a part of this Agreement with a higher order of precedence.

b. [Reserved.]

2.4.3. Interpretation and resolution of conflicts

- a. Each Party shall notify the other Party promptly after it identifies or becomes aware of any conflict, ambiguity or inconsistency:
 - i. of a type described in Part 2, Section 2.4.2;
 - ii. between or among any Deliverable and the provisions of this Agreement and/or the Project Standards; or
 - iii. regarding the interpretation of any Deliverable,

and, to the extent such conflict, ambiguity or inconsistency arises from a conflict with the Project Agreement, the Developer will, upon giving or receipt of such notice, notify the Enterprises of such conflict, ambiguity or inconsistency.

Each Party agrees to not take advantage of any such conflict, ambiguity or inconsistency, or of any other error or omission in or to this Agreement. Furthermore, in the event of any such conflict, ambiguity or inconsistency, the Parties agree that the relevant terms of this Agreement shall not be construed against the Person that prepared them and the Parties waive any Law with contrary effect which would otherwise be applicable in connection with the construction and interpretation of this Agreement.

- b. If any conflict, ambiguity or inconsistency arises under this Agreement and there is a corresponding conflict, ambiguity or inconsistency under the Project Agreement, then pursuant to the Project Agreement, if such conflict, ambiguity or inconsistency is of a type described in Section 2.4.3.a.ii of the Project Agreement relates to a Technical Deliverable, the Enterprises shall, in their discretion, notify Developer of their determination regarding such reconciliation. The Developer shall provide a copy of any such determination received from the Enterprises respecting the reconciliation of such conflict, ambiguity, or inconsistency, and the determination of the Enterprises shall be binding on the Parties hereunder. To the extent that the Construction Contractor disagrees with the Enterprises determination, then to the extent that the Developer is permitted to dispute such determination in accordance with Section 2.4.3.b of the Project Agreement, the Construction Contractor shall be entitled to submit an Equivalent Claim Notice pursuant to Part 1, Article 6.2.
- c. If any conflict, ambiguity or inconsistency arises under this Agreement and there is no corresponding conflict, ambiguity or inconsistency under the Project Agreement, then to the extent such relates to a Technical Deliverable, the Developer may, in its reasonable discretion, notify the Construction Contractor of its determination, as evaluated in its good faith discretion, regarding such reconciliation, which determination shall be binding on the Parties hereunder, subject to review in accordance with Schedule 25 (*Dispute Resolution Procedure*).

3. PROJECT INFORMATION, RELIANCE AND DILIGENCE

3.1. Limited Reliance on Project Information

The Construction Contractor acknowledges and agrees that:

- a. prior to the Final Project Information Date, the Reference Documents (including, for certainty, the Reference Design) and certain other documents, information, reports and materials (together, the "Project Information") were made available to the Construction Contractor for information only;
- b. prior to the Agreement Date, the Construction Contractor conducted its own due diligence on the accuracy, completeness, relevance, fitness for purpose and adequacy of the Project Information;
- c. the Reference Documents have not been incorporated into this Agreement as a result of being listed in Schedule 29 (*Reference Documents*) to the Project Agreement or as a

result of being referenced in any provision of this Agreement that requires the Construction Contractor to comply with a specific Reference Document (or part thereof); and

- d. neither the Enterprises under the Project Agreement, the Developer, nor any other Person that produced or provided any Project Information, gives or has given any representation, warranty, undertaking or guarantee as to the accuracy, completeness, relevance, fitness for purpose or adequacy of any Project Information, and as such:
- i. The Construction Contractor is not entitled to rely on any Project Information, except with respect to any Reference Document, to the extent such Reference Document is either expressly or implicitly and necessarily the basis for determining the occurrence of a Supervening Event or whether any risk, information, matter or thing was Known or Knowable; and
 - ii. subject to Part 2, Section 3.4, neither the Developer nor any other Person that produced or provided any Project Information, shall have any responsibility or liability to the Construction Contractor or any other Construction Contractor-Related Entity in respect of, and the Construction Contractor shall not be relieved of any obligation under this Agreement as a result of:
 - A. any lack of accuracy, utility, completeness, relevance, fitness for purpose or adequacy of any kind whatsoever of any such Project Information;
 - B. any interpretations of, or conclusions drawn from, any such Project Information;
 - C. any failure by the Developer or by any other Person that produced or provided any such Project Information, to update such Project Information, the contents of which may reflect information available as of the date that such Project Information was prepared or as of such other date indicated therein;
 - D. any failure by the Developer or any other Person to reference or otherwise make available any materials, documents, drawings, plans or other information relating to the Project; or
 - E. any causes of action or claims of, or Losses whatsoever suffered by, the Construction Contractor or any other Construction Contractor-Related Entity by reason of any use of, or any action or forbearance in reliance on, such Project Information.

3.2. Responsibility for Independent Diligence

3.2.1. Sufficient diligence

Subject to the terms of this Agreement, the Construction Contractor is deemed to have satisfied itself as to:

- a. the sufficiency and (as applicable) condition of the Right-of-Way, the ROD Construction Limits and the Project License, and of all other property, assets and rights that the Construction Contractor is entitled to receive under this Agreement;
- b. the nature and extent of the risks assumed by it under this Agreement;
- c. the sufficiency of the Construction Contractor-Related Entities' opportunities to conduct due diligence, including in relation to the condition of each ROW Parcel, on or prior to the Setting Date pursuant to Good Industry Practice; and
- d. the precautions and times and methods of working necessary to prevent or, if it is not possible to prevent, to mitigate or reduce any nuisance or interference, whether public or private, being caused to any third parties through the performance of the Work.

3.2.2. No reliance on unincorporated statements or representations and warranties

The Construction Contractor acknowledges and agrees that:

- a. it has not entered into this Agreement on the basis of, and has not relied upon, any statement, representation or warranty or other provision (in each case whether oral or written, express or implied) made or agreed to by the Developer or by any other Person, or any of their agents or employees, except those expressly set out or repeated in this Agreement; and
- b. the only remedies available in respect of any untrue statement, misrepresentation or breach of warranty made to the Construction Contractor in this Agreement shall be any remedies expressly available under this Agreement.

3.3. Limitations on Site Condition Claims

Neither the Construction Contractor nor any other Construction Contractor-Related Entity shall be entitled to:

- a. make any Claim against the Enterprises, CDOT, Developer or any other Developer-Related Entity; or
- b. without the prior written consent of (i) the Developer (not to be unreasonably withheld or conditioned) and, (ii) pursuant to Section 39.1 of the Project Agreement, the Enterprises, make any Claim against any other Person,

in relation to the condition of any ROW Parcel or any Additional ROW Parcel at the time such parcel first became subject to the Construction Contractor's Possession or the Construction Contractor first acquired any interest or right in respect of such parcel, except that the Construction Contractor may, to the extent that the Developer is entitled to bring a corresponding Claim pursuant to Section 3.3 of the Project Agreement, submit an Equivalent Claim Notice pursuant to Part 1, Article 6.2.

3.4. Residual Developer Liability

Nothing in this Part 2, Section 3 shall exclude any liability which the Developer would otherwise have to the Construction Contractor:

- a. in respect of any statements, representations or warranties made fraudulently, recklessly or in bad faith or constituting willful misconduct or gross negligence;
- b. to the extent expressly provided for in this Agreement; or
- c. in respect of a Developer Act.

PART B: REPRESENTATIONS AND WARRANTIES; FINANCIAL CLOSE; GRANT OF RIGHTS

4. INTENTIONALLY OMITTED

5. REPRESENTATIONS AND WARRANTIES

5.1. Representations and Warranties

5.1.1. The Construction Contractor hereby represents and warrants to the Developer that each representation and warranty set out in Part A of Schedule 2 (Representations and Warranties) is true and correct as of the Agreement Date.

5.1.2. The Developer hereby represents and warrants to the Construction Contractor that each representation and warranty made by it and set out in Part B of Schedule 2 (Representations and Warranties) is true and correct as of the Agreement Date.

5.2. Mutual Reliance

Each of the Construction Contractor and the Developer acknowledges that it enters into the CC Project Documents to which it is a party in reliance on the representations and warranties made pursuant to Part 2, Section 5.1.

5.3. Notice of Untrue, Incorrect or Misleading Representations and Warranties

Notwithstanding that the representations and warranties made by the Parties pursuant to Part 2, Section 5.1 are made and, pursuant to Part 2, Section 6.2, repeated, only at particular times:

- a. the Construction Contractor shall promptly inform the Developer after it becomes aware that any of its representations and warranties either was false, misleading or inaccurate in any material respect when made (or repeated) or omitted material information when made (or repeated); and
- b. the Developer shall promptly inform the Construction Contractor after it becomes aware that any of the representations and warranties made by it either was false, misleading or inaccurate in any material respect when made (or repeated) or omitted material information when made (or repeated).

5.4. Special Remedies for Mutual Breach of Warranty

If any circumstance or event exists or occurs that constitutes or results in concurrent breaches of any of the parallel representations and warranties made pursuant to Part 2, Section 5.1 by the Construction Contractor and the Developer, but which breaches do not also constitute or result in any other breach or default by either Party, including, subject to the passage of time and giving of notice, a Construction Contractor Default or a Developer Default, then:

- a. such breaches shall not result in a Supervening Event or form the basis for a damages claim by either Party against the other; and
- b. each Party's only remedy shall be to:
 - i. take action as permitted under this Agreement to rectify or mitigate the effects of such circumstance or event;
 - ii. if applicable, exercise its rights to pursue severance and/or substitution of any invalid clause, condition, term, provision, section, subsection or part of this Agreement pursuant to Part 2, Section 42.3;
 - iii. Intentionally Omitted; and/or
 - iv. exercise its rights pursuant to Part 2, Section 43.3.

5.5. Survival of Representations and Warranties

Pursuant to Part 2, Section 41, each Party's liability with respect to its representations and warranties made pursuant to Part 2, Section 5.1, or thereafter repeated pursuant to this Agreement, shall survive the end of the CC Term.

6. FINANCIAL CLOSE

6.1. Financial Close Assistance

The Construction Contractor acknowledges the Developer's obligations pursuant to Section 6.1 of the Project Agreement and that the Developer will enter into certain Financing Documents, which will provide (amongst other things) that the Developer shall provide certain documents and satisfy certain conditions precedent as a condition to the provision of the financing thereunder. During the period from the Agreement Date to Financial Close, the Construction Contractor shall cooperate with the Developer to provide such assistance and information as is necessary to satisfy any conditions precedent to Financial Close that are within the control of the Construction Contractor, including without limitation:

- a. providing such information relating to the technical aspects of the Construction Work, the O&M Work During Construction or this Agreement as reasonably requested by the Developer to finalize any due diligence required to achieve Financial Close;
- b. participating in discussions with Lenders and/or rating agencies relating to any obligations of the Construction Contractor under this Agreement or the Interface Agreement as reasonably requested by the Developer;
- c. participating in any road-show with potential investors required in connection with any Bond Financing with regard to the Project;
- d. negotiating, finalizing and executing the Lenders' CC Direct Agreement and the Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.);
- e. providing such information and certifications in respect of the Construction Contractor, the Construction Guarantor, the CC Work, or the terms of this Agreement as may be reasonably requested by Developer to comply with any reasonable request of the Lenders, including providing a certificate, in form and substance reasonably acceptable to the Lenders and counsel to the Lenders, from each of the Construction Contractor and the Construction Guarantor with respect to references to such entities in any offering documents relating to any Bond Financing with regard to the Project or in any other Financing Documents;
- f. providing customary legal opinions addressed to the Developer and the Lenders from legal counsel as to:
 - i. organization, existence, power and authority of the Construction Contractor and Construction Guarantor;
 - ii. due authorization, execution and delivery of this Agreement, the Construction Guarantee, the Enterprises' CC Direct Agreement, the Lenders' CC Direct Agreement and the Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.);
 - iii. enforceability of this Agreement, the Enterprises' CC Direct Agreement and the Lenders' CC Direct Agreement;
 - iv. no violation of law, court orders, judgments or decrees or of the Construction Contractor's organizational documents with respect to this Agreement, the Enterprises' CC Direct Agreement and the Lenders' CC Direct Agreement;
 - v. enforceability of Construction Guarantee and the Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.);

- vi. no violation of law, court orders, judgments or decrees or of the Construction Guarantor's organizational documents with respect to the Construction Guarantee or the Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.); and
- vii. no Governmental Approvals or other actions are required for the execution, delivery and performance of this Agreement the Construction Guarantee, the Enterprises' CC Direct Agreement, the Lenders' CC Direct Agreement and the Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.), except as have already been obtained or made, as applicable; and
- g. providing any other deliverables reasonably required by Developer as a condition precedent to Financial Close which relate to the Construction Contractor, the Construction Guarantor, this Agreement or the Interface Agreement.

6.2. Bring-Down of Construction Contractor and Developer Representation and Warranties at Financial Close

- 6.2.1. On each of the TIFIA Effective Date and the date of Financial Close, the Construction Contractor shall execute and deliver to Developer a certificate repeating the Construction Contractor representations and warranties in Part A of Schedule 2 (Representations and Warranties) as of such date.
- 6.2.2. On the date of Financial Close, the Developer shall execute and deliver to the Construction Contractor a certificate certifying that the Developer has or will have, as the case may be, available all funds necessary to pay the Construction Contractor the Contract Price at the times when such amounts become due and payable under this Agreement.
- 6.2.3. The Construction Contractor hereby represents and warrants to the Developer that each representation and warranty set forth in Schedule 29 (*TIFIA Representations and Warranties*) is true and correct as of (a) the TIFIA Effective Date, (b) the Bonds Closing Date, and (c) each date on which any disbursement of the TIFIA Loan is made.

6.3. Failure to Achieve Financial Close

- 6.3.1. The failure to achieve Financial Close by the Financial Close Deadline due to the failure of the Construction Contractor to perform its obligations under this Part 2, Section 6 shall be considered a Construction Contractor Default.

6.4. Construction Contract Amendment

On the Financial Close Date, the Construction Contractor and the Developer shall enter into the Construction Contract Amendment.

7. PROJECT LICENSE

7.1. Intentionally Omitted

7.2. Construction Contractor's Project License

- 7.2.1. Grant of Project License
 - a. Subject to the terms and conditions of this Agreement:
 - i. the Developer grants to the Construction Contractor a license (the "Project License") over, under, upon and in the Right-of-Way, and any Additional Right-of-Way, for the sole purpose of exercising its rights and performing its obligations under this Agreement on the same terms and conditions and to the same extent that the Developer is granted a license from the Enterprises pursuant to Section 7 of the Project Agreement; and
 - ii. the Construction Contractor acknowledges and accepts such Project License.

- b. Without limiting the Construction Contractor's conditional, limited rights to obtain early access to and use of (but, for certainty, not Possession of) ROW Parcels pursuant to Section 1.2 of Schedule 18 (Right-of-Way), to the extent of the Developer's rights under the Project Agreement the Developer shall deliver, and the Construction Contractor shall be entitled to have, Possession of:
 - i. each ROW Parcel on and from the Possession Date specified in the Notice of Possession with respect to such ROW Parcel until such ROW Parcel's Project License End Date; and
 - ii. any Additional ROW Parcel on and from the Possession Date specified in the Notice of Possession with respect to such Additional ROW Parcel until such Additional ROW Parcel's Project License End Date.

without prejudice to the Construction Contractor's rights arising as a result of the occurrence of any Compensation Event as described in paragraph b. of the definition thereof in Part A of Annex A (Definitions and Abbreviations) and, for certainty, subject to such rights and restrictions of access and use of certain third parties that fall within the definition of Possession in Part A of Annex A (Definitions and Abbreviations) from time to time during the CC Term.

- c. The Project License shall automatically be revoked upon the occurrence of the end of the CC Term.
- d. Intentionally Omitted.

7.2.2. Sublicensing

The Construction Contractor shall have the right to issue sub-licenses under the Project License to Subcontractors as necessary to carry out the Construction Contractor's obligations under this Agreement.

7.2.3. Limitations and qualifications on the grant of rights and Project License

- a. The Project License is personal property, and not an interest in real property, and shall not be recorded in the City of Denver's Clerk and Recorder's Office or in any other county.
- b. The Construction Contractor shall not use any part of the Site, or exercise its rights with respect to the Project License, in either case, for any purpose other than carrying out its obligations under this Agreement.
- c. The Construction Contractor's interest in the Right-of-Way, and any Additional Right-of-Way, is limited by the Project License and the other terms and conditions of this Agreement. The Construction Contractor is not and shall not be, and shall not be treated as or be deemed to be, the legal or equitable owner of the Right-of-Way, or any Additional Right-of-Way, in whole or in part, for any purpose.
- d. This Agreement does not, and shall in no way be deemed to, constitute a lease (regardless of the characterization of such lease, including as an operating lease or a financing lease) to the Construction Contractor or a grant (regardless of the characterization of such grant, including by way of easement, purchase option, conveyance, lien or mortgage), in each case, of any right, title, interest or estate, including any fee simple, leasehold estate, easement or property interest of any kind, in or to the Right-of-Way, any Additional Right-of-Way, the Project or of any Assets incorporated into, or appurtenant to, the Project.
- e. Without limiting its rights under this Agreement arising as a result of the occurrence of any Compensation Event as described in paragraph b. of the definition thereof in Part A of Annex A (Definitions and Abbreviations), the Construction Contractor acknowledges and agrees that its Possession of each ROW Parcel and any Additional ROW Parcel pursuant to Part 2, Section 7.2.1.b is subject to the rights and restrictions of access and

use of certain third parties that fall within the definition of Possession in Part A of Annex A (Definitions and Abbreviations) from time to time during the CC Term. The Construction Contractor shall reasonably facilitate access to and through the Site by all Persons with such rights of access and use, and shall not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate such rights of access and use.

7.3. Ownership and Liability

7.3.1. Right-of-Way

All of the Right-of-Way, and any Additional Right-of-Way, shall be held or acquired, as applicable, in the name of CDOT (or in such other name(s) as the Enterprises may otherwise determine in their discretion). The Construction Contractor acknowledges that subject to the terms of the Project Agreement, the Enterprises reserve to themselves and their designees, including CDOT, the rights of use, occupancy and, as applicable, ownership over, under, upon and in the Right-of-Way and any Additional Right-of-Way.

7.3.2. Construction Contractor's responsibilities

Following either the Construction Contractor's Possession of any ROW Parcel or any Additional ROW Parcel pursuant to Part 2, Section 7.2.1.b (and for such period of time as the Construction Contractor is entitled to have Possession thereto pursuant to such Section), or the Construction Contractor's acquisition of any interest or right with respect to any Temporary Property or Permit Area (and for such period of time as such interest or right is maintained), the Construction Contractor shall (as among the Parties):

- a. to the extent that the Construction Contractor is obligated to provide Builder's Risk insurance pursuant to Schedule 13 to this Agreement, have responsibility for such part of the Site (and for all Elements located thereon), including risk of damage and loss; and
- b. bear any costs and expenses incurred in relation to such part of the Site (and in relation to all Elements located thereon), including all fees, expenses and taxes associated with such part of the Site,

in each case subject to the express terms of this Agreement.

7.3.3. Transfer of Ownership

- a. With respect to any part of any Element that is to be affixed to any ROW Parcel or any Additional ROW Parcel (or any infrastructure already affixed thereto) as part of the Project, ownership of and title to each such part shall automatically vest in CDOT (or, in the Enterprises' discretion, their designee) free from all Encumbrances immediately upon such part being affixed thereto.
- b. Any Work Product, including all property interests therein, shall be considered "works made for hire" pursuant to Law and, accordingly, shall be the property of the Enterprises, excluding only any Proprietary Intellectual Property.
- c. Notwithstanding Part 2, Section 7.3.3.a:
 - i. the vesting of ownership of and title to any part of any Element pursuant to Part 2, Section 7.3.3.a and any Work Product pursuant to Part 2, Section 7.3.2.b shall not imply acceptance of such part of such Work Product by the Developer (or by such part's or such Work Product's current or future owner) as to the compliance of such part with the requirements set out in this Agreement, nor shall the Construction Contractor be relieved of its obligation to comply with any of its obligations under this Agreement with respect to such Element or such Work Product, as applicable, the CC Work or otherwise; and

- ii. subject to the terms of this Agreement, the risk of loss or damage to such part of any Element and any Work Product held by the Construction Contractor shall remain with Construction Contractor pursuant to Part 2, Section 7.3.2.
- d. The Construction Contractor shall not do any act or thing that will create any Encumbrance against any Element (or part thereof), any Work Product or any part of the Right-of-Way or of any Additional Right-of-Way, and shall promptly remove any such Encumbrance), unless such Encumbrance came into existence as a result of a Developer Act.

PART C: OBLIGATIONS TO DESIGN, CONSTRUCT, OPERATE AND MAINTAIN THE PROJECT

8. CONSTRUCTION CONTRACTOR'S PROJECT OBLIGATIONS

8.1. General Undertakings

- 8.1.1. The Construction Contractor hereby undertakes to perform the CC Work pursuant to and in compliance with:
- a. the terms, conditions and requirements of this Agreement, including each of the Schedules;
 - b. the Project Standards;
 - c. Law;
 - d. all Governmental Approvals and all Permits in effect from time to time; and
 - e. Good Industry Practice.
- 8.1.2. Furthermore, the Construction Contractor hereby undertakes that it shall:
- a. not adopt or, once adopted, change its legal form or name of organization without the Developer's prior consent, such consent:
 - i. in the Developer's discretion, if such change would adversely affect the Developer's rights, obligations or interests under this Agreement or with respect to the Project; and
 - ii. otherwise, not to be unreasonably withheld;
 - b. Intentionally Omitted;
 - c. not permit any other Person to carry out any business activities on the Site or in relation to the Project, except as expressly permitted by this Agreement;
 - d. not commit or otherwise facilitate, and not permit any other Construction Contractor-Related Entity to commit or otherwise facilitate, the commission of any Prohibited Acts;
 - e. maintain and, as applicable, comply with, and ensure that each Subcontractor maintains and complies with, all licenses, certifications and accreditations and related standards, as well as all other required professional abilities, skills and capacity, in each case required to perform the Construction Work and the O&M Work During Construction; and
 - f. subject to any rights of the Construction Contractor arising as a result of the occurrence of any Construction Contractor Change documented in a Change Order or any Supervening Event, bear all risk, including of delay and/or increased cost, resulting from or arising out of the use of the Reference Design or the I-70 Cover Plans or any differences between its design for any portion of the Project and the Reference Design or such plans.
- 8.1.3. Without limiting its other obligations under this Agreement, the Construction Contractor shall use Reasonable Efforts to cooperate and coordinate with the Developer, the Enterprises, CDOT and all other Governmental Authorities with jurisdiction in matters relating to the CC Work, including their review, inspection and oversight of the Project as contemplated herein, in accordance with any Law granting such jurisdiction or as contemplated by any of the Third Party Agreements.
- 8.1.4. The Construction Contractor:
- a. acknowledges that it has reviewed a copy of the Project Agreement and it is aware of the Developer's obligations to the Enterprises under the Project Agreement;

- b. acknowledges and accepts the Enterprises' rights under the Project Agreement including, but not limited to, the Enterprises' rights of oversight, inspection, testing and auditing in regards to the CC Work;
 - c. to the extent that any revisions are made to the Project Agreement between execution of this Agreement and the effectiveness of the Project Agreement, shall negotiate in good faith with the Developer to amend this Agreement to incorporate comparable revisions;
- 8.1.5. During the CC Term, the Developer shall not make or agree to make any material amendments to or material variations of the Project Agreement related to the CC Work (it being acknowledged for the purposes of this Part 2, Section 8.1.5 that any amendment which is prejudicial to the interests of the Construction Contractor or which is likely to have a material and adverse effect on the Construction Contractor shall be regarded as material) without the prior written consent of the Construction Contractor, such consent not to be unreasonably withheld or delayed, provided that the Construction Contractor shall not be entitled to refuse or withhold its consent where the Developer is required by the Project Agreement to make such amendment or variation.
- 8.1.6. The Construction Contractor acknowledges and accepts the rights of the Enterprises under the Project Agreement to the extent related to the CC Work. The Construction Contractor shall, on behalf of the Developer, accommodate the Enterprises' rights with respect to the CC Work under the Project Agreement, including, but not limited to, the right of access to the Right-of-Way and the Additional Right-of-Way and the right to inspect the Construction Work and the O&M Work During Construction, subject to and in accordance with the requirements of the Project Agreement.
- 8.1.7. Where either Party has supplied information relating to the CC Work to the other Party under this Agreement for a particular purpose such other Party shall use that information only for the purpose for which it was or is intended (unless otherwise required by Law). Where the Construction Contractor supplies the Developer with information to be passed on to the Enterprises under the Project Agreement or any third party, the Developer shall:
- a. include that information in any relevant documents; and
 - b. not change that information without the consent of the Construction Contractor, such consent not to be unreasonably withheld or delayed;
- provided, however, that the Developer shall be entitled to adapt the format or presentation of such information and to add or delete from such information (provided, in each case, such information does not then become misleading by reason of, inter alia, the fact that it appears in a new or different context) in order to enable it to comply with its obligations to provide such information whether under the Project Agreement or otherwise.
- 8.1.8. The Developer and the Construction Contractor shall each notify the other of any actual breach or default or prospective breach or default (in circumstances where the Developer or the Construction Contractor acting reasonably considers that any actual breach or default is likely to occur) of the Enterprises under the Project Agreement or any Subcontractors under the relevant Subcontract of which, in each case, it is aware where that default might reasonably be expected to have a material adverse effect on the performance of any aspect of the CC Work.

8.2. Assumption of Risk and Responsibility

- 8.2.1. Except to the extent otherwise expressly provided for in this Agreement (including as the result of the occurrence of any Construction Contractor Change documented in a Change Order or Supervening Event), all risks, costs and expenses in relation to the performance by the Construction Contractor of the CC Work are allocated to, and accepted by, the Construction Contractor as its entire and exclusive responsibility.
- 8.2.2. As among the Parties, the Construction Contractor shall be solely responsible for the selection, pricing and performance of all Subcontractors (of every tier) and all other Persons for whom or for which the Construction Contractor is responsible by contract or pursuant to Law, and for the performance, acts, defaults, omissions, breaches and negligence of the same, as fully as if any

such performance, acts, defaults, omissions, breaches or negligence were those of the Construction Contractor.

- 8.2.3. In the event that the inclusion in this Agreement of any ATC (as defined in the ITP) that was included in the Preferred Proposer's Proposal was made subject to any express condition, as such conditions are set out, and defined as ATC Conditions, in Part B of Schedule 28 (*Proposal Extracts*), the Construction Contractor shall be solely responsible for satisfying such condition. If any such condition is not satisfied, and without limiting the Developer's other rights hereunder, the Construction Contractor shall comply with the requirements of this Agreement (unmodified by such ATC) without any resulting entitlement to an extension of time, relief and/or compensation.

8.3. Federal and State Requirements

8.3.1. Compliance with Federal requirements

- a. The Construction Contractor shall, and shall ensure that in respect of the Project and the CC Work, each of its Subcontractors and each of their respective Subcontractors shall, comply with all Federal Law requirements applicable to transportation projects that receive Federal credit or funds, including the requirements set out in Schedule 15 (Federal and State Requirements).
- b. In the event of any conflict between any applicable Federal Law requirement and the other requirements of this Agreement, Part 2, Section 2.4.2.a.xi shall apply.

8.3.2. False or fraudulent statements and claims

- a. The Construction Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and the US DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions under this Agreement.
- b. Accordingly, by signing this Agreement, the Construction Contractor certifies and affirms the truthfulness and accuracy of any claim, statement, submission or certification it has made pertaining to this Agreement and the Project.
- c. The Construction Contractor acknowledges that, if it makes a false, fictitious or fraudulent claim, statement, submission or certification, then, in addition to any other penalties that may be applicable, the Federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, on the Construction Contractor to the extent the Federal government deems appropriate.

8.3.3. Federal status of Project

- a. The Construction Contractor acknowledges that:
 - i. the FHWA has designated the Project as a "Major Project" under 23 U.S.C. § 106, which designation, as applied to the Project by the FHWA (including pursuant to the FHWA's "Major Project Financial Plan Guidance" (December 2014)), requires:
 - A. submission by the Enterprises to, and approval by, FHWA of a project management plan; and
 - B. subject to Part 2, Section 8.4.3.a, submission by the Developer of:
 - I. promptly following Financial Close, an initial financial plan; and
 - II. during the Construction Period, annual updates to such financial plan,
 in each case to, and for approval by, FHWA; and
 - C. submission by the Enterprises to, and approval by, FHWA of a supplement to each financial plan submitted by the Developer pursuant to Part 2, Section 8.3.3.a.i.B; and

- ii. portions of the Project are and will be part of the National Highway System, as defined in 23 CFR § 470.
- b. Accordingly:
 - i. Intentionally Omitted; and
 - ii. the Construction Contractor acknowledges and agrees that the Enterprises may submit documents based on or including the Proposal and/or Project Records to the FHWA in order for the Enterprises to comply with the requirements of 23 U.S.C. § 106(h) as applied to the Project by FHWA, including as part of any submission made by the Enterprises to the FHWA as described in Part 2, Sections 8.3.3.a.i.A and 8.3.3.a.i.C, and the Construction Contractor shall also use Reasonable Efforts to cooperate with and assist the Developer and the Enterprises in the Enterprises complying with such requirements as reasonably requested by the Developer from time to time.

8.3.4. Emergency Repair Work

- a. As a condition to receiving payment of any Change in Costs for performing Emergency Repair Work as a result of the occurrence of any Compensation Event as described in paragraphs c., (with respect to relevant Public Safety Orders), d., e. and k. of the definition thereof in Part A of Annex A (Definitions and Abbreviations), the Construction Contractor shall competitively bid and contract for such Emergency Repair Work as FHWA's or FEMA's or any other equivalent Governmental Authority's applicable regulations, policies or procedures may require in order for the Enterprises or CDOT to obtain reimbursement for eligible costs.
- b. The Construction Contractor shall:
 - i. ensure that any Emergency Repair Work is performed pursuant to the requirements of this Agreement, Law and FHWA's, FEMA's and any other equivalent Governmental Authority's applicable regulations, policies or procedures, including (as applicable) the FHWA's "Emergency Relief Manual"; and
 - ii. maintain estimates, cost records and supporting documentation pursuant to such applicable regulations, policies or procedures, and otherwise in form and substance as reasonably required by the Enterprises.
- c. Without limiting the Construction Contractor's obligations under Part 2, Sections 8.3.4.a and 8.3.4.b, the Developer and, pursuant to the Project Agreement, the Enterprises may, in their discretion, provide oversight of Emergency Repair Work as may be required by FHWA, FEMA or any other equivalent Governmental Authority, or by Law, to preserve eligibility for reimbursement of eligible costs.

8.3.5. Restrictions on communications with FHWA and US DOT

The Construction Contractor shall only communicate with the FHWA and the US DOT in relation to the Project and the CC Work indirectly through the Developer, except for direct communications:

- a. as required by Law;
- b. expressly permitted or required by this Agreement; or
- c. made with the Developer's prior Approval,

in each of which cases the Construction Contractor shall provide the Developer with regular and reasonably detailed written updates regarding such communications.

8.4. Governmental Approvals and Permits

“8.4.1 The Construction Contractor acknowledges that the Department Provided Approvals were obtained prior to the Agreement Date by CDOT, with the exception of the Central 70 Reevaluation #2, which will be obtained by CDOT on or prior to the date on which the Developer satisfies the NTP2 Conditions and, subject to Part 2, Section 8.4.3.b, shall be maintained by the Enterprises, acting in coordination with CDOT, at their cost and expense (excluding any cost or expense borne by the Construction Contractor pursuant to Part 2, Section 8.4.3.b). The Developer shall use Reasonable Efforts to ensure the Construction Contractor is able to obtain the benefit of any Department Provided Approval required in connection with the CC Work.”

8.4.2. Construction Contractor’s responsibility to obtain Governmental Approvals and Permits

- a. Subject to Part 2, Section 8.4.4.a, and without limiting its rights under this Agreement arising as a result of the occurrence of any Construction Contractor Change documented in a Change Order or any Supervening Event (including any such rights that relate to obtaining any new or amending any existing Governmental Approval or Permit as a result of any such Change Order or Supervening Event), the Construction Contractor shall be responsible for obtaining all Governmental Approvals (other than the Department Provided Approvals) and all Permits required for the CC Work, and for arranging any necessary amendments to any Governmental Approvals (including, pursuant to Part 2, Section 8.4.3.b, Department Provided Approvals) and any Permits, in each case as necessary to perform its obligations hereunder at the time and in the manner when they fall due for performance.
- b. Without limiting its obligations under Part 2, Section 19.1, the Construction Contractor shall deliver to the Developer copies of all Governmental Approvals and Permits for which it is responsible pursuant to Part 2, Section 8.4.2.a (and copies of any modifications, renewals, extensions and waivers to or of any thereof) promptly following receipt by Construction Contractor of the same.
- c. The Construction Contractor’s obligations under Part 2, Section 8.4.2.a shall not be limited by any Law placing responsibility for the same upon the Developer, either or both of the Enterprises, CDOT or another Person. To the extent that any Governmental Approval or Permit is required to be in the name of the Developer or the Enterprises, as applicable, the procedures specified in Part 2, Section 8.4.4 shall apply.

8.4.3. Submissions to the FHWA and involving Department Provided Approvals; process for obtaining and modifying Governmental Approvals

- a. Prior to submitting an application for any Governmental Approval or Permit (or for any proposed termination, modification, renewal, extension or waiver of a Governmental Approval or Permit) or (with respect to FHWA only) any other Deliverable to:
 - i. the FHWA; or
 - ii. any Person with respect to all such submissions that involve a Department Provided Approval,

The Construction Contractor shall first submit the same, together with any supporting environmental or other studies, analyses and data, to the Developer for Approval. The Construction Contractor shall submit each other application for a Governmental Approval or Permit (or for any proposed termination, modification, renewal, extension or waiver of a Governmental Approval or Permit) for, except as otherwise provided in this Agreement, Information to the Developer in accordance with Section 5(a) of Schedule 9 (Submittals).

- b. As between the Developer and the Construction Contractor, the Construction Contractor shall perform all necessary actions and shall bear all risk of delay and/or all risk of cost and expense, in either case, associated with Governmental Approvals and with Permits relating to the CC Work, including:

- i. without limiting the Enterprises', CDOT's and FHWA's rights to independently evaluate all environmental and other studies and documents and fulfil the other responsibilities assigned to them by 23 CFR Part 771, conducting all necessary environmental or other studies and preparing all necessary environmental or other documents in compliance with Law (provided that, pursuant to Section 8.4.3.b.i of the Project Agreement, the Enterprises may, in their discretion, elect to conduct any such studies or to prepare any such documents at the Enterprises' cost and expense);
- ii. obtaining and complying with all necessary new Governmental Approvals and Permits, or all necessary modifications, renewals and extensions of existing Governmental Approvals and Permits, or of pending applications for Governmental Approvals and Permits; and
- iii. all risk and cost of litigation,

where such risk of delay and/or risk of cost and expense:

- iv. either:
 - A. relates to:
 - I. a Governmental Approval that is not a Department Provided Approval; or
 - II. a Permit; or
 - B. results from:
 - I. the Construction Contractor's use of the Reference Design or the I-70 Cover Plans (except to the extent that any such risk of delay and/or cost and expense relates solely to a Department Provided Approval);
 - II. any differences between the Construction Contractor's design and the Reference Design or the I-70 Cover Plans;
 - III. differences between the design, construction, operations and/or maintenance means and methods the Construction Contractor chooses for any portion of the CC Work and those set out, referred to or contemplated in any Governmental Approval (including, for certainty, any Department Provided Approval) or Permit, or in the application for any Governmental Approval or Permit;
 - IV. the incorporation of any ATC (as defined in the ITP) into this Agreement;
 - V. the acquisition of any Additional ROW Parcel, Construction Contractor-risk Permit Area or Temporary Property Rights; and/or
 - VI. any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any Construction Contractor-Related Entity; and
- v. does not otherwise result from the occurrence of any Developer Act, Supervening Event (including where such Supervening Event results in a requirement to obtain any new or amend any existing Governmental Approval or Permit) or to the extent otherwise agreed in any Change Order.

- c. If the Construction Contractor is unable to obtain, modify, renew or extend any Governmental Approval or Permit for which it is responsible pursuant to Part 2, Section 8.4.2.a, then, without limiting its rights under this Agreement arising as a result of the occurrence of any Construction Contractor Change documented in a Change Order or any Supervening Event (including as a result of the Developer's breach of their obligations under Part 2, Section 8.4.4.a, and including any such rights that relate to obtaining any new or amending any existing Governmental Approval or Permit as a result of any such Change Order or Supervening Event), the Construction Contractor shall promptly notify the Developer and proceed or continue to perform the CC Work according to the requirements of this Agreement and the means and methods for the CC Work set out, referred to or contemplated in the Department Provided Approvals, and any other Governmental Approvals and any Permits that have been or are subsequently obtained.
 - d. No such inability of the Construction Contractor to obtain, modify, renew or extend any Governmental Approval or Permit for which it is responsible pursuant to Part 2, Section 8.4.2.a shall itself constitute a Supervening Event or other legal or contractual basis for any claim or relief hereunder by or for the Construction Contractor to the extent that the cause of, or reason for, such inability does not otherwise constitute a Supervening Event or such other basis for any claim or relief. To the extent that any basis for any claim or relief hereunder by or for the Construction Contractor arising from an inability of the Construction Contractor to obtain, modify, renew or extend any Governmental Approval or Permit for which it is responsible pursuant to Part 2, Section 8.4.2.a is caused by or otherwise arises from a Supervening Event, the provisions of Part 1, Article 6 shall apply.
- 8.4.4. Developer and Enterprises assistance in obtaining and modifying Governmental Approvals and Permits
- a. At the reasonable request of the Construction Contractor, the Developer shall reasonably assist and cooperate with the Construction Contractor where necessary to obtain, modify, renew or extend any Governmental Approval or Permit for which the Construction Contractor is otherwise responsible pursuant to Part 2, Section 8.4.2.a. To the extent that the Construction Contractor considers the assistance of the Enterprises necessary, the Construction Contractor shall provide such information as is necessary for Developer to request the assistance and cooperation of the Enterprises under the Project Agreement. Such assistance and cooperation of the Developer and the Enterprises (as the case may be), shall include using Reasonable Efforts to:
 - i. execute (or as applicable, facilitate execution by CDOT of) such documents as can only be executed by the Developer, the Enterprises, or CDOT, as applicable;
 - ii. make such applications or recordings (or, as applicable, facilitate such applications or recording by CDOT), either in its or their own name or jointly with the Construction Contractor, as can only be made by the Developer, the Enterprises, or CDOT, as applicable, or in joint names of the Construction Contractor and the Developer, the Construction Contractor and the Enterprises, or the Construction Contractor and CDOT, as the case may be; and
 - iii. attend meetings and cooperate with any relevant Governmental Authority, Utility Owner or Railroad as reasonably requested by the Construction Contractor (or, as applicable, facilitate such attendance and cooperation with CDOT), in each case within a reasonable period of time after being requested to do so by the Construction Contractor.
 - b. Subject to any pre-agreed scope of CC Work and budget and to any rights of Developer that arise as a result of the occurrence of any Construction Contractor Change documented in a Change Order or Supervening Event, the Construction Contractor shall (i) fully reimburse the Developer (for its reimbursement of the Enterprises under the Project Agreement) for all reasonable costs and expenses the Enterprises, and, as

applicable, CDOT, incur as a result of the Enterprises, and, as applicable, CDOT complying with their obligations pursuant Section 8.4.4.a of the Project Agreement; and (ii) reimburse the Developer for all reasonable costs and expenses the Developer incurs as a result of the Developer complying with its obligations pursuant to Part 2, Section 8.4.4.a of this Agreement, provided that, except to the extent provided pursuant to Part 2, Section 8.4.3.b, the Construction Contractor shall not be responsible for the payment of the Enterprises' and, as applicable, CDOT's costs and expenses incurred in obtaining, modifying, renewing or extending any Department Provided Approval.

8.5. Third Party Agreements

8.5.1. Compliance with Third Party Agreements and performance of related Work

The Construction Contractor shall not, and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall not, take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate the performance by any party to a Third Party Agreement of its obligations thereunder.

8.5.2. Designation of third party agreements

The Developer may, upon a corresponding action of the Enterprises pursuant to Section 8.5.2 of the Project Agreement, by notice to the Construction Contractor require the Construction Contractor to comply with the terms (to the extent specified in such notice) of:

- a. an agreement (a copy of which shall be attached to such notice) that is not prior to such notice a Third Party Agreement and to which either or both of the Enterprises and/or CDOT is a party with:
 - i. any Governmental Authority, Utility Owner or Railroad; or
 - ii. any property owner or other Person:
 - A. having jurisdiction over any aspect of the Project or Work; or
 - B. having any property interest affected by the Project or the Work; and
- b. any amendment or modification of an existing Third Party Agreement (a copy of which amendment or modification shall be attached to such notice),

and, following delivery of any such notice, such agreement, amendment or modification shall become a Third Party Agreement or amend or modify the existing Third Party Agreement, as the case may be, for purposes of this Agreement.

8.5.3. Restrictions on new third party agreements

Unless expressly Approved by the Developer, the Construction Contractor shall not enter into, and shall ensure that no other Construction Contractor-Related Entity enters into, any agreement with any Person referred to in Part 2, Section 8.5.2.a.i or Part 2, Section 8.5.2.a.ii, that in any way purports to, or reasonably could be interpreted to, obligate the Developer, the Enterprises, CDOT or the State. For certainty, this Part 2, Section 8.5.3 shall not apply to any Sprint Reimbursement Agreement, to which Section 4.6.1.b of Schedule 10 (Design and Construction Requirements) shall apply.

8.5.4. Sharing of Recovery

Subject to Part 2, Section 15.7.3 the Developer shall, subject to Equivalent Project Relief and the Pay-if-Paid Provisions, compensate the Construction Contractor for any Losses incurred under any URA, Utility Work Order, any RRA or the Cover Maintenance Agreement to the extent the Developer recovers or receives any amounts in respect of the same pursuant to Section 8.5.4 of the Project Agreement.

8.5.5. Enforcement of RRAs

The Construction Contractor acknowledges and agrees that, pursuant to Section 8.5.5 of the Project Agreement, upon the reasonable request of the Developer, the Enterprises shall use Reasonable Efforts to enforce their rights under each RRA against the Railroad that is party to such agreement. To the extent that the Developer is entitled to make a reasonable request pursuant to Section 8.5.5 of the Project Agreement, the Construction Contractor may submit an Equivalent Claim Notice pursuant to Part 1, Article 6.2 requesting that Developer make such a request under the Project Agreement.

8.6. Compliance with Project Standards

8.6.1. Monitoring of Project Standards

- a. The Construction Contractor shall, and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall, monitor and familiarize themselves with changes or additions to, or replacements of, the Project Standards (in the case of Subcontractors, to the extent applicable to their portion of the CC Work).
- b. The Construction Contractor shall notify the Developer of any change or addition to, or replacement of, any Project Standard promptly after it becomes aware of such change, addition or replacement.

8.6.2. Changes, additions or replacements to or of Project Standards

- a. Subject to Part 2, Section 8.6.2.b, the Construction Contractor shall not be required to comply with any change or addition to, or replacement of, a Project Standard, except pursuant to an Enterprise Change or a Developer Change, in each case, documented in a Change Order or a Directive Letter.
- b. If and to the extent that compliance by the Construction Contractor with any change or addition to, or replacement of, a Project Standard is required for the Construction Contractor's continued compliance with Law (the burden of establishing which shall be on the Construction Contractor), but without limiting the Construction Contractor's obligation to at all times comply with Law, the Developer shall submit an Equivalent Claim Notice.
- c. Notwithstanding any Enterprise Change or Developer Change documented in a Change Order or a Directive Letter in relation to any change or addition to, or replacement of, an O&M Standard, the Construction Contractor shall only be entitled to compensation for Change in Costs resulting from any such Enterprise Change or Developer Change if and to the extent such Enterprise Change or Developer Change:
 - i. is initiated to conform the O&M Standards with a Discriminatory Change in Law or a Qualifying Change in Law;
 - ii. requires the Construction Contractor to incur any expenditure; or
 - iii. is materially more onerous as applied to the Project or the Construction Contractor than the application thereof to (A) Similar Projects of either Enterprise or CDOT or (B) the principal contractors responsible for such projects,

provided that, in each case, such Enterprise Change or Developer Change, as applicable, does not arise as a result of or is not made in response to any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any Construction Contractor-Related Entity.

9. CONSTRUCTION CONTRACTOR'S CONSTRUCTION PERIOD OBLIGATIONS

9.1. Obligation to Perform Construction Work; Restrictions on Construction Work

- a. The Construction Contractor shall perform:
 - i. the NTP1 Work on and from (but (other than, for certainty, those preparatory activities referenced in paragraphs b. and c. of the definition of NTP1 Work in Part A of Annex A (Definitions and Abbreviations)) not prior to) the date of issuance of NTP1;
 - ii. subject to Part 2, Section 9.1.a.i, all CC Work (other than the performance of Snow and Ice Control Services) on and from (but not prior to) the date of issuance of NTP2; and
 - iii. Snow and Ice Control Services, on and from the Snow and Ice Control Commencement Date (subject to any obligation of Developer to perform such services prior to such date pursuant to Section 2.2.2.b of Schedule 11 (Operations and Maintenance Requirements)),
pursuant to and in compliance with the terms, conditions and requirements of this Agreement.
- b. The Construction Contractor acknowledges and accepts that pursuant to Section 9.1.b. of the Project Agreement, unless expressly Approved by the Enterprises (and provision of a corresponding approval by the Developer hereunder), the Construction Contractor shall not perform any Construction Work (other than Utility Work) consisting of activities that disturb, alter or otherwise physically impact any part of the Right-of-Way (or of any Additional Right-of-Way) that is outside the ROD Construction Limits.

9.2. Schedule Management, Completion and Commissioning

9.2.1. Milestone Completion, Substantial Completion and Final Acceptance

- a. Subject to Part 2, Section 9.2.2, the Construction Contractor shall achieve:
 - i. Substantial Completion by the Baseline Substantial Completion Date (and, by doing so, achieve Milestone Completion of each Payment Milestone); and
 - ii. Final Acceptance by the Final Acceptance Deadline Date.
- b. The Baseline Substantial Completion Date and the Final Acceptance Deadline Date shall only be extended pursuant to this Agreement as Agreed or Determined either pursuant to a Change or following the occurrence of a Relief Event or a Compensation Event, and in all cases, subject to Equivalent Project Relief.

9.2.2. Project Schedule

Notwithstanding anything to the contrary in this Agreement, including Part 2, Section 9.2.1.a, and without prejudice to the rights of the Developer:

- a. that arise as a result of the CC Noncompliance Event specified in item 2.32 in Table 6A.2; or
- b. that arise as a result of the occurrence of Construction Contractor Default number (5) in Part 2, Section 32.1.1,

the Construction Contractor's failure to comply with the Project Schedule (including its failure to comply with Part 2, Sections 9.2.1.a.i or 9.2.1.a.ii) in carrying out the Construction Work shall not constitute a breach of this Agreement or a Construction Contractor Default.

9.2.3. Float

- a. The Construction Contractor acknowledges and accepts that pursuant to Section 9.2.3.a. of the Project Agreement, Float is available to the Enterprises as needed to absorb

delays caused by Supervening Events or other events to achieve interim completion dates and deadlines set out in the Project Schedule and, ultimately, to achieve Milestone Completion of each Payment Milestone by the relevant Milestone Completion Target Date, Substantial Completion by the Baseline Substantial Completion Date and Final Acceptance by the Final Acceptance Deadline Date.

- b. The Construction Contractor acknowledges that pursuant to Section 9.2.3.b. of the Project Agreement, notwithstanding Part 2, Section 9.2.3.a, Float shall not be available to the Enterprises to absorb delays caused by the occurrence of a Compensation Event as described in paragraphs a.i. (but only with respect to a material breach of the Project Agreement by the Enterprises), a.ii., g., i.i., j., l., m. or o. of the definition thereof in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement.

9.2.4. Remediation Plan

- a. If:
- i. the Construction Contractor fails to achieve any Payment Milestone or Substantial Completion by the applicable Project Schedule Deadline; or
 - ii. at any time after the date that is 18 months prior to the Baseline Substantial Completion Date, the Developer determines in its reasonable discretion that Substantial Completion will not be achieved by the CC Longstop Date,

then, in either case, the Construction Contractor shall, within twenty (20) days after written notice of such failure or determination, be required to prepare and submit a remedial plan for Developer Acceptance. The remedial plan shall set forth a schedule and specific actions to be taken by the Construction Contractor to achieve the applicable Payment Milestone or Substantial Completion, as applicable. The Developer may require that such actions include improving the Construction Contractor's quality management practices, plans and procedures, revising and restating management plans, changing organizational and management structure, increasing monitoring and inspections, changing Key Personnel and other important personnel, replacement of Subcontractors.

- b. The Construction Contractor's failure to deliver to the Developer the required remedial plan within such twenty (20) day period shall constitute a Construction Contractor Default pursuant to Part 2, Section 32.1.1, number (24). Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a Construction Contractor Default pursuant to Part 2, Section 32.1.1, number (24).

9.3. Payment and Performance Security

9.3.1. Obligation to obtain and maintain Contractor Bonds

- a. The Construction Contractor shall deliver to the Developer (for delivery to the Enterprises) Contractor Bonds with respect to:
- i. the CC Work; and
 - ii. Intentionally Omitted,

on the earlier of (x) as and when required pursuant to Schedule 3 (Commencement and Completion Mechanics), and (y) the TIFIA Effective Date.

- b. Thereafter, the Construction Contractor shall ensure that each such Contractor Bond shall remain in full force and effect, and in full compliance with the definition of Contractor Bond set out in Part A of Annex A (Definitions and Abbreviations), provided that, subject to Part 2, Sections 9.3.1.c and 9.3.1.d, the terms of the Enterprises' CC Direct Agreement, the Developer's rights to draw on any Contractor Bond in accordance with its terms and the terms of this Agreement and the Enterprises' rights to draw on any

Contractor Bond in accordance with its terms and the terms of the Project Agreement, promptly following the earlier of the Project Agreement Termination Date and:

- i. the Final Acceptance Date, the Enterprises shall release or return to the Developer each Contractor Bond delivered pursuant to Part 2, Section 9.3.1.a.i, and upon return of such Contractor Bond to the Developer, the Developer shall promptly return such Contractor Bond to the Construction Contractor; and
 - ii. Intentionally Omitted.
- c. Notwithstanding Part 2, Section 9.3.1.a, the Construction Contractor acknowledges and agrees that, to the extent required by Law in connection with CC Work to be performed during the CC Term, or as otherwise required in connection with a Change Order or Directive Letter, the Construction Contractor shall obtain and maintain additional payment and/or performance security in such amounts, for such periods of time and in such form (if any) as required by Law or in connection with a Change. For purposes of this Agreement, references to a Contractor Bond shall be deemed to include any such additional security and any such additional security shall, subject to compliance with Law or the terms of any Change Order or Directive Letter, be provided by and maintained with an Eligible Surety or otherwise pursuant to Part 2, Section 9.3.3. The Enterprises shall release or return to the Developer any such additional security obtained and maintained pursuant to this Part 2, Section 9.3.1.c at the end of the relevant period during which Construction Contractor is obligated to obtain and maintain the same, and upon return of such additional security to the Developer, the Developer shall promptly return such additional security to the Construction Contractor.
- d. The Construction Contractor shall be entitled to replace any Contractor Bond delivered pursuant to Part 2, Section 9.3.1.a or otherwise obtained and maintained pursuant to Part 2, Section 9.3.1.c. Promptly following such replacement, and subject to the Construction Contractor's continued compliance with Part 2, Section 9.3.1.a or Part 2, Section 9.3.1.c, as applicable, the Enterprises shall release or return to Developer such replaced Contractor Bond, and upon release or return of such replaced Contractor Bonds to Developer, the Developer will promptly release or return such Contractor Bonds to the Construction Contractor.

9.3.2. Methods of providing Contractor Bonds

The Construction Contractor shall satisfy its obligations to provide Contractor Bonds under Part 2, Sections 9.3.1.a and 9.3.1.c by:

- a. Intentionally Omitted.
- b. procuring such Contractor Bonds so that such bonds as provided by an Eligible Surety are security for:
 - i. the Construction Contractor's performance obligations to Developer under this Agreement; and
 - ii. the Construction Contractor's payment obligations to lower tier Subcontractors and to laborers,

The Developer shall be the primary obligee under such Contractor Bonds and the Enterprises and the Collateral Agent shall be additional obligees.

9.3.3. Alternative Forms of Security

The Construction Contractor may satisfy its obligations under Part 2, Section 9.3.1.a, in a manner that provides security at least equivalent (including with respect to the amount thereof) to the security required to be provided pursuant to Part 2, Section 9.3.2.b, by delivering to the Developer for its Acceptance, and for delivery to the Enterprises for their Acceptance:

- a. alternative form(s) of payment and/or performance surety bond(s) that are not in substantially the form set out in Schedule 20 (*Forms of Contractor Bonds*);
- b. one or more irrevocable on demand letters of credit from Eligible Financial Institutions which, with respect to satisfaction of the Construction Contractor's obligations under Part 2, Section 9.3.1.a.i, may only be in relation to the O&M Work During Construction (and not, for certainty, the Construction Work); and
- c. Intentionally Omitted;

provided that the Construction Contractor shall deliver any such proposed alternative form(s) of security to the Developer for their Acceptance at least 45 Calendar Days prior to the date on which the Construction Contractor is required, or otherwise proposes, to have such security in full force and effect for purposes of compliance with its obligations under this Agreement.

9.3.4. No Release

Any demand made by an obligee under any Contractor Bond shall not serve to waive, or release the Construction Contractor from, any of the Construction Contractor's obligations under this Agreement.

9.4. Warranties and Liability for Defects

9.4.1. Warranties

The Construction Contractor warrants that each Warrantied Element:

- a. shall be designed, constructed and completed in a manner that:
 - i. complies with Good Industry Practice; and
 - ii. meets or exceeds all other applicable requirements of this Agreement;
- b. shall, except as otherwise expressly permitted under this Agreement, be comprised of new materials; and
- c. shall be of good quality and free from faults and Defects;

(a., b. and c., together with the Additional Warranties, the "Warranties"). For certainty, all provisions of this Part 2, Section 9.4 shall apply to the Additional Warranties, except to the extent expressly specified otherwise.

9.4.2. Warranty Beneficiaries

- a. The Warranties (including, for certainty, the Additional Warranties) are for the express benefit of the Developer in order for the Developer to satisfy its obligations to each of the Enterprises, CDOT and, with respect to those Warrantied Elements to be maintained by each of them, the City of Denver and Denver Public Schools (all such beneficiaries, together, the "Warranty Beneficiaries") under Section 9.4 of the Project Agreement. The Construction Contractor acknowledges and agrees that pursuant to Section 9.4.2 of the Project Agreement, the Enterprises shall have the right, on behalf of any Warranty Beneficiary, to enforce the Warranties (as defined in the Project Agreement) relating to such Warranty Beneficiary's Warrantied Elements, and upon such occurrence the Developer shall have the right to enforce the Warranties granted hereunder and the Construction Contractor's obligations under Part 2, Sections 9.4.1 to 9.4.5 as such obligations apply to such Warrantied Elements. The Construction Contractor acknowledges and agrees that pursuant to Section 9.4.2.a of the Project Agreement, the Enterprises is required to coordinate with the Warranty Beneficiaries with a view to the Enterprises being the primary party with which the Developer is required to interface in connection with any such enforcement. The Developer shall coordinate the exercise of such right of enforcement with the Enterprises, with a view to the Developer being the primary party with which Construction Contractor is required to interface in connection with any such enforcement.

- b. The rights and remedies of the Developer arising with respect to any breach of the Warranties shall not limit the Construction Contractor's liability or responsibility, or the Developer's rights and remedies, under this Agreement or Law with respect to the CC Work, including with respect to any Defect, Nonconforming Work, CC Noncompliance Event, Non-Permitted Closure, breach, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence.

9.4.3. Warranty Period

The Construction Contractor acknowledges and accepts that the Warranties (other than the Additional Warranties) shall remain in effect until the expiration of the applicable Warranty Period, as such Warranty Period may be extended pursuant to Part 1, Article 9.3.

9.4.4. Construction Contractor obligation to remedy Warrantied Elements

- a. The Construction Contractor shall (at its own risk, cost and expense, including the risk, cost and expense of associated design work) promptly (and, to the extent applicable, no later than any required date of completion specified in any Warranty Defects List) investigate, repair, replace or otherwise correct and fully remedy any Defect in the Warrantied Elements or any other breach of the Warranties notified to it by the Developer (following receipt by the Developer of a corresponding notice from the Enterprises) prior to the expiry of the applicable Warranty Period (including, for certainty, as such period may be extended pursuant to Section 9.4.3.b of the Project Agreement). The Construction Contractor acknowledges that pursuant to Section 9.4.4.a of the Project Agreement, the Enterprises shall Approve the completion of all work with respect to any such Defect in the Warrantied Elements or any other such breach of the Warranties on the basis that the relevant Construction Work completed as a result of the correction and remedy of such Defect or breach is in full compliance with the applicable requirements of this Agreement. The Developer and, pursuant to Section 9.4.4 of the Project Agreement, the Enterprises shall be entitled to take action to investigate, repair, replace or otherwise correct and fully remedy any Defect in the Warrantied Elements and any other breach of the Warranties pursuant to Part 2, Section 23.4.1.c if the Construction Contractor fails to comply with its obligations pursuant to this Part 2, Section 9.4.4.a.
- b. The Construction Contractor acknowledges and agrees that the Developer, the Enterprises, CDOT and each Warranty Beneficiary may perform work on any Warrantied Element during the Warranty Period, to the extent they or it otherwise have or has rights to do so, without voiding any Warranty, provided that the Construction Contractor:
 - i. shall not be liable for any Defect or any other breach of the Warranties caused, or to the extent exacerbated by, such work; and
 - ii. does not hereby waive any defenses, rights, claims or remedies to which it may otherwise be entitled as a result of the performance of such work.

9.4.5. Warranty Defects List

- a. Pursuant to Section 9.4.5 of the Project Agreement, at any time prior to the expiry of the applicable Warranty Period (including, for certainty, as extended pursuant to Part 1, Article 9.3) the Enterprises and, with respect to any Warrantied Element maintained by it, each other Warranty Beneficiary shall, in their discretion, have the right to access and conduct an inspection of each Warrantied Element. Following such inspection, the Enterprises, in consultation with any relevant Warranty Beneficiary, shall have the right, but not the obligation, to identify Defects and breaches of the Warranties in relation to the relevant Warrantied Element and to prepare and deliver to Developer a list of such Defects and breaches (the "Warranty Defects List") and a required date of completion of the required Warranty work, provided that any such list shall be delivered to Developer prior to the expiry of the applicable Warranty Period. The Developer shall deliver to the Construction Contractor any Warranty Defects List promptly upon receipt of such Warranty Defects List from the Enterprises.

- b. The Construction Contractor shall notify the Developer within seven Working Days of receipt of any Warranty Defects List whether it agrees with or disputes the contents of such Warranty Defects List and thereafter the Developer shall deliver such response to the Enterprises. If the Construction Contractor fails to provide such notice within such period, then the Construction Contractor shall be deemed to agree with the contents and requirements of such Warranty Defects List.
- c. The Construction Contractor shall reimburse the Developer (including for reimbursement of the Enterprises (and, at the Developer's direction, any applicable Warranty Beneficiary)) for all reasonable costs and expenses incurred in conducting an inspection pursuant to Part 2, Section 9.4.4.a, Section 9.4.4.a of the Project Agreement, Part 2, Section 9.4.5, Section 9.4.5 of the Project Agreement, or otherwise pursuant to this Agreement or the Project Agreement, that identifies a Defect in the Warranted Elements or any other breach of the Warranties.

9.4.6. Standard Warranties

In addition to the Warranties, the Construction Contractor shall in accordance with Good Industry Practice use Reasonable Efforts to procure for itself customary supplier, manufacturer and other third party warranties, which warranties shall, to the extent commercially available, be fully transferrable and assignable to the O&M Contractor, the Developer and the Enterprises (and, to the extent that any such warranty is in respect of a Warranted Element, the relevant Warranty Beneficiary) upon the earlier of the Substantial Completion Date and the CC Termination Date.

9.5. Assignment of Certain Causes of Action

The Construction Contractor agrees to assign to the Developer (for subsequent assignment to the Enterprises pursuant to the Project Agreement) all rights, title, and interest in and to all causes of action the Construction Contractor may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under comparable State Law, arising from purchases of goods, services or materials pursuant to this Agreement. This assignment shall be made and become effective automatically upon payment of the Contract Price, without further acknowledgment by the Parties.

10. INTENTIONALLY OMITTED

11. INTENTIONALLY OMITTED

12. COOPERATION AND COORDINATION WITH RELATED TRANSPORTATION FACILITIES, ON LIMITED O&M WORK SEGMENTS AND WITH OTHER DEPARTMENT PROJECTS

12.1. Duty to Cooperate and Coordinate

Without limiting its other obligations under this Agreement, the Construction Contractor shall:

- a. cooperate and coordinate with the Developer, the Enterprises, CDOT and any relevant third party (including the City of Denver in relation to the Denver Planned Projects) as reasonably requested by the Developer, with regard to the design, construction, operation and/or maintenance of, respectively, the Project (including with regard to the Limited O&M Work Segments) and the Related Transportation Facilities; and
- b. otherwise use Reasonable Efforts in order to minimize any adverse impact:
 - i. on the CC Work as a result of the design, construction, operation and/or maintenance of any Related Transportation Facility and the Limited O&M Work Segments; and
 - ii. on (A) any Related Transportation Facility, (B) the Limited O&M Work Segments and (C) any Other Department Project, as a result of the CC Work.

12.2. Compatibility and Integration with Related Transportation Facilities

The Construction Contractor shall:

- a. as part of the Construction Work, locate, configure, design and construct the endpoints, interfaces, interchanges, ramps, intersections, crossings, entrances and exits of the Project so that the Project will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe and orderly transition of traffic to and from, each Related Transportation Facility that:
 - i. exists on the Setting Date; or
 - ii. is a CCD Identified Future Improvement,in each case in accordance with Good Industry Practice and to the extent possible in light of the Known or Knowable configuration, design and use of such facilities;
- b. as part of the O&M Work During Construction, and without prejudice to the Construction Contractor's right arising as a result of the occurrence of any Compensation Event as described in paragraph n. of the definition thereof in Part A of Annex A (*Definitions and Abbreviations*), provide for, facilitate and accommodate such compatibility, integration and transition with, to and from Related Transportation Facilities in accordance with Good Industry Practice; and
- c. not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate the construction, operation and maintenance of any Related Transportation Facility.

12.3. Procurement of Other Department Projects

- 12.3.1. In response to the Developer's written request (which shall only be issued upon receipt by the Developer of a corresponding request from the Enterprises), the Construction Contractor shall inform the Developer within 12 Working Days of receipt of such request of all material facts or circumstances of which it is aware that might reasonably be expected to affect the procurement, design, construction, operation or maintenance of any Other Department Project, or any other Related Transportation Facility, in the light of the details concerning such project or facility that the Developer have provided to the Construction Contractor or that are otherwise known by the Construction Contractor.
- 12.3.2. If the Developer notifies the Construction Contractor that the Enterprises are preparing to issue or have issued any Other Department Project Procurement Materials or are otherwise seeking offers from any Person or negotiating with any Person in respect of any proposed Other Department Project, then the Construction Contractor shall use Reasonable Efforts as the Developer may reasonably request to assist such procurement, including providing access to the Developer, the Enterprises, CDOT and each of their respective designees to:
 - a. each part of the Site for the purpose of surveying, inspecting or investigating the relevant parts thereof (provided that the Developer shall, and shall require that other parties requiring access at the Developer's request shall, and shall require that the Enterprises and all other parties requiring access to, at all times comply with all relevant site rules and safety regulations in relation to the Site); and
 - b. Project Records, but only to the extent that the Developer may otherwise require the Construction Contractor to deliver or to procure the delivery of such records under the terms of this Agreement,in each case solely and to the extent necessary to procure and award the relevant Other Department Project.

12.3.3. The Construction Contractor shall:

- a. use Reasonable Efforts to cooperate and coordinate with the Developer, the Enterprises, CDOT and each of their respective designees engaged in such Other Department Project as required pursuant to Part 2, Section 12.1;
- b. not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate such Other Department Project; and
- c. at reasonable times and upon reasonable notice, allow access to the Developer, the Enterprises, CDOT and each of their respective designees to each part of the Site as is reasonably necessary to facilitate the carrying out of and interface with the Other Department Project (provided that the Developer shall, and shall require that the Enterprises and all other parties requiring access to, at all times comply with all relevant site rules and safety regulations in relation to the Site),

provided that the Construction Contractor shall not be required to take (or refrain from taking) any action (including allowing access pursuant to Part 2, Section 12.3.3.c) that would reasonably be anticipated to adversely affect the CC Work or the carrying out of the Construction Contractor's other obligations under this Agreement.

12.4. Enterprises' Assistance

12.4.1. The Enterprises has agreed under Section 12.4 of the Project Agreement to, at reasonable times and upon reasonable notice, and subject to CORA, provide to Developer (and the Developer will, to the extent permitted by the Enterprises, provide to the Construction Contractor) reasonable access to plans, surveys, drawings, specifications, reports and other documents and information in the possession of, or otherwise accessible by, the Enterprises pertaining to Related Transportation Facilities and Other Department Projects, including the use of Reasonable Efforts to provide Developer with copies of the same (which copies the Developer will provide to the Construction Contractor); and

12.4.2. At the Construction Contractor's request, the Developer shall use Reasonable Efforts to provide assistance to the Construction Contractor in fulfilling its obligations under Part 2, Sections 12.1 through 12.3, including requesting assistance from the Enterprises under Section 12.4.1.b of the Project Agreement. In no event shall the Developer or the Enterprises be required to bring any legal action or proceeding against any third party.

12.5. Traffic Management

12.5.1. The Construction Contractor acknowledges that the Enterprises, CDOT, the City of Denver, Emergency Services and other Governmental Authorities with traffic management authority under Law, shall have, without obligation or liability to the Construction Contractor, the right to conduct traffic management activities pursuant to standard practices and procedures in effect from time to time:

- a. on the Right-of-Way, any Additional Right-of-Way and any other part of the Site that is open for use by the traveling public;
- b. in connection with the conduct of operations and maintenance activities by CDOT in relation to the Limited O&M Work Segments;
- c. in connection with any Other Department Project; and
- d. on any Related Transportation Facility,

which activities shall not, for certainty, themselves constitute a Supervening Event.

12.5.2. To the extent that the Developer has received notice from the Enterprises under Section 12.5.2 of the Project Agreement, the Developer shall notify the Construction Contractor in advance of any Person conducting any traffic management activities as permitted by Part 2, Section 12.5.1, provided that no such notice shall be required as to activities of which Construction Contractor is known by the Developer to be aware (whether due to prior notice, the terms of this Agreement or

otherwise). Subject to Equivalent Project Relief, to the extent that any such traffic management activities prevent the Construction Contractor from accessing locations for the purpose of curing any Category 1 Defect or Category 2 Defect, the Defect Remedy Period applicable to the relevant Category 1 Defect or Category 2 Defect shall be extended by the period of time that such access is prevented.

13. INTENTIONALLY OMITTED

PART D: CHANGES AND SUPERVENING EVENTS

14. CHANGE PROCEDURE

14.1. Right to Initiate Changes

14.1.1. Enterprises and Developer Changes

- a. The Construction Contractor acknowledges that subject to the limitations set out in Schedule 24 (Change Procedure) of the Project Agreement, the Enterprises may (and, pursuant to Section 8.6.2.b of the Project Agreement, shall) propose a Change in accordance with Section 14.1 of the Project Agreement. Such a notice submitted pursuant to Section 14.1 of the Project Agreement by the Enterprises (an “Enterprise Change Notice”) shall be processed pursuant to Sections 1 and 3 of Schedule 24 (Change Procedure).
- b. In the event that the Enterprises require a Change in accordance with the Project Agreement and such Change modifies the Construction Contractor’s obligations hereunder and which Changes are of a compulsory nature for the Developer under the Project Agreement, then the Construction Contractor shall be obligated to perform the CC Work as modified, and the provisions of Part 1, Article 6 shall apply.
- c. The Developer may, at any time prior to the Final Acceptance Date, propose a Change to the CC Work pursuant to a notice to the Construction Contractor (a “Developer Change Notice”). Any Developer Change Notice shall be processed pursuant to Sections 1 and 3 of Schedule 24 (Change Procedure).

14.1.2. Construction Contractor Changes

The Construction Contractor may request that the Developer consider Changes by submitting a notice to the Developer. Such a notice submitted by the Construction Contractor (a “Construction Contractor Change Notice”) shall be processed pursuant to Sections 2 and 3 of Schedule 24 (Change Procedure) to this Agreement.

14.2. Directive Letters

14.2.1. The Construction Contractor acknowledges that:

- a. pursuant to Section 1.4 of Schedule 24 (Change Procedure) of the Project Agreement, the Enterprises may deliver a Directive Letter (as defined in the Project Agreement) to the Developer at any time after the Enterprises’ submission of a related Enterprise Change Notice to the Developer; and
- b. pursuant to Section 1.5 of Schedule 24 (Change Procedure), the Developer may deliver a Developer Directive Letter to the Construction Contractor at any time after the Developer’s submission of a related Developer Change Notice to the Construction Contractor.

15. SUPERVENING EVENTS

15.1. Submission of Supervening Event Notices and Submissions

15.1.1. The Construction Contractor shall (and shall ensure that each of its Subcontractors shall) develop and maintain procedures pursuant to Good Industry Practice to anticipate, identify and notify the Developer (or, in the case of the Subcontracts, the Construction Contractor) of the occurrence of Supervening Events, provided that:

- a. such obligation, and the Construction Contractor’s obligations under Part 2, Sections 15.1.2 through 15.1.5, shall not apply to any Enterprise Change or Developer Change initiated pursuant to a Change Order; and

- b. Part 2, Section 15.1.2.a shall not apply to any Enterprise Change initiated pursuant to an Enterprise Directive Letter or a Developer Change initiated pursuant to a Developer Directive Letter.
- 15.1.2. If the Construction Contractor becomes aware or determines that a Supervening Event has occurred (regardless of whether such event has concluded or is continuing, and without limiting any other obligation the Construction Contractor may have to notify the Developer or any other Person of, or in relation to, such event pursuant to this Agreement, Law, any Permit or Governmental Approval or otherwise) or, with respect to Part 2, Section 15.1.2 only, is likely to occur, then, subject to Part 2, Section 15.1.4, it shall:
- a. promptly, and in any event no later than eight Working Days, after becoming aware of such occurrence or making a determination that such event is likely to occur submit to the Developer an Equivalent Claim Notice in the form provided in Part A of Schedule 21 (Forms of Supervening Event Notices and Submissions) (a “Supervening Event Notice”), and the Developer shall submit a corresponding Supervening Event Notice under the Project Agreement and, subject to Part 1, Article 6.4.3, thereafter assert its rights under the Project Agreement with respect to the Supervening Event claimed by the Construction Contractor;
 - b. thereafter, and to the extent a Supervening Event has occurred, :
 - i. promptly, and in any event no later than 15 Working Days, after becoming aware of such occurrence submit to the Developer a submission in the form provided in Part B of Schedule 21 (Forms of Supervening Event Notices and Submissions) (a “Preliminary Supervening Event Submission”); and
 - ii. promptly after becoming aware of such occurrence, and in any event no later than the later of (A) 65 Working Days after becoming aware thereof and (B) 30 Working Days after the conclusion of such Supervening Event, submit to the Developer a submission in the form provided in Part B of Schedule 21 (Forms of Supervening Event Notices and Submissions) (a “Detailed Supervening Event Submission”).

provided that, for purposes of determining when the Construction Contractor is required to submit any notice or submission under this Part 2, Section 15.1.2, the Construction Contractor shall be deemed to be aware of any Supervening Event on the date of its occurrence to the extent the Construction Contractor failed to comply with its obligations under Part 2, Section 15.1.1.
- 15.1.3. The Construction Contractor acknowledges and agrees that pursuant to the Project Agreement, the Enterprises shall respond promptly to any Supervening Event Submission submitted by Developer pursuant to Section 15.1.2.b of the Project Agreement and, as applicable, to any notice or submission in relation thereto subsequently submitted by Developer pursuant to Section 15.1.5 of the Project Agreement, in each case for the purpose of attempting, together with the Enterprises, to reach an agreement pursuant to Section 15.3.2 of the Project Agreement. The Developer shall provide to the Construction Contractor copies of the Enterprises’ responses to Supervening Event Submissions promptly upon receipt.
- 15.1.4. The Construction Contractor may satisfy its obligation under Part 2, Section 15.1.2.b.i by instead submitting a Detailed Supervening Event Submission promptly and in any event no later than the expiry of the applicable period that would have otherwise applied under Part 2, Section 15.1.2.b.i.
- 15.1.5. After the Construction Contractor submits any notice or submission to the Developer pursuant to Part 2, Section 15.1.2 or 15.1.4, the Construction Contractor shall, with respect to any Supervening Event that has occurred, promptly:
- a. notify the Developer if at any time it becomes aware of any further material information relating to the Supervening Event, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading; and

- b. following the Developer's or the Enterprises' reasonable request, or as required pursuant to the terms of any written agreement previously made pursuant to Part 2, Section 15.3.2 (including with respect to a continuing Supervening Event), submit to the Developer additional information (for submission to the Enterprises, where applicable) related to the relevant Supervening Event.

15.2. Limitations on Supervening Event Submissions

15.2.1. Failure to provide timely notice

If, following the occurrence of a Supervening Event, the Construction Contractor fails to comply with its obligations under any of Part 2, Sections 15.1.2 and 15.1.5 within the applicable time period (in each case measured from the date on which the Construction Contractor first became aware (or, in accordance with the proviso to Part 2, Section 15.1.2, is deemed to have become aware) or determined that a Supervening Event had occurred) specified in such Sections, then the Construction Contractor shall be deemed to have irrevocably and forever waived and released:

- a. the portion of any claim or right with respect to such event (including the right to take into account for calculation purposes, pursuant to (i) Part 2, Section 15.7 or (ii) the definition of Appendix B Parcel Costs in Part A of Annex A (Definitions and Abbreviations), the amount of certain Losses whether or not the Developer would owe the Construction Contractor compensation in respect of any such Loss as a result of such calculation) that would relate to adverse effects accruing, persisting or increasing after the expiry of the applicable period or otherwise due to such failure and until the Construction Contractor complies with the relevant obligation; and
- b. any and all claim or right with respect to such event (including the right to take into account for calculation purposes, pursuant to (i) Part 2, Section 15.7 or (ii) the definition of Appendix B Parcel Costs in Part A of Annex A (Definitions and Abbreviations), the amount of certain Losses whether or not the Developer would owe the Construction Contractor compensation in respect of any such Loss as a result of such calculation) if the Construction Contractor has failed to:
 - i. submit a Supervening Event Notice on or before the 24th Working Day after the Construction Contractor became aware (or, in accordance with the proviso to Part 2, Section 15.1.2, is deemed to have become aware) of the occurrence of a Supervening Event;
 - ii. submit a Preliminary Supervening Event Submission on or before the 64th Working Day after the Construction Contractor became aware (or, in accordance with the proviso to Part 2, Section 15.1.2, is deemed to have become aware) of the occurrence of a Supervening Event; or
 - iii. submit a Detailed Supervening Event Submission on or before the later of (A) the 112th Working Day after becoming aware (or, in accordance with the proviso to Part 2, Section 15.1.2, is deemed to have become aware) of the occurrence of a Supervening Event and (B) the 100th Working Day after the conclusion of such Supervening Event,

provided, however, that with respect to any Equivalent Claim, to the extent that the Developer's claim or right with respect to such event has not been waived under the Project Agreement, the Construction Contractor's claim or right hereunder shall not be compromised.

15.2.2. Duty to mitigate

- a. Without modifying its other obligations under this Agreement, the Construction Contractor shall use Reasonable Efforts to mitigate the effects of any Supervening Event, including by re-sequencing, reallocating or redeploying its forces to other parts of the CC Work.

- b. The Construction Contractor shall not be entitled to any extension of time, compensation or other relief pursuant to this Part 2, Section 15 to the extent such extension of time, compensation or other relief would have been avoided by its compliance with Part 2, Section 15.2.2.a.
- c. To the extent any failure by Construction Contractor under this Part 2, Section 15 impacts the rights of O&M Contractor under the O&M Contract to pursue Equivalent Project Relief (as such rights are defined under the O&M Contract), the Construction Contractor shall be liable to O&M Contractor as provided under the Interface Agreement.

15.2.3. Intentionally Omitted

15.3. Resolution

15.3.1. If the Construction Contractor has complied with its obligations under Part 2, Section 15.1 then, subject to Equivalent Project Relief:

- a. in the case of any Relief Event or Compensation Event, the Construction Contractor shall be relieved from the performance of its obligations under this Agreement to the extent, and only to the extent, that the Construction Contractor's inability to perform such obligations is due directly to, and limited to the duration of the direct effects of, such Relief Event or Compensation Event, provided that the Construction Contractor shall not be excused from timely compliance with any obligation to make a payment pursuant to this Agreement due to the occurrence of any Relief Event or Compensation Event;
- b. in the case of any Relief Event or Compensation Event:
 - i. to the extent that any CC Noncompliance Event is directly attributable to the occurrence of such Relief Event or Compensation Event, subject to Part 2, Section 15.3.1.a, no CC Noncompliance Points shall accrue in respect of such CC Noncompliance Event; and
 - ii. to the extent that any Closure is directly attributable to the occurrence of such Relief Event or Compensation Event, subject to Part 2, Section 15.3.1.a, such Closure shall be an Excused Closure, but only to the extent that paragraphs g. and h. of the definition thereof in Part A of Annex A (*Definitions and Abbreviations*) are satisfied;
- c. in the case of any Relief Event or Compensation Event occurring prior to the Final Acceptance Date that:
 - i. affects or will affect the Critical Path, after taking into account any available Float pursuant to Part 2, Section 9.2.3.a (but subject always to Part 2, Section 9.2.3.b) and excluding any previous or concurrent unrelated delay for which the Construction Contractor is responsible (the resulting period of delay, measured in Calendar Days, being the "Schedule Delay Period"); and/or
 - ii. delays or will delay completion of the Construction Work (after taking into account any available Float pursuant to Part 2, Section 9.2.3.a (but subject always to Part 2, Section 9.2.3.b) and excluding any previous or concurrent unrelated delay for which the Construction Contractor is responsible) required to achieve:
 - A. Milestone Completion of any Payment Milestone by the Milestone Completion Target Date; and/or
 - B. Substantial Completion by the Baseline Substantial Completion Target Date,

and, as a result, Milestone Completion of such Payment Milestone or Substantial Completion occurs or will occur, as applicable, after the relevant Milestone Completion Target Date or the Baseline Substantial Completion Target Date (the

resulting period of delay with respect to such Payment Milestone or Substantial Completion, measured in Calendar Days, being a “Milestone Delay Period” and, together with any Schedule Delay Period, each a “Delay Period”);

then:

- iii. with respect to any such Relief Event or Compensation Event that affects or will affect the Critical Path:
 - A. if such Relief Event or Compensation Event occurred prior to the Baseline Substantial Completion Date, then the Baseline Substantial Completion Date shall be extended by the number of Calendar Days equal to the Schedule Delay Period;
 - B. if such Relief Event or Compensation Event occurred after the Baseline Substantial Completion Date but prior to the Substantial Completion Date, then the CC Longstop Date shall be extended by the number of Calendar Days equal to the Schedule Delay Period; or
 - C. if such Relief Event or Compensation Event occurred after the Baseline Substantial Completion Date but prior to the Final Acceptance Date, then the Final Acceptance Deadline Date shall be extended by the number of Calendar Days equal to the Schedule Delay Period;
 - d. in the case of any Relevant Event, the Developer shall compensate the Construction Contractor pursuant to Part 2, Section 15.4 (without double-counting), as applicable, for Compensable Costs, subject to Part 2, Section 15.7; and
 - e. Intentionally Omitted.
- 15.3.2. The Construction Contractor acknowledges and accepts that, pursuant to the Project Agreement, upon agreement between the Developer and the Enterprises, such agreement not to be unreasonably withheld, as to:
- a. the extension of time, relief and/or compensation (including the payment terms of, and documentation required for, any such compensation) to which Developer is then entitled pursuant to the Project Agreement (including, as necessary, on a retroactive basis) in respect of any Relief Event or Compensation Event as determined pursuant to Section 15.3.1 of the Project Agreement; and/or
 - b. the amount of any Loss that Developer is then entitled to take into account for calculation purposes pursuant to (i) Section 15.7 of the Project Agreement or (ii) the definition of Appendix B Parcel Costs in Part A of Annex A (*Definitions and Abbreviations*) to the Project Agreement, whether or not the Enterprises owe Developer compensation in respect of any such Loss as a result of such calculation,
- the Developer and the Enterprises shall execute a written memorandum (or, with respect to any Supervening Event that was continuing when a prior such memorandum was executed, a written addendum to such prior memorandum) in a form to be prepared by the Enterprises setting out the details of such agreement. Developer shall deliver a copy of any such agreement or amendment to the Construction Contractor and, subject to the Pay-if-Paid Provisions and Equivalent Project Relief, grant the Construction Contractor such relief with respect to the Supervening Event which is the subject of such agreement or amendment as is authorized by such agreement or amendment.
- 15.3.3. The Construction Contractor acknowledges and agrees that if the Developer and the Enterprises do not reach agreement as contemplated in Part 2, Section 15.3.2 and any dispute in relation to the relevant matters is resolved pursuant to the Project Agreement Dispute Resolution Procedure, to the extent that the Project Agreement Dispute Resolution Procedure does not result in a written record of such resolution equivalent to such a memorandum, the Parties shall

execute such a memorandum to document such resolution. The Developer shall provide a copy of any such memorandum to the Construction Contractor.

15.3.4. The Construction Contractor acknowledges and accepts that a Change Order implementing an Enterprise Change or a Developer Change shall constitute an agreed memorandum for purposes of Part 2, Section 15.3.2. The Developer shall provide a copy of any such Change Order to the Construction Contractor.

15.4. Payment of Change in Costs

- a. The Construction Contractor acknowledges and accepts that pursuant to Section 15.4.a of the Project Agreement, the Enterprises may elect to pay Change in Costs either as a lump sum payment for work already performed or as a series of progress payments for payment of work as it is performed. Subject to Equivalent Project Relief and the Pay-if-Paid Provisions, the Developer shall pay Change in Costs to the Construction Contractor hereunder to the extent set forth in a written demand for such payment within 5 Working Days of the Developer's receipt of payment for such Change in Costs from the Enterprises.
- b. The Construction Contractor shall maintain (and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall maintain) cost records, supporting documentation and such other Project Records as necessary to calculate and document any Change in Costs payable pursuant to Part 2, Section 15.4.a.
- c. Any Construction Contractor written demand for payment pursuant to Part 2, Section 15.4.a shall be made in form, and accompanied by such documentation, as necessary to comply with the terms of any written memorandum executed pursuant to Section 15.3.2 of the Project Agreement, as applicable, and otherwise as reasonably required by the Enterprises.

15.5. Intentionally Omitted

15.6. Intentionally Omitted

15.7. Compensation Exclusions and Limitations

15.7.1. With respect to any Compensable Costs incurred by the Construction Contractor in respect of any Relevant Event (other than any No-deductible Event, to which this Section 15.7.1 shall not apply) that occurs during the Construction Period, if the aggregate amount of such Compensable Costs directly resulting from the occurrence of such event is greater than _____ (any such event, a "Compensable Construction Period Event"), then, subject to the Equivalent Project Relief provisions and Part 2, Section 15.7.3, the Developer shall compensate the Construction Contractor (as applicable):

- a. with respect to the occurrence of all Compensable Construction Period Events (other than such events that are subject to Part 2, Sections 15.7.1.b, 15.7.1.c or 15.7.1.d), for the amount by which the aggregate amount of Compensable Costs directly resulting from the occurrence of all such events is greater than _____ ;
- b. with respect to all Unexpected Utility Condition Events that are Compensable Construction Period Events, for the aggregate amount of Compensable Costs directly resulting from the occurrence of all such events as follows:
 - i. 50% of the first _____ of such aggregate amount of Compensable Costs (while, for certainty, the Construction Contractor shall bear the remaining 50% of such costs); and
 - ii. 100% of any and all such aggregate amount of Compensable Costs in excess of such first _____ of such aggregate amount; and
- c. with respect to all Non-Appendix B Parcel Unexpected Hazardous Substances Events that are Compensable Construction Period Events, for the aggregate amount of Compensable Costs directly resulting from the occurrence of all such events as follows:

- i. 50% of the first _____ of such aggregate amount of Compensable Costs (while, for certainty, the Construction Contractor shall bear the remaining 50% of such costs); and
 - ii. 100% of any and all such aggregate amount of Compensable Costs in excess of such first _____ of such aggregate amount; and
- d. with respect to all Appendix B Parcel Unexpected Hazardous Substances Events that are (or, as the case may be, to the extent they are) Compensable Construction Period Events, for the aggregate amount of Compensable Costs directly resulting from the occurrence of all such events as follows:
- i. none of the first _____ of all Appendix B Parcel Costs; and
 - ii. 100% of any and all such aggregate amount of Compensable Costs that are:
 - A. incurred as a direct result of the occurrence of all Appendix B Parcel Unexpected Hazardous Substances Events that are (or, as the case may be, to the extent that they are) Compensable Construction Period Events; and
 - B. in excess of the dollar amount specified in Part 2, Section 15.7.1.d, where, for purposes of this Part 2, Section 15.7.1.d.ii, Change in Costs as a component of such aggregate amount of Compensable Costs shall be determined in accordance with paragraph a. of the definition thereof in Part A of Annex A (Definitions and Abbreviations) (and not paragraph b. of such definition)).

15.7.2. Intentionally Omitted.

15.7.3. With respect to any Change in Costs (excluding any such costs as described in paragraph a.viii. of the definition thereof in Part A of Annex A (Definitions and Abbreviations)) incurred by the Construction Contractor as a result of the occurrence of a Compensation Event as described in paragraph f.vi. of the definition thereof in Part A of Annex A (Definitions and Abbreviations):

- a. Pursuant to Section 15.7.3 of the Project Agreement, the Developer shall cause the Enterprises to use Reasonable Efforts to assert a Claim against the relevant Utility Owner in respect of the Losses incurred by the Construction Contractor as a result of the occurrence of any such Compensation Event which Losses constitute Change in Costs to which this Part 2, Section 15.7.3 applies;
- b. The Construction Contractors rights under Part 2, Sections 15.3.1.d, 15.4 and 15.7.1 to be compensated with respect to any and all Change in Costs to which this Part 2, Section 15.7.3 applies shall (subject to Part 2, Section 15.7.3.c) be subject to Equivalent Project Relief and limited to the amount of such Change in Costs (if any) that the Developer receives from the Enterprises;
- c. the Developer shall be entitled to be reimbursed by the Construction Contractor (to the extent that the Enterprises is entitled to be reimbursed by the Developer pursuant to Section 15.7.3.c of the Project Agreement) for the reasonable cost and expense of pursuing any Claim against a Utility Owner pursuant to Part 2, Section 15.7.3.a (whether or not the Enterprises make any recovery from the relevant Utility Owner as a result of making such Claim), including by deducting the amount thereof from any amount otherwise payable to the Construction Contractor under this Agreement including as contemplated by Part 2, Section 15.7.3.b; and
- d. provided that the Developer has complied with its obligations under Part 2, Section 15.7.3.a, the Construction Contractor:
 - i. agrees to be bound by the outcome of the Enterprises' use of Reasonable Efforts to assert a Claim pursuant to Section 15.7.3.a of the Project Agreement in connection with the occurrence of any such Compensation Event; and

- ii. hereby waives any right that it may have to recover from the Developer any Change in Costs to which this Part 2, Section 15.7.3 applies to the extent that any such Change in Costs that it has incurred as a result of the occurrence of any such Compensation Event exceed the amount received by the Developer from the Enterprises pursuant to Part 2, Sections 15.7.3.b and 15.7.3.c,

provided that, for certainty, this Part 2, Section 15.7.3:

- e. shall not apply to any:
 - i. Change in Costs as described in paragraph a.viii. of the definition thereof in Part A of Annex A (Definitions and Abbreviations);
 - ii. Intentionally Omitted.;
 - iii. Intentionally Omitted,
 in any such case arising as a result of any such Compensation Event; and
- f. is without prejudice to the Construction Contractor's rights under any other provision of this Part 2, Section 15 to be compensated for costs referenced in Part 2, Sections 15.7.3.e.i.

15.8. Special Provisions for Force Majeure Events

15.8.1. Following the occurrence of a Force Majeure Event:

- a. The Construction Contractor, if an Affected Party with respect to such Force Majeure Event, shall promptly notify the Developer of the Force Majeure Event pursuant to Part 2, Sections 15.1 and 15.2.2.a, and the Developer shall promptly notify the Enterprises of the same pursuant to Section 15.8.1.a of the Project Agreement;
- b. the Developer, if an Affected Party with respect to such Force Majeure Event, shall promptly notify the Construction Contractor of the Force Majeure Event; and
- c. the Construction Contractor acknowledges that the Enterprises, if an Affected Party (as defined in the Project Agreement) with respect to such Force Majeure Event, shall promptly notify Developer of the Force Majeure Event, including the date of its commencement, evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect, and the Developer shall promptly notify the Construction Contractor upon receiving such notice from the Enterprises, and the Developer shall be an Affected Party under this Agreement to the extent that the Enterprises is an Affected Party under the Project Agreement.

15.8.2. Whether or not any notice has been given pursuant to Part 2, Section 15.8.1:

- a. The Construction Contractor, if an Affected Party, shall comply with Part 2, Sections 15.1 and 15.2.2.a with respect to the treatment of the relevant Force Majeure Event as a Relief Event pursuant to Part 2, Section 15.3; and
- b. If the Enterprises or the Developer is an Affected Party, the Developer may require the Construction Contractor to consult with it in good faith, and to use all Reasonable Efforts, to agree on appropriate terms to mitigate the effects of the relevant Force Majeure Event and facilitate the continued performance of this Agreement.

15.8.3. To the extent the Developer is an Affected Party, the Developer shall be relieved from the performance of their affected obligations under this Agreement (and shall not incur liability to the Construction Contractor for Losses in connection with a Force Majeure Event), provided that, notwithstanding the foregoing, the Developer shall not be excused from timely payment of any monetary obligations under this Agreement due to the occurrence of any Force Majeure Event.

15.9. Developer Acts; Certain Developer Changes

The Construction Contractor and the Developer agree that any Claim by the Construction Contractor with respect to any Developer Act or any Developer Change that does not require a corresponding Change under the Project Agreement shall be subject to the Supervening Event Claim process, notice and information requirements, deadlines and other requirements set forth in Part 2, Section 15.1, and requirements applicable to Claims for Supervening Events set forth in this Part 2, Section 15 generally, provided that no materials related to a Developer Act or a Developer Change that does not require a corresponding Change under the Project Agreement shall be submitted to the Enterprises and resolution of such Claim shall not be subject to Equivalent Project Relief or the Pay-if-Paid Provisions.

PART E: KEY PERSONNEL, SUBCONTRACTORS AND WORKFORCE

16. PERSONNEL

16.1. Construction Contractor's Key Personnel Obligations

Subject to Part 2, Section 16.2, the Construction Contractor shall ensure that all Key Personnel are at all relevant times (as determined by reference to the periods set out in Schedule 27 (*Key Personnel*)):

- a. seconded to or employed by such Person; and
- b. occupying the role and performing the function of their position,

in each case as required by or set out in such Schedule and any other relevant provisions of this Agreement.

16.2. Removal or Replacement of Key Personnel

16.2.1. The Construction Contractor shall not remove and/or replace any of the Key Personnel without the Developer's prior Approval and to the extent required by Section 16.2.1 of the Project Agreement, the Approval of the Enterprises, provided that the Construction Contractor may, as required by Law or pursuant to Good Industry Practice, terminate, suspend or limit the duties of any Key Personnel individual (and, promptly thereafter, notify the Developer of such action).

16.2.2. If for any reason the Construction Contractor wishes to remove and/or replace any Key Personnel and such removal and/or replacement requires the Developer's Approval under Part 2, Section 16.2.1 and the Approval of the Enterprises under Section 16.2.1 of the Project agreement, the Construction Contractor shall promptly deliver a notice to the Developer for Approval (and for delivery to the Enterprises for the Enterprises' Approval), setting out the reason for such removal and/or replacement, together with:

- a. the identity, expertise and experience of the proposed replacement; and
- b. any such support information or evidence as the Developer may reasonably require in relation to such matters.

16.3. Construction Contractor's Personnel Qualifications

The Construction Contractor shall ensure that all CC Work shall be performed and, as applicable, supervised by personnel:

- a. who are careful, skilled, experienced and competent in their respective trades or professions;
- b. who are professionally qualified to, and who hold all necessary registrations, permits, approvals and licenses to, perform or supervise the relevant part of the CC Work pursuant to this Agreement; and
- c. who shall assume professional responsibility for the accuracy and completeness of the relevant part of the CC Work performed or supervised by them.

17. SUBCONTRACTING REQUIREMENTS

17.1. Subcontracting Terms and Requirements

17.1.1. Each Subcontract, and any amendments or supplements thereto, shall comply with, and, as applicable, incorporate the terms set out in, Part A of Schedule 16 (*Mandatory Terms*) to this Agreement.

17.1.2. Intentionally Omitted.

17.1.3. Intentionally Omitted.

17.1.4. The Construction Contractor shall deliver to the Developer a copy of:

- a. Intentionally Omitted; and
- b. each Subcontract (and any amendment to any such Subcontract) promptly and in any event no later than 25 Calendar Days after execution of such Subcontract (or amendment).

17.2. Self-Performance

- a. The Construction Contractor shall self-perform at least 30% of the value of the Construction Work as measured by the amounts payable under the terms of the Construction Contract with respect to such Construction Work (excluding, for certainty, any amounts payable with respect to the O&M Work During Construction).
- b. For purposes of Part 2, Section 17.2.a, the Construction Contractor shall be considered to be a “design-builder” as described in 23 CFR § 635.116(d)(2).

17.3. Subcontracting with Affiliates

- a. Without limiting its obligations under Part 2, Sections 17.1 and 17.2, the Construction Contractor shall have the right to have CC Work directly or indirectly performed by Affiliates of itself only if the following conditions are satisfied:
 - i. the Affiliate shall be qualified, experienced and capable in the performance of such part of the CC Work assigned;
 - ii. the Construction Contractor shall execute a written Subcontract with the Affiliate;
 - iii. such Subcontract shall be subject to the Developer’s Acceptance, and:
 - A. be on terms consistent with this Agreement and Good Industry Practice;
 - B. be on terms no less favorable to the Construction Contractor (or, as applicable, its Subcontractor) than those that the Construction Contractor (or such Subcontractor) could reasonably obtain in an arms’ length, competitive transaction with an unaffiliated Subcontractor;
 - C. be in form and substance similar to Subcontracts then being used by the Construction Contractor or its Subcontractors, as applicable, for similar work or services with unaffiliated Subcontractors; and
 - D. set out the scope of work and services thereunder and all the pricing, terms and conditions in relation to such scope of work and services.
- b. The Construction Contractor shall make no payments to Affiliates for work or services in advance of provision of such work or services under the terms of a Subcontract that complies with Part 2, Section 17.3.a, except for reasonable mobilization payments or other payments consistent with arm’s length, competitive transactions of similar scope.

17.4. Relationship with Subcontractors

- a. Pursuant to Part 2, Section 8.2, the retention of any Subcontractor (of any tier) by the Construction Contractor in accordance with this Agreement shall not:
 - i. relieve the Construction Contractor of its obligations and liabilities, or deprive the Construction Contractor of any rights, in each case under this Agreement; and
 - ii. relieve the Developer of or increase their obligations and liabilities, or deprive the Developer of any rights, in each case under this Agreement.
- b. The Developer acknowledges and agrees that:
 - i. the Subcontracts may provide that the Subcontractors may claim relief from the Construction Contractor only if and to the extent that such claim or relief is granted to the Construction Contractor under this Agreement; and

- ii. the Construction Contractor will not be precluded from advancing any claim or seeking any relief under this Agreement solely by reason that the Construction Contractor is not liable to a Subcontractor under a Subcontract until and/or only to the extent that such claim or relief is granted by the Developer to the Construction Contractor under this Agreement,

provided that all such claims shall be made and administered by the Construction Contractor, and nothing in this Section creates any contract or obligation directly between or among the Developer and any Subcontractor or gives any Subcontractor any rights against the Developer.

17.5. Prompt Payment of Subcontractors

17.5.1. The Construction Contractor shall, and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall, pay each of its and their respective Subcontractors an amount equal to:

- a. 100% of the calculated value of the completed work or the services provided under the relevant Subcontract through and including the last day of the most recently concluded month; *less*
- b. any amounts previously paid in respect of such completed work or provided services; *less*
- c. any amount that is subject to retainage as permitted by Part 2, Section 17.5.4.b; *less*
- d. any amount that is subject to a good faith dispute presented in accordance with the terms of the relevant Subcontract,

promptly, which for purposes of this Part 2, Section 17.5.1 means no later than:

- e. with respect to:
 - i. Intentionally Omitted;
 - ii. the Construction Contractor as payor, 30 Calendar Days following the relevant payee Subcontractor's delivery of an invoice to the Construction Contractor in compliance with Section 2.(c) of Part A of Schedule 16 (Mandatory Terms) in respect of such amount as determined pursuant to Part 2, Sections 17.5.1.a through 17.5.1.d and in accordance with the terms of the relevant Subcontract; and
- f. with respect to any Subcontractor as payor, seven Calendar Days following such payor Subcontractor's receipt of a corresponding payment in respect of the relevant work or services, as applicable.

17.5.2. The Construction Contractor may request Approval of the Developer (which in turn shall request Approval of the Enterprises in accordance with Section 17.5.2 of the Project Agreement) for any payee Subcontractor to be exempt from being paid promptly as provided for in Part 2, Section 17.5.1. Following the Approval of any such exemption, Part 2, Section 17.5.1.e (and not Part 2, Section 17.5.1.f) shall apply to the exempted Subcontractor as a payor Subcontractor as if such exempted Subcontractor was the Construction Contractor (except to the extent that any of such exempted Subcontractor's payee Subcontractors are also subject to such an Approved exemption under this Part 2, Section 17.5.2).

17.5.3. Notwithstanding the provisions of Part 2, Section 17.5.1 and 17.5.2, the Construction Contractor shall pay each of its direct Subcontractors in accordance with 49 CFR § 26.29 no later than 30 Calendar Days following payment from the Developer to the Construction Contractor of any CC Monthly Payment or any other payment under this Agreement to the extent that part of such payment is required under the terms of the relevant Subcontract to be used to pay such Subcontractor the relevant amount.

17.5.4. The Construction Contractor shall, and shall ensure that each of its direct Subcontractors and each of their respective Subcontractors shall, be permitted (but not, for certainty, required) to withhold retainage from payments otherwise due to a Subcontractor, provided that:

- a. such retainage shall not exceed 5% of the calculated value of the completed work or services provided from time to time; and
- b. all such retainage shall be paid in full no later than 30 Calendar Days after the work or services performed under the relevant Subcontract is or are satisfactorily completed.

17.6. Notices Regarding the O&M Work During Construction Subcontract

The Construction Contractor shall provide the Developer with:

- a. a notice setting forth any amounts paid to the O&M Work During Construction Subcontractor with respect to a Delayed Completion pursuant to the O&M Work During Construction Subcontract;
- b. a notice upon the occurrence of any default or event of default under the O&M Work During Construction Subcontract by the O&M Work During Construction Subcontractor giving rise to a termination right on behalf of the Construction Contractor, which notice shall specify that such a default or event of default has occurred; and
- c. a copy of any termination notice delivered by the Construction Contractor to the O&M Work During Construction Subcontractor terminating the O&M Work During Construction Subcontract.

PART F: PROJECT MANAGEMENT

18. DELEGATION OF AUTHORITY

18.1. Intentionally Omitted

18.2. Use of Representatives

18.2.1. Appointment of Representatives

- a. Pursuant to this Part 2, Section 18.2.1, the Construction Contractor and the Developer shall each identify and maintain a person as its official representative (respectively, the “Construction Contractor’s Representative” and the “Developer’s Representative” and, together, the “Representatives” and each a “Representative”) with the functions and powers as set out in Part 2, Section 18.2.2.
- b. The Construction Contractor’s Representative shall initially be its “Construction Manager”, initially as identified in Schedule 27 (Key Personnel), subject to replacement pursuant to Part 2, Section 16.2. The Developer’s Representative shall initially be its “Project Manager” as notified to the Construction Contractor on or prior to the Agreement Date, subject to replacement pursuant to this Part 2, Section 18.2.1.
- c. From time to time:
 - i. the Developer or the Construction Contractor may replace its Representative; and
 - ii. the Construction Contractor and the Developer may each delegate all or part its or their Representative’s responsibilities under this Agreement,
in either case by notice to the other Party containing:
 - iii. the name, title, mailing address, principal phone numbers, email address (or digital equivalent) and fax number (if any) of the replacement Representative or delegatee;
 - iv. in the case of partial delegations of authority, a schedule setting out the extent to which authority for managing any aspect of this Agreement has been delegated and to whom; and
 - v. in the case of time-limited replacements or delegations, the start and end date for such time-limited replacement or delegation.

18.2.2. Power and authority of Developer and Construction Contractor Representatives

- a. Except as previously notified by the Construction Contractor to the Developer before any relevant act or instruction occurs or is given:
 - i. the Developer shall be entitled to assume that the Construction Contractor’s Representative has, and the Construction Contractor shall (subject to reasonable exceptions and limitations to be notified to the Developer) ensure that the Construction Contractor’s Representative shall have, full authority to act on behalf of the Construction Contractor for all purposes of this Agreement; and
 - ii. subject to any exceptions or limitations previously notified to them, the Developer and the Developer’s Representative shall be entitled to treat any act of the Construction Contractor’s Representative in connection with this Agreement as being expressly authorized by the Construction Contractor and the Developer and the Developer’s Representative shall not be required to determine whether any express authority has in fact been given.
- b. Except as previously notified by the Developer to the Construction Contractor before any relevant act or instruction occurs or is given:

- i. the Construction Contractor shall be entitled to assume that the Developer's Representative has, and the Developer shall (subject to reasonable exceptions and limitations to be notified to the Construction Contractor) ensure that the Developer's Representative shall have, full authority to act on behalf of the Developer for all purposes of this Agreement; and
 - ii. subject to any exceptions or limitations previously notified to them, the Construction Contractor and the Construction Contractor's Representative shall be entitled to treat any act of the Developer's Representative in connection with this Agreement as being expressly authorized by the Developer and the Construction Contractor and the Construction Contractor's Representative shall not be required to determine whether any express authority has in fact been given.
- c. Any relevant instruction to be given by either party shall be given in accordance with Part 2, Section 49.1.1.

18.2.3. Intentionally Omitted.

PART G: PUBLIC OVERSIGHT

19. RECORD KEEPING AND OVERSIGHT

19.1. Project Records

19.1.1. General obligation to maintain Project Records

The Construction Contractor shall (and shall require that each of its Subcontractors and each of their respective Subcontractors shall) at all times create and maintain full and complete records, books, documents, papers, databases, files and other documentation of information relating to the Project and, as applicable, the Construction Contractor's performance of its obligations under this Agreement and each Subcontractor's performance under the Subcontracts to which it is a party, including:

- a. as required by Law, including CORA to the extent it is applicable to Project Records in the custody of Construction Contractor-Related Entities as a matter of Law;
- b. pursuant to Good Industry Practice;
- c. pursuant to GAAP, as applicable;
- d. as otherwise required by the provisions of this Agreement other than this Part 2, Section 19.1.1, including pursuant to Section 13 of Schedule 8 (*Project Administration*); and
- e. maintenance of copies of:
 - i. this Agreement (and all amendments and waivers thereto) and, with respect to each Subcontractor's records, of each Subcontract to which it is a party (and all amendments and waivers thereto); and
 - ii. all notices, correspondence, submissions, change, purchase or work orders, or other documents and materials expressly referenced as work product in this Agreement, this Agreement and, with respect to each Subcontractor's records, each Subcontract to which it is a party,

together, the "Project Records".

19.1.2. Standards for maintenance of Project Records

The Construction Contractor shall (and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall):

- a. create and maintain Project Records in the format or formats (hardcopy, analog, digital or otherwise) determined from time to time by reference to the requirements and standards set out in Part 2, Sections 19.1.1.a through 19.1.1.e;
- b. maintain originals or copies of all Project Records that are otherwise required to be maintained in a physical format at a location in the State; and
- c. develop and maintain procedures to backup and secure all Project Records that, at a minimum, comply with Law and Good Industry Practice.

19.1.3. Inspection of Project Records

The Construction Contractor shall, without charge:

- a. make all its Project Records available for inspection by the Developer, the Enterprises, CDOT or any of their representatives or designees (each, an "Inspecting Party") pursuant to this Part 2, Section 19.1.3;
- b. make its Project Records available for inspection by the Inspecting Parties at its principal offices in the State, or at such other facilities as the Developer may reasonably require on

behalf of themselves or any other Inspecting Party to the extent records are maintained at such other facilities:

- i. during normal business hours (and, upon reasonable request, at times outside normal business hours); and
 - ii. upon reasonable notice, unless the Developer or, pursuant to Section 19.1.3 of the Project Agreement, the Enterprises have a good faith suspicion of fraud in which case no prior notice shall be required;
- c. allow any Inspecting Party to make extracts and take notes during any inspection and, upon request, furnish copies of Project Records to any Inspecting Party; and
- d. subject to its obligations to comply with Part 2, Section 19.1.2.c, and without limiting its obligations pursuant to Schedule 8 (Project Administration), prior to issuance of NTP2 the Construction Contractor shall submit to the Developer for Acceptance, and have received Acceptance of, a written protocol with respect to making all Project Records maintained in digital formats available for real-time, “24/7” secure remote access by the Inspecting Parties to the extent reasonably practicable. The Construction Contractor shall thereafter comply with such protocol.

19.1.4. Subcontractor Project Records

- a. The Construction Contractor shall ensure that each of its Subcontractors and each of their respective Subcontractors shall, either directly or through the Construction Contractor and in either case without charge, make its Project Records available to the Inspecting Parties for inspection on terms equivalent to those set out in Part 2, Section 19.1.3.a to 19.1.3.c.
- b. To the extent any Project Records are in the exclusive possession of a Subcontractor that fails to make such records available pursuant to Part 2, Section 19.1.4.a, the Construction Contractor shall notify the Developer of such occurrence, identify the Project Records that are unavailable, and describe what efforts the Construction Contractor has made to secure compliance or otherwise obtain such Project Records.

19.1.5. Limitations on disclosure

Notwithstanding anything to the contrary contained in this Agreement, the Construction Contractor shall not be required to disclose, or to ensure the disclosure by any of its Subcontractors and/or of their respective Subcontractors of, any Project Records protected by attorney-client or other legal privilege or protection under Law based upon an opinion of counsel (such counsel to be Acceptable to the Developer) unless such disclosure is otherwise compelled by Law.

19.1.6. Retention of Project Records

- a. Each individual Project Record shall be retained for a period of at least seven years after such Project Record is first generated, or for such longer period as may be required pursuant to Part 2, Sections 19.1.1.a through 19.1.1.e or Part 2, Section 19.1.6.b.
- b. Notwithstanding Part 2, Section 19.1.6.a, the Construction Contractor shall (and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall) retain and make available pursuant to this Part 2, Section 19.1 all Project Records:
 - i. that relate to a Claim or Dispute until any later date that such matters are Agreed or Determined; and
 - ii. in existence on the last Calendar Day of the Term (or the equivalent under any Subcontract) until the later of the seventh anniversary of such day and any date as may be required pursuant to Part 2, Sections 19.1.1.a through 19.1.1.e.

19.1.7. Survival of obligations

The Construction Contractor's obligations under this Part 2, Section 19.1 shall survive until the later of:

- a. the seventh anniversary of the CC Termination Date; and
- b. with respect to the retention of any Project Record, such date as determined pursuant to Part 2, Section 19.1.6.

19.2. Financial Statements

In addition to all of the Construction Contractor's other obligations to prepare and deliver reports and other materials under this Agreement, the Construction Contractor shall provide the Developer with copies of the following:

- a. the unaudited quarterly and annual accounts of the Construction Contractor and the Construction Guarantor within 20 Working Days after such accounts have been finalized; and
- b. the audited annual accounts of the Construction Contractor and the Construction Guarantor within 20 Working Days after publication (or, if not published, after such accounts have been finalized),

each of which the Developer shall be entitled to provide to the Lenders and any Registered Rating Agency.

19.3. Enterprise Board Meeting Attendance

The Construction Contractor acknowledges the Developer's obligation to appear before the Enterprise's board and the Transportation Commission pursuant to Section 19.3 of the Project Agreement. Upon request from the Developer, the Construction Contractor agrees to cooperate and assist the Developer in order to enable the Developer to comply with the Developer's obligations under the Project Agreement.

20. COLORADO OPEN RECORDS ACT**20.1.1. Intentionally Omitted**

20.1.2. The Construction Contractor shall (and shall ensure that each other Construction Contractor-Related Entity shall) comply with any Accepted protocol for the disclosure and, as applicable, exemption from disclosure of Project Records in compliance with CORA and other Laws applicable to the disclosure of such Project Records.

20.1.3. None of the Developer, the Enterprises nor CDOT shall be responsible or liable to the Construction Contractor or any other Person for the disclosure of any Project Records if the disclosure:

- a. is required by Law;
- b. subject to Part 2, Section 19.1.5 (and excluding, for certainty, any disclosure of CORA Exempt Materials) is permitted by Law;
- c. is required by court order;
- d. occurs through inadvertence or mistake;
- e. is made to the FHWA or the US DOT; or
- f. is compliant with the protocol Accepted pursuant to Part 2, Section 20.1.2.

20.1.4. In the event the Developer, the Enterprises or CDOT receives a CORA request for Project Records that are in the custody and control of Construction Contractor-Related Entities, the Construction Contractor shall cooperate with the Developer, the Enterprises, CDOT and, as applicable, the State's Attorney General's office, and shall cause all Subcontractors and each of

their respective Subcontractors to cooperate, in responding to such request in a timely manner under CORA or otherwise in accordance with the protocol Accepted pursuant to Section 20.1.2 of the Project Agreement.

20.1.5. The Construction Contractor shall be responsible for all costs associated with defending any request for disclosure of any Project Records claimed by the Construction Contractor to be exempt from disclosure under CORA, whether such records are in the custody of the Construction Contractor (or any other Construction Contractor-Related Entity), the Developer (or any other Developer-Related Entity), the Enterprises or CDOT. In connection with this obligation, the Construction Contractor shall:

- a. use Reasonable Efforts to assist the Developer and the Enterprises (and to secure the assistance of the Enterprises by each of the Construction Contractor's Subcontractors and of each of their Subcontractors) in such defense;
- b. pursuant to Part 2, Section 24.2, indemnify the Developer and the Enterprises for any Losses incurred or suffered by them in such defense; and

at the request of the Enterprises or the State Attorney General's office, intervene in any such defense at its own cost and with its own counsel.

20.1.6. The Construction Contractor shall not (and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall not) disclose any Project Records to any Person, other than:

- a. as expressly permitted by this Agreement;
- b. as required by Law or a court order;
- c. in compliance with the protocol Accepted pursuant to Section 20.1.2 of the Project Agreement or, prior to Acceptance of such protocol, among Construction Contractor-Related Entities in the ordinary course of business in connection with the Project and subject to customary safeguards regarding the confidential treatment of such records; or
- d. with the Developer's prior Approval,

and, in each case, where such information relates to a member of the public, the Construction Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided and then only in compliance with Law, unless the Construction Contractor has obtained the prior written consent of such Person and of the Developer.

21. INSPECTIONS AND AUDITS

21.1. Site Inspections and Annual Survey and Audit Rights

21.1.1. Inspections of the Site

- a. The Construction Contractor acknowledges and agrees that, subject to Part 2, Section 21.1.1.b, the Developer, the Enterprises, CDOT, the FHWA and their respective authorized agents shall have an unrestricted right to enter the Site from time to time in order to:
 - i. inspect the state and progress of the CC Work and to monitor compliance by the Construction Contractor with its obligations under this Agreement, including by conducting inspections, surveys, sampling, measurements, observations, testing and other reasonably necessary oversight activities;
 - ii. conduct routine, in-depth or any other type of inspection or other oversight activity in accordance with their standard practices; and/or
 - iii. any other inspection or oversight activity expressly contemplated by this Agreement,

provided that any such activities are conducted pursuant to Part 2, Section 21.1.3.

- b. In exercising their rights under this Part 2, Section 21.1.1, the Developer shall at all times, and shall cause the Enterprises at all times, to comply with all relevant site rules and safety regulations in relation to the Site.

21.1.2. Annual Survey and Audit Rights

The Construction Contractor acknowledges and agrees that the Enterprises have certain survey and audit rights pursuant to Section 21.1.2 of the Project Agreement.

- a. Once in every Calendar Year, and at additional times if the Enterprises or the Developer reasonably believe that Construction Contractor is in breach of its obligations under this Agreement, the Enterprises or the Developer may carry out or cause the carrying out of:
 - i. a survey of the CC Work (or part of the CC Work) by a suitably qualified independent expert (not being an employee or consultant of the Developer, either Enterprise or CDOT that has otherwise been materially involved in the Project (except for purposes of conducting a prior survey)); and
 - ii. an audit of Project Records and the Construction Contractor's compliance with its obligations under this Agreement.
- b. The Developer shall notify the Construction Contractor in writing a minimum of seven Working Days in advance of the date they wish to carry out a survey or audit described in Part 2, Section 21.1.2.a, provided that no such prior notice shall be required if the Developer or the Enterprises reasonably believe that the Construction Contractor is in breach of its obligations under this Agreement. Unless a Construction Contractor Default has occurred and is continuing, the Developer and the Enterprises shall consider in good faith any reasonable request by the Construction Contractor for the survey or audit to be carried out on a different date if such request is made at least five Working Days prior to the notified date and the Construction Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Construction Contractor's ability to perform its obligations or exercise its rights under this Agreement. The survey and audit described in Part 2, Section 21.1.2.a may be conducted separately during any relevant Calendar Year.

21.1.3. Rules governing conduct of inspections, surveys and audits

- a. When carrying out any inspection, survey or audit pursuant to Part 2, Section 21.1.1 or Section 21.1.2, the Developer shall use Reasonable Efforts to minimize any unnecessary disruption to the CC Work and the Construction Contractor's performance of its obligations under this Agreement.
- b. Subject to Part 2, Sections 21.1.3.c and 21.1.4.a.iii, as between the Developer and the Construction Contractor, the cost of the inspection, survey or audit conducted pursuant to Part 2, Section 21.1.1 or Part 2, Section 21.1.2 shall be borne by the Developer.
- c. The Construction Contractor shall, at its own cost and expense, use Reasonable Efforts to provide assistance to the Developer and the Enterprises as required from time to time during the carrying out of any inspection, survey or audit conducted pursuant to this Part 2, Section 21.

21.1.4. Findings of breach

- a. If an inspection, survey or an audit conducted pursuant to Part 2, Section 21.1.1 or Part 2, Section 21.1.2 is conducted in response to or identifies any Construction Contractor breach or Construction Contractor Default, the Developer may, as applicable and in its discretion:
 - i. notify the Construction Contractor of the condition which the CC Work (or any part of the CC Work) should be in to comply with the Construction Contractor's obligations under this Agreement or, without altering the Construction Contractor's obligations hereunder, of other steps the Developer believes should

- be taken with respect to the Construction Contractor's obligations under this Agreement;
- ii. without altering the Construction Contractor's obligations hereunder, specify a reasonable period within which the Construction Contractor must carry out any rectification and/or maintenance work, or where rectification or maintenance work cannot rectify the non-compliance, to take reasonable steps to prevent the recurrence of such a non-compliance; and/or
 - iii. be entitled to be reimbursed by the Construction Contractor for the reasonable cost and expense of the inspection, survey or audit and any costs and expenses incurred by the Developer (including amounts the Developer is obligated to reimburse the Enterprises pursuant to Section 21.1.4 of the Project Agreement) in relation to such inspection, survey or audit (or, in the case of a breach that is not a Construction Contractor Default, such parts of the inspection, survey or audit that the Developer reasonably determines were necessary to identify such breach).
- b. Notwithstanding any action by the Developer pursuant to Part 2, Section 23.4, the Construction Contractor shall promptly (or within such other period of time as is required or expressly permitted by Law and the provisions of this Agreement) rectify any non-compliance identified by any survey or audit conducted pursuant to this Part 2, Section 21.1.

21.2. Right to Conduct Physically Intrusive Inspections

The Construction Contractor acknowledges and agrees that the Enterprises have certain inspection rights pursuant to Section 21.2 of the Project Agreement.

- 21.2.1. Without prejudice to the Developer's other rights under this Agreement, the Developer and, pursuant to the Project Agreement, the Enterprises shall have the right, at any time prior to the Final Acceptance Date, upon reasonable notice, to require the Construction Contractor to permit physically intrusive inspections by the Developer or the Enterprises of any part or parts of the Construction Work, including by opening up covered or sealed portions of the Construction Work, when the Developer or the Enterprises reasonably believe that such part or parts of the Construction Work do not comply with the requirements of this Agreement. With respect to any test, observation, or inspection requested or conducted by or on behalf of the Developer that did not originate with the Enterprises, the Developer shall not request or conduct such tests, inspections or observations until the Developer has provided written assurances acceptable to the Construction Contractor, acting reasonably, that funds necessary to pay the costs of any such test, observation or inspection are available. In carrying out any such inspection the Developer shall use Reasonable Efforts to minimize unnecessary disruption to the CC Work and the Construction Contractor's performance of its obligations under this Agreement.
- 21.2.2. The costs of any inspection carried out pursuant to Part 2, Section 21.2.1 shall be borne as follows:
- a. by the Construction Contractor if such Construction Work was covered prior to any observation or test required by the Construction Standards or prior to any observation or test for which the Construction Contractor did not provide reasonable notice hereunder and did not have appropriate observers observe the test; and
 - b. in all other cases, as follows:
 - i. by the Construction Contractor, if the relevant part or parts of the Construction Work does not or do not comply with the requirements of this Agreement, and:
 - A. the Construction Contractor shall rectify such noncompliance at its own cost and expense; and
 - B. the Developer shall be entitled to be reimbursed by the Construction Contractor for the reasonable cost and expense incurred by the

Developer and for costs for which the Developer is required to reimburse the Enterprises pursuant to Section 21.2.2 of the Project Agreement in relation to such inspection conducted pursuant to Part 2, Section 21.2.1 (or, in the case of a noncompliance that is not a Construction Contractor Default, such parts of the inspection that the Developer reasonably determine were necessary to identify such noncompliance);

- ii. if such inspection was conducted by the Enterprises and the relevant part or parts of the Construction Work complies or comply with the requirements of this Agreement, such inspection shall, subject to Equivalent Project Relief, be treated as a Compensation Event, except to the extent that such inspection was carried out in response to the Construction Contractor breaching its obligation to maintain Project Records pursuant to Part 2, Section 19.1, which Project Records, if maintained in accordance with this Agreement, would have demonstrated that the relevant part or parts of the Construction Work complied with the requirements of this Agreement; and
- iii. if such inspection was conducted by the Developer and not by the Enterprises, and the relevant part or parts of the Construction Work complies or comply with the requirements of this Agreement, the costs of such inspection shall be paid by the Developer within 30 Calendar Days following receipt by the Developer of the Construction Contractor's written demand therefor.

21.2.3. Without prejudice to the rights of the Developer pursuant to this Part 2, Section 21.2 or the Enterprises pursuant to Section 21.2 of the Project Agreement, the Parties acknowledge that the exercise of such rights pursuant to this Part 2, Section 21.2 shall not in any way affect the obligations of Construction Contractor under this Agreement except as expressly set out in this Part 2, Section 21.2 or elsewhere in this Agreement.

21.3. Increased Oversight

The Construction Contractor acknowledges and agrees that the Enterprises have certain oversight rights pursuant to Section 21.3 of the Project Agreement.

21.3.1. The Developer or, pursuant to the Project Agreement, the Enterprises may, in their discretion, at any time when:

- a. there are material Defects in the Construction Work; or
- b. the Construction Contractor has materially failed to comply with the Technical Requirements (other than with respect to any breach that constitutes a CC Noncompliance Event) which failure remains uncured; and/or
- c. the Increased Oversight Threshold has been met or exceeded,
without prejudice to any other right or remedy available to them, and without limiting the Construction Contractor's other obligations under this Agreement (including obligations to remedy Defects and to otherwise perform in accordance with the requirements set out in this Agreement), by notice to the Construction Contractor:
- d. require the Construction Contractor to promptly prepare and submit for Approval a remedial plan to, as applicable:
 - i. remedy such Defects or failure and prevent its recurrence; or
 - ii. improve performance so as to address the causes of the Increased Oversight Threshold being met or exceeded,

and, following Approval of such plan, the Construction Contractor shall be required to comply with such plan; and/or

- e. increase the level of their monitoring of the Construction Contractor relative to the prior standard of practice under this Agreement prior to such Defect or failure, or to the

Increased Oversight Threshold being met or exceeded, until such time as the Construction Contractor shall have demonstrated to the reasonable satisfaction of the Developer that it is capable of performing and shall perform all its obligations under this Agreement.

- 21.3.2. If the Developer, in its discretion, issues a notice pursuant to Part 2, Section 21.3.1 or the Enterprises issue a notice in relation to the CC Work pursuant to Section 21.3.1 of the Project Agreement, the Construction Contractor shall bear its own costs and expenses and pay to the Developer on demand all reasonable costs and expenses incurred by or on behalf of the Developer in relation to any increased level of monitoring and any amounts that the Developer is obligated to reimburse the Enterprises pursuant to Section 21.3.2 of the Project Agreement.

PART H: PERFORMANCE MANAGEMENT

22. PERFORMANCE-BASED PAYMENT DEDUCTIONS AND PERSISTENT BREACH

22.1. Performance-based Payment Deductions

22.1.1. Pursuant to Section 3(b) of Schedule 5 (Milestone Payments) and Part 1 of Schedule 6 (Performance Mechanism), certain Construction Period performance related deductions may be made from the Substantial Completion Milestone Payment.

22.1.2. Intentionally Omitted.

22.2. Persistent Breach by Construction Contractor

22.2.1. If a breach of this Agreement by the Construction Contractor (other than any breach that constitutes a CC Noncompliance Event or results in the accrual of a Construction Closure Deduction that arises due to a Supervening Event) has:

- a. continued for more than 20 consecutive Calendar Days; or
- b. occurred two or more times in any six consecutive month period,

then the Developer may serve a notice (an “Initial Warning Notice”) on the Construction Contractor:

- c. specifying that it is an Initial Warning Notice;
- d. giving reasonable details of the breach; and
- e. stating that the relevant breach is a breach which, if it continues for the period of time specified in Part 2, Section 22.2.2.a or recurs as specified in Part 2, Section 22.2.2.b, may result in a Construction Contractor Default for Persistent Construction Contractor Breach,

provided that an Initial Warning Notice may not be served in respect of any incident of breach which has previously been the subject of a separate Initial Warning Notice or a Final Warning Notice.

22.2.2. If the breach specified in an Initial Warning Notice:

- a. continues beyond 20 consecutive Calendar Days after the date of service of the Initial Warning Notice; or
- b. recurs two or more times within the six consecutive month period after the date of service of the Initial Warning Notice,

then the Developer may serve another notice (a “Final Warning Notice”) on the Construction Contractor:

- c. specifying that it is a Final Warning Notice;
- d. stating that the breach specified has been the subject of an Initial Warning Notice; and
- e. stating that:
 - i. the continuation of such breach for more than 20 consecutive Calendar Days after the date of service of the Final Warning Notice; or
 - ii. the recurrence of such breach one or more times within the six consecutive month period after the date of service of the Final Warning Notice,

shall constitute a “Persistent Construction Contractor Breach”, which itself shall constitute a Construction Contractor Default pursuant to Part 2, Section 32.1.1.

23. SAFETY COMPLIANCE, SUSPENSION OF THE WORK AND PUBLIC SECTOR RIGHTS TO INTERVENE**23.1. Safety Compliance**

- 23.1.1. The Construction Contractor acknowledges and accepts that pursuant to Section 23.1 of the Project Agreement, the Enterprises may, in their discretion, issue Safety Compliance Orders to Developer from time to time, which Safety Compliance Order shall be binding on the Construction Contractor in accordance with this Agreement.
- 23.1.2. The Developer shall provide the Construction Contractor with each Safety Compliance Order promptly upon receipt and shall provide the Construction Contractor with any information it receives from the Enterprises relating to a potential Safety Compliance Order.
- 23.1.3. The Construction Contractor shall promptly implement each Safety Compliance Order that it receives from the Developer pursuant to Part 2, Section 23.1.2, including through the use of Reasonable Efforts by the Construction Contractor to overcome any inability to comply with any Safety Compliance Order caused by a Supervening Event. The Developer shall be entitled to take action pursuant to Part 2, Section 23.4.1.d if the Construction Contractor fails to comply with its obligations pursuant to this Part 2, Section 23.1.3.

23.2. Refusal of Access

The Developer reserves the right to refuse access to the Right-of-Way by any Person:

- a. if the Developer reasonably believes that:
 - i. the presence or activities of such Person on the Right-of-Way or any Additional Right-of-Way represents a material risk to the health or safety of any person, the Environment or Improvements, the community or property;
 - ii. such Person is under the influence of alcohol or drugs; or
 - iii. such Person is acting or threatening to act in a violent, harassing, discriminatory or illegal manner, or such Person previously acted in such a manner; or
- b. who previously committed any of the conduct described in Part 2, Section 23.2.a while accessing any part of the Site.

23.3. Suspension of Work

- 23.3.1. The Developer and the Enterprises shall at all times have the right and authority to suspend, in whole or in part, the CC Work by written order to the Construction Contractor. Any such order shall state the Developer's or the Enterprises' reasons for the required suspension of the Work.
- 23.3.2. Except where any suspension of the CC Work by the Developer or the Enterprises pursuant to Part 2, Section 23.3.1 is made (and continues):
- a. in response to:
 - i. any uncured failure by the Construction Contractor to comply with any Law, Governmental Approval or Permit; and/or
 - ii. the existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Project Standards related to safety or to comply with any Safety Compliance Order; or
 - b. pursuant to Part 2, Section 25.3.3.b,
the issuance of any such suspension order (or the continuation of any such suspension order) shall constitute a Compensation Event, provided that any such Compensation Event arising from a suspension of the CC Work by the Enterprises shall be subject to Equivalent Project Relief.

23.4. Enterprises' Self-Help**23.4.1. Self-help rights**

The Construction Contractor acknowledges and accepts that pursuant to Section 23.4.1 of the Project Agreement, if the Enterprises reasonably believes that they need to take action in connection with the Project or the CC Work as a result of:

- a. an Emergency having occurred and being continuing;
- b. any Project Agreement Developer Default having occurred and not having been cured within any relevant Project Agreement Developer Default Cure Period;
- c. the Construction Contractor or the Developer having failed to comply with its obligations pursuant to Part 2, Section 9.4.4.a with respect to any Defect in the Warranted Elements or any other breach of the Warranties;
- d. the Construction Contractor or the Developer having failed to comply with its obligations with respect to any Safety Compliance Order; and/or
- e. it being necessary to discharge a constitutional or statutory duty or a duty imposed on the Enterprises, CDOT or the State by any Law, or to facilitate any such discharge by the Enterprises, CDOT or the State,

then the Enterprises shall be entitled to take action pursuant to Part 2, Sections 23.4.2 and 23.4.3.

23.4.2. Notice of election to exercise self-help rights

If the Enterprises notifies the Developer that they wish to take action pursuant to Section 23.4.1 of the Project Agreement, the Developer shall promptly provide a copy of such notice to the Construction Contractor. The Construction Contractor acknowledges and accepts that in the case of an Emergency or a Project Agreement Developer Default, the Enterprises shall only be obliged to use Reasonable Efforts to comply with their notification obligations under Section 23.4.2 of the Project Agreement, and accordingly no prior notice to the Construction Contractor may be available. To the extent that such notice provides a time period for the Developer to take action before the Enterprises begins self-help actions, and the need for the Enterprises' self-help action arises from a breach by the Construction Contractor of its obligations under this Agreement, then the Construction Contractor shall, at its own cost and expense, be entitled to take action to remediate such breach during the time period specified in such notice.

23.4.3. Required actions

- a. The Construction Contractor shall use Reasonable Efforts to give all necessary assistance to the Enterprises while they are taking any Required Action.
- b. Intentionally Omitted.

23.4.4. Reimbursement of Enterprises' costs and expenses

If the Enterprises take any Required Action in response to or because of any Construction Contractor breach of its obligations under this Agreement or any Construction Contractor Default, any costs and expenses of the Developer incurred in connection with the Enterprises taking, or as a result of taking, such action (including amounts that must be reimbursed to the Enterprises by the Developer pursuant to the Project Agreement) shall be payable on demand by the Construction Contractor to the Developer.

23.5. Developer Self-Help

Notwithstanding anything to the contrary herein, but subject to the rights of the Lenders under the Lenders' CC Direct Agreement, upon the occurrence of any Construction Contractor Default and the expiration, without full and complete cure, of the relevant Construction Contractor Default Cure Period, if any, available to the Construction Contractor, without waiving or releasing the

Construction Contractor from any obligations, the Developer shall have the right, but not the obligation, for so long as such Construction Contractor Default remains uncured by the Construction Contractor or the Developer, to pay and perform all or any portion of the Construction Contractor's obligations and the CC Work that are the subject of such Construction Contractor Default, as well as any other then-existing breaches or failures to perform for which the Construction Contractor received prior written notice from the Developer but has not commenced or does not continue diligent efforts to cure. Exercise of such cure rights is subject to the terms and conditions of Section 23.4 of the Project Agreement.

PART I: INDEMNIFICATION AND INSURANCE

24. INDEMNIFICATION AND NOTICE AND DEFENSE OF CLAIMS

24.1. Developer Indemnity

Subject to Part 2, Sections 35.2, 35.4, 35.5, and 35.6, the Developer shall, to the fullest extent permitted by Law, release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Claims against an Indemnified Party and/or Losses actually suffered or incurred by the Indemnified Parties (except to the extent such Losses are caused by the misconduct, negligence or other culpable act, error or omission of the Indemnified Parties), due to third party Claims that are based upon any actual or alleged failure by the Developer to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions of this Agreement.

24.2. Construction Contractor Indemnity

Subject to Part 2, Section 24.3 and Part 2, Sections 35.2 through 35.6, the Construction Contractor shall, to the fullest extent permitted by Law, release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Claims against an Indemnified Party and/or Losses suffered by an Indemnified Party arising from, or as a consequence of, performance or non-performance of any of the Construction Contractor's obligations under this Agreement or breach by the Construction Contractor of this Agreement, including any such Claims and/or Losses that are in respect of:

- a. death or personal injury;
- b. loss of or damage to any Indemnified Party's property (whether personal or real), equipment or facilities, regardless of whether such property, equipment or facilities are owned, leased or otherwise held by such Indemnified Party, including loss of use thereof;
- c. any Claim against an Indemnified Party by any third party in connection with the use of any Project Intellectual Property in compliance with the terms of this Agreement;
- d. any violation of Law, including any Federal or state securities Law or similar, or any Environmental Law, by any Construction Contractor-Related Entity;
- e. Intentionally Omitted;
- f. Intentionally Omitted; or
- g. to the extent not otherwise a Claim or Loss that is in respect of any of the matters specified in Part 2, Sections 24.2.a through 24.2.f Claims asserted and/or Losses suffered by any third party (including (i) any counterparty to a Third Party Agreement and (ii) any officer, director, agent or employee who is an Indemnified Party), which such third party asserts against and/or claims from one or more of the Principal Indemnified Parties provided that such Claim and/or Loss shall only fall within the scope of this Part 2, Section 24.2.g if and to the extent that any such Claim and/or Loss arose as a result of either:
 - i. the Construction Contractor's or any other Construction Contractor-Related Entity's breach or failure to perform any obligation that any Principal Indemnified Party owed to such third party (any such obligation, a "Relevant Obligation"); or
 - ii. any act or omission of the Construction Contractor or any other Construction Contractor-Related Entity that renders any Principal Indemnified Party unable to perform any Relevant Obligation or otherwise results in any Principal Indemnified Party having liability for such Claim and/or Loss;
 - iii. the Relevant Obligation or any Principal Indemnified Party's potential liability for such Claim and/or Loss exists or arises under Law or any Governmental Approval, Permit or agreement (including a Third Party Agreement); and

- iv. either:
 - A. if Part 2, Section 24.2.g.i applies, the Developer have delegated performance of the Relevant Obligation to the Construction Contractor pursuant to this Agreement; or
 - B. if Part 2, Section 24.2.g.ii applies, the existence of the Relevant Obligation or the Principal Indemnified Party's potential liability for such Claim and/or Loss under any Law, Governmental Approval, Permit or agreement was known (or, with respect to any Relevant Obligation, should have been known) to the Construction Contractor or such other Construction Contractor-Related Entity prior to the occurrence of the relevant breach, failure to perform, act or omission,

provided that nothing in this Part 2, Section 24.2 shall limit or preclude the Construction Contractor's right to claim any affirmative defense permitted by Law.

24.3. Exclusions from Construction Contractor Indemnity

The Construction Contractor's indemnification and hold harmless obligations under Part 2, Section 24.2 shall not extend to any Loss or Claim of an Indemnified Party to the extent that such Loss or Claim:

- a. was, with respect to a Loss only, already the subject of an indemnity claim under Part 2, Section 24.2 from another Indemnified Party; or
- b. was directly caused by:
 - i. a Supervening Event;
 - ii. the fault, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence of such Indemnified Party;
 - iii. performance or non-performance by the Developer of any of its obligations under this Agreement or the performance or non-performance by the Enterprises of any of its obligations under the Project Agreement;
 - iv. such Indemnified Party's violation of any Law; or
 - v. a Developer Act;
- c. is comprised of a Claim asserted and/or Loss suffered by any third party (including (i) any counterparty to a Third Party Agreement and (ii) any officer, director, agent or employee who is an Indemnified Party) which third party asserts a Claim that is:
 - i. against one or more of the Principal Indemnified Parties;
 - ii. otherwise within the scope of the indemnity set out in Part 2, Section 24.2; and
 - iii. covered by the worker compensation program of the Principal Indemnified Party against which the Claim is asserted; or
- d. is not of a type specifically referenced in Part 2, Sections 24.2.a through 24.2.f and such Loss or Claim:
 - i. arose from, or as a consequence of, the Construction Contractor's performance (and not of any non-performance or breach) of its obligations under this Agreement; and
 - ii. could not have been avoided by the Construction Contractor.

24.4. Claims by Employees

The Construction Contractor's indemnification obligation under Part 2, Section 24.2 in relation to Losses and/or Claims against an Indemnified Party by an employee of the Construction Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose

acts they may be liable, shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

24.5. Notice of Claims and Tender of Defense

If any of the Indemnified Parties receives notice of a Claim or otherwise has actual knowledge of a Claim that it believes is within the scope of the indemnity under Part 2, Section 24.1 or Part 2, Section 24.2, the Indemnified Party shall, without limiting its obligations under Part 2, Section 25.4.2:

- a. provide the Indemnifying Party with notice of any such Claim of which they are aware (together with a copy of all written materials that the Indemnified Parties receive asserting such Claim), provided, however, that any failure to give such notice will not constitute a waiver of any rights of the Indemnified Party except to the extent that the rights of the Indemnifying Party are actually prejudiced by such failure; and
- b. subject to Part 2, Section 24.6.2:
 - i. tender to any applicable insurers or the Indemnifying Party, as applicable, the Indemnified Party's defense of any Claim resulting from the same; and
 - ii. use Reasonable Efforts to cause each other Indemnified Party to tender to the insurers or the Indemnifying Party, as applicable, such Indemnified Party's defense of any Claim resulting from the same.

24.6. Defense of Claims

24.6.1. Tender of defense

- a. Subject to Part 2, Section 24.6.2, if and to the extent defense of any Claim that is subject to the indemnity under Part 2, Section 24.1 or Part 2, Section 24.2 is tendered to the Indemnifying Party, then within 20 Calendar Days after the receipt of such tender, the Indemnifying Party shall notify the Indemnified Party whether it has tendered the matter to an insurer (if applicable).
- b. Subject to Part 2, Section 24.6.2, if the insurer under any Insurance Policy accepts any tender of defense with respect to any Claim that is subject to the Indemnifying Party's indemnity under Part 2, Section 24.1 or Part 2, Section 24.2 or that is otherwise subject to such policy within the applicable time period required by Law:
 - i. the Parties shall use Reasonable Efforts to cooperate in the defense proffered by such insurer, including (with respect to the Indemnifying Party) communication and coordination of the Indemnifying Party's and its insurer's defense strategy with the Enterprises and the Colorado Attorney General's Office; and
 - ii. for purposes of this Agreement, each applicable Indemnified Party shall be deemed to be an insured party under the relevant Insurance Policy.
- c. If any such Claim is not tendered to an insurer, or if an insurer has rejected the tender, the Indemnifying Party shall promptly notify the Indemnified Party whether the Indemnifying Party:
 - i. accepts tender of defense and confirms the Claim is subject to full indemnification under Part 2, Section 24.1 or Part 2, Section 24.2, as applicable, without any reservation of rights to deny or disclaim full indemnification;
 - ii. accepts tender of defense with a reservation of rights, in whole or in part;
 - iii. is incapable of accepting such tender of defense due to an Indemnified Party's exercise of rights pursuant to Part 2, Section 24.6.2, or otherwise has not been tendered defense of any relevant Claim by any Indemnified Party pursuant to Part 2, Section 24.5.b.ii; or

- iv. rejects the tender of defense, in which circumstance the Indemnified Party shall be entitled to select its own counsel and control the defense of such Claim, including the right to settle the Claim without Indemnifying Party consent:
 - A. following consultation by the Developer or the Construction Contractor, as applicable (to the extent they are the relevant Indemnified Parties) with the Indemnifying Party; and
 - B. without prejudice to such Indemnified Party's right to be indemnified by the Indemnifying Party.
- d. If the Indemnifying Party accepts tender of defense pursuant to Part 2, Section 24.6.1.c.i or Part 2, Section 24.6.1.c.ii, then, subject to Part 2, Section 24.6.2, the Indemnifying Party shall have the right to select legal counsel for the Indemnified Party with the prior written consent of such Indemnified Party, provided that the Indemnifying Party shall be responsible for all costs and expenses related to such defense and each such counsel.
- e. Notwithstanding any Indemnifying Party acceptance of tender of defense pursuant to Part 2, Section 24.6.1.c.i or Part 2, Section 24.6.1.c.ii, the Indemnifying Party acknowledges and agrees that each Indemnified Party retains all rights with regard to settlement of any Claim that is subject to the Indemnifying Party's indemnity under Part 2, Section 24.1 or Part 2, Section 24.2, as applicable, and the Indemnifying Party (or counsel appointed by the Indemnifying Party or its insurer) shall seek the consent of such Indemnified Party (with respect to the Developer or the Construction Contractor as Indemnified Party, such consent not to be unreasonably withheld) and with respect to either Enterprise as Indemnified Party, the consent of the Colorado Attorney General's Office, to any settlement terms and conditions.
- f. The Indemnifying Party shall not be liable for any settlement by an affected Indemnified Party of a Claim that is subject to the Indemnifying Party's indemnity under Part 2, Section 24.1 or Part 2, Section 24.2, as applicable except:
 - i. where the Indemnifying Party (or its insurer) has given its prior written consent to such settlement, which consent shall not be unreasonably withheld;
 - ii. with respect to any settlement made pursuant to Part 2, Section 24.6.1.c.iv; or
 - iii. where the settlement is approved by a court of competent jurisdiction and such court approval has become final and binding.

24.6.2. Reservation of rights

The Construction Contractor acknowledges and agrees that:

- a. the Colorado Attorney General's Office:
 - i. is required by Law to represent and defend the Enterprises and CDOT; and
 - ii. may appoint counsel of its selection to act as Special Assistant Attorney General in respect of any particular Claim;
- b. certain other Indemnified Parties may have similar statutory representation obligations and rights; and
- c. consequently, the Enterprises and such other Indemnified Parties have the right in their discretion to:
 - i. elect at any time to conduct their own defense with respect to a Claim that is within the scope of the indemnity under Part 2, Section 24.2; or
 - ii. agree to allow such defense to be conducted in whole, in part or in conjunction with counsel appointed by the Construction Contractor or its insurer, subject (with respect to the Enterprises, CDOT and the State) to Approval of such counsel by the Colorado Attorney General's Office.

25. INSURANCE

25.1. Obligation to Obtain and Maintain Insurance

25.1.1. The Parties shall, at a minimum, obtain and maintain, or cause to be obtained and maintained, all insurance policies specified in Schedule 13 (Required Insurances) (the “Insurance Policies”) pursuant to the requirements of this Part 2, Section 25 and Schedule 13 (Required Insurances). Schedule 13 (Required Insurances) sets forth which Insurance Policies shall be obtained by the Construction Contractor (the “CC Insurance Policies”) and which Insurance Policies shall be obtained by the Developer (the “Developer Insurance Policies”). The Construction Contractor may satisfy such requirements by:

- a. placing any of the CC Insurance Policies on a Project-specific basis; and/or
- b. relying on corporate policies of Construction Contractor-Related Entities (or their Affiliates),

provided that all other applicable requirements of this Part 2, Section 25 and Schedule 13 (Required Insurances) are satisfied.

25.1.2. Notwithstanding Part 2, Section 25.1.1, the Parties acknowledge and agree that:

- a. neither Party makes any representations or warranties as to the adequacy or sufficiency of the minimum Insurance Policy requirements specified in this Agreement, including as to whether such Insurance Policies shall be adequate to protect a Party against:
 - i. the performance or non-performance of its obligations under this Agreement;
 - ii. the risks it is assuming under this Agreement or the Project Agreement; and
 - iii. its liabilities to any third party;
- b. except as otherwise expressly provided in this Agreement, no limit of liability specified for any Insurance Policy, or approved variances therefrom, shall preclude the Developer from exercising any right otherwise available to them under this Agreement or at Law; and
- c. to the extent required by Law in connection with CC Work to be performed during the CC Term, the Construction Contractor shall obtain and maintain, or cause to be obtained and maintained, in addition to the Insurance Policies, such other insurance policies for such amounts, for such periods of time and subject to such terms, as required by Law.

25.1.3. For certainty, the insurance coverage the Construction Contractor is required to obtain and maintain, or cause to be obtained and maintained, pursuant to Part 2, Sections 25.1.1 and 25.1.2.c may support but shall not limit the Construction Contractor’s indemnification and defense obligations under this Agreement.

25.2. General Insurance Requirements

25.2.1. Placement of insurance with Eligible Insurers

- a. All Insurance Policies shall be obtained from, and maintained with, Eligible Insurers.
- b. If an insurer providing any Insurance Policy ceases to be an Eligible Insurer, then the Construction Contractor or the Developer, as applicable, shall promptly, and in any event within 15 Calendar Days of such event occurring, secure alternate coverage with an Eligible Insurer unless the Enterprises and the Developer otherwise approve the continued maintenance of such Insurance Policy with the existing insurer.

25.2.2. Language; governing law

All Insurance Policies shall be issued in the English language and governed by the laws of the State of Colorado or the State of New York.

25.2.3. Liability and deductibles

Except to the extent included in any Termination Amount or in any compensation paid with respect to a Supervening Event or Change, as between the Construction Contractor and the Developer:

- a. the Construction Contractor shall be liable for all insurance deductibles, premiums, and liabilities in excess of the coverage provided under any CC Insurance Policy, and the Developer shall have no liability for the same; and
- b. the Developer shall be liable for all insurance deductibles, premiums, and liabilities in excess of the coverage provided under any Developer Insurance Policy, and the Construction Contractor shall have no liability for the same.

25.2.4. Primary coverage

- a. Each Insurance Policy shall provide that the coverage thereof is primary and non-contributory with respect to all named insureds, additional insureds (including the Developer the Enterprises, CDOT and the Specified Additional Insureds) and loss payees, as their interests may appear, except the Developer Insurance Policies shall provide primary and non-contributory coverage with respect to Developer's negligence and Developer's responsibility to provide workers' compensation and employers' liability for its employees.
- b. Any insurance or self-insurance that is maintained by an insured or any additional insured (including the Developer (with respect to the CC Insurance Policies), the Construction Contractor (with respect to the Developer Insurance Policies), the Enterprises, CDOT and any Specified Additional Insured) in addition to any Insurance Policy shall be in excess of such Insurance Policy and not contribute with it.

25.2.5. Endorsements

Each Insurance Policy (excluding those required pursuant to Section 1.3, Section 1.4, Section 1.6, Section 1.8, and Section 1.10 of Schedule 13 (*Required Insurances*)) shall be written or endorsed such that:

- a. any:
 - i. failure on the part of a named or any additional insured (including any Specified Additional Insured) to comply with reporting provisions or other conditions of such Insurance Policy;
 - ii. breach of representation or warranty by, breach of any provision in such policy by, or other action or inaction of, a named insured, any additional insured (including any Specified Additional Insured) or others; or
 - iii. change in ownership of all or any portion of the Project or the Developer's or Construction Contractor's interest in the same,

shall not affect or vitiate the coverage provided under such Insurance Policy to the other named insureds or any additional insureds (including any Specified Additional Insured and the Lenders) (or to any such named insured's or additional insured's respective members, directors, officers, employees and agents);

- b. such Insurance Policy shall apply separately to each named insured and additional insured (including any Specified Additional Insured) against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability;
- c. endorsements adding additional insureds (including Specified Additional Insureds) to required policies shall contain no limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the Insurance Policy generally, including, for certainty, any limitation, condition, restriction or exception to coverage due to the absence of a direct contractual relationship between the additional insured and the named insured or, if different, the Person that obtained the insurance; and

- d. Specified Additional Insureds may be added as additional insureds from time to time as anticipated by the definition thereof,

in the case of each of paragraphs a. to d., to the extent not prohibited by Law.

25.2.6. Prior notice of cancellation, suspension, modification etc.

- a. Each CC Insurance Policy to be provided pursuant to Sections 1.1 and 1.2 of Schedule 13 (Required Insurances) shall be written or endorsed such that coverage under, and limits with respect to, such CC Insurance Policy cannot be canceled, voided, suspended, lapsed, modified or reduced except following 90 Calendar Days' (or for non-payment of premium, 30 Calendar Days') prior notice to the Developer and the Lenders, where the insurer shall not have any limitation of liability for failure to provide such notice.
- b. Each CC Insurance Policy to be provided pursuant to Sections 1.3, 1.4, 1.5 and 1.8 of Schedule 13 (Required Insurances) shall be written or endorsed such that coverage under, and limits with respect to, such CC Insurance Policy cannot be canceled, voided, suspended, lapsed, modified or reduced except following 60 Calendar Days' (or for non-payment of premium, 30 Calendar Days') prior notice to the Developer and the Lenders, where the insurer shall not have any limitation of liability for failure to provide such notice.
- c. Each CC Insurance Policy to be provided pursuant to Sections 1.6, 1.7, 1.9 and 1.10 of Schedule 13 (Required Insurances) shall be written or endorsed such that coverage under, and limits with respect to, such CC Insurance Policy cannot be canceled, voided, suspended, lapsed, modified or reduced except following 60 Calendar Days' (or for non-payment of premium, 20 Calendar Days') prior notice to the Developer and the Lenders, where the insurer shall not have any limitation of liability for failure to provide such notice.

25.2.7. Waivers of subrogation

- a. The Developer waives all rights against each Construction Contractor-Related Entity, and the Construction Contractor waives all rights against the Developer, the Enterprises, CDOT and each Specified Additional Insured, in each case for any claims to the extent covered and paid by the Insurance Policies, or by any other insurance obtained and maintained pursuant to Part 2, Section 25.1.2.c, except such rights as they may have to the proceeds of such insurance.
- b. The Construction Contractor shall, and shall require all Subcontractors to, to the extent applicable, provide written waivers (equivalent to the Construction Contractor's waivers set out in Part 2, Section 25.2.7.a) in favor of the Developer, the Enterprises, CDOT and each Specified Additional Insured.
- c. The Developer may, at its discretion (provided that such discretion is exercised and notice of the same is given to the Construction Contractor at least 10 Calendar Days prior to any associated loss), require the Construction Contractor to provide written waivers equivalent to the waivers set out in Part 2, Sections 25.2.7.a and 25.2.7.b in favor of the City of Denver (other than in its capacity as Cover Top Maintainer) and Denver Public Schools.

25.2.8. Defense costs

No defense costs shall be included within or erode the limits of coverage under any Insurance Policy, except that defense costs may be included within the limits of coverage under each Insurance Policy required pursuant to Sections 1.2, 1.4, 1.5, and 1.6, of Schedule 13 (Required Insurances).

25.2.9. Exhaustion of limits

With respect to each Insurance Policy (excluding those that are specific to this Project) required pursuant to Section 1.2 of Schedule 13 (Required Insurances), whenever the aggregate limit is exhausted by at least 25% of the required aggregate limit by claims paid or reserved by insurer(s)

(such that, for certainty, 75% or less of such required aggregate limit then remains available), the Party responsible for the relevant Insurance Policy shall promptly:

- a. notify the other Party of such exhaustion; and
- b. and in any event within three Working Days, deliver evidence to the other Party (such evidence reasonable satisfactory to such Party) that the Party responsible for the relevant Insurance Policy has obtained, or caused to be obtained, additional insurance to reinstate the aggregate limit to the minimum amount required by Section 1.2 of Schedule 13 (*Required Insurances*).

25.3. Verification of coverage

25.3.1. The Parties shall, not less than eight Working Days prior to the effective (or renewal) date of each Insurance Policy for which it is responsible, deliver to the other Party:

- a. a written certificate of insurance that:
 - i. is on the most recent ACORD form consistent with the required coverage and in standard form;
 - ii. states the identity of all insurers, named insureds and additional insureds;
 - iii. states the type and limits of coverage;
 - iv. includes as attachments all additional insured endorsements; and
 - v. is signed by an authorized representative of the insurer shown on the binder; and
- b. a letter from the Insurance Broker placing the Insurance Policy addressed to the Enterprises certifying that:
 - i. such Insurance Broker has reviewed Section 25 of the Project Agreement and Schedule 13 (*Required Insurances*) to the Project Agreement;
 - ii. the Insurance Policy so certified has been issued in accordance with Section 25 of the Project Agreement and Schedule 13 (*Required Insurances*) to the Project Agreement;
 - iii. all premiums in respect of such Insurance Policy have been paid, or arrangements have been made to pay such premiums in a timely manner; and
 - iv. in the absence of material non-disclosure, misrepresentation or fraud by the named insured, the Enterprises may rely on such letter.

25.3.2. The Construction Contractor shall promptly, and in any event no later than 75 Calendar Days after the effective (or renewal) date of each CC Insurance Policy, deliver to the Developer (for delivery to the Enterprises) a true and complete certified copy of each such CC Insurance Policy, including all endorsements thereto, provided that if any CC Insurance Policy insures subject matter other than the CC Work or the Project (or any part of either thereof) any reference to such other subject matter (including any confidential information as determined in compliance with the disclosure protocol Accepted by the Developer pursuant to Part 2, Section 20.1.2) may be removed or redacted from such certified copies so long as such certified copies are accompanied by a letter from the Insurance Broker confirming that such removal or redaction has no effect on the conclusions in the letter that it previously provided pursuant to Part 2, Section 25.3.1.b in respect of such CC Insurance Policy.

25.3.3. If the Construction Contractor fails to comply with its obligations under Part 2, Sections 25.2.1.b, 25.3.1 or 25.3.2, the Developer shall, without limiting any of their other rights under this Agreement, have the right, but not the obligation, without notice to the Construction Contractor, to:

- a. obtain any insurance that is the subject of such failure at the Construction Contractor's cost and expense; or

- b. for so long as such failure continues, exercise their right to suspend, in whole or in part, the CC Work pursuant to Part 2, Section 23.3.1.

25.4. Reporting and Handling of Claims

25.4.1. The Construction Contractor's obligations to report and process claims

- a. Unless notified otherwise by the Developer pursuant to Part 2, Section 25.4.2.a with respect to the Developer's, the Enterprises' (or CDOT's) insurance claims (and potential claims), as between the Developer and the Construction Contractor, the Construction Contractor shall:

- i. promptly report and process all potential claims under the CC Insurance Policies;
- ii. promptly and diligently pursue claims pursuant to the claims procedures specified in such CC Insurance Policies, whether for defense or indemnity or both; and
- iii. enforce all legal rights against insurers under the CC Insurance Policies and under Law in order to collect on all claims, including pursuing necessary litigation and enforcement of judgments, provided that the Construction Contractor shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means,

in each case, to the extent applicable, following (x) notice to and regular consultation with the Developer pursuant to Part 2, Section 25.4.1.b and (y) the use by the Construction Contractor of Reasonable Efforts to reflect the Developer's resulting input.

- b. The Construction Contractor shall:
 - i. promptly notify the Developer of any incident, potential claim, claim or other matter of which Developer becomes aware that:
 - A. involves or could conceivably involve an Indemnified Party as a defendant;
 - B. involves a claim or potential claim by the Construction Contractor or any other Person under an Insurance Policy, or any other insurance obtained and maintained pursuant to Part 2, Section 25.1.2.c, with, in any such case, a potential value of \$25,000 (indexed) or more;
 - C. involves a claim which is being denied by an insurer; or
 - D. involves a fatality, and
 - ii. regularly consult with the Developer and the Enterprises (as and when reasonably requested by the Developer) regarding, and thereafter keep the Developer and the Enterprises fully informed of, any incident, claim or matter of the type referenced in Part 2, Sections 25.4.1.b.i.A through 25.4.1.b.i.D (including, for certainty, any such incident, claim or matter of which the Construction Contractor becomes aware by notice from the Developer).

25.4.2. Developer and Enterprise involvement in reporting and processing claims

- a. Notwithstanding Part 2, Section 25.4.1, the Developer, the Enterprises (and CDOT, to the extent it is a Specified Additional Insured with respect to any relevant Insurance Policy) shall have the right, but not the obligation, to report directly to insurers and, subject to prior notice to the Construction Contractor, process the Developer's or the Enterprises' (or, as applicable, CDOT's) claims, as applicable, under the Insurance Policies.
- b. The Developer agrees to promptly:
 - i. notify the Construction Contractor of any Developer (or to the extent the Developer is notified by the Enterprises, any Enterprise and/or CDOT) incident, or any Claim or potential Claim against the Developer (or to the extent the

Developer is notified by the Enterprises, any Claim or potential Claim against CDOT), and/or any other matters that are reasonably expected to give rise to an insurance claim, in each case of which the Developer becomes aware; and

- ii. subject to Part 2, Sections 24.6.1 and 24.6.2, to:
 - A. tender to any applicable insurers the Enterprises' defense of any Claim against the Enterprises; and
 - B. use Reasonable Efforts to procure that the Enterprises and CDOT tenders to the insurers its defense of any Claim against it.
- c. The Developer shall use Reasonable Efforts to cooperate with the Construction Contractor as necessary for the Construction Contractor to satisfy its obligations under Part 2, Sections 25.4.1 and 24.6.1, including providing the Construction Contractor a copy of all written materials that the Developer receives asserting a Claim against the Developer, the Enterprises and/or CDOT that is subject to defense by an insurer under an Insurance Policy.

25.4.3. Insurance meetings

Without limiting the Construction Contractor's obligations under this Part 2, Section 25.4, the Construction Contractor and the Construction Contractor's insurers and control claims adjuster shall provide the Developer with claim updates from designated insurance representatives at such intervals as the Developer may reasonably request, but no less than twice in each Calendar Year, to review all incidents, potential claims and claim files together with such other matters related to the Insurance Policies as the Developer may reasonably request.

25.5. Reinstatement

25.5.1. Use of Physical Damage Proceeds and conduct of Reinstatement Work

- a. All insurance proceeds received under the Insurance Policies in respect of physical property damage to the Construction Work or the Project (excluding any delay in startup or business interruption insurance maintained as part of such policies, "Physical Damage Proceeds") shall be applied by the Construction Contractor to perform work ("Reinstatement Work") necessary to repair, reconstruct, reinstate and replace each part of the Work and the Project in respect of which such proceeds were received.
- b. Prior to carrying out Reinstatement Work for which Physical Damage Proceeds have been received or are payable in an amount in excess of _____ (indexed) in respect of a single event (or a series of related events), the Construction Contractor shall:
 - i. prepare, and submit to the Developer (for submission to the Enterprises for Acceptance pursuant to Section 25.5 of the Project Agreement), a plan (a "Reinstatement Plan") for performing and completing such Reinstatement Work in accordance with this Agreement (for which purposes the requirements of Schedule 10 (Design and Construction Requirements) shall be deemed to apply to the Reinstatement Work); and
 - ii. following the Enterprises' Acceptance of any such Reinstatement Plan, promptly perform the Reinstatement Work in accordance with such plan, while regularly keeping the Developer informed in relation to the progress of such Reinstatement Work,

provided that, pending submission or Acceptance by the Enterprises of any Reinstatement Plan, the Construction Contractor shall promptly begin performing any Reinstatement Work to the extent necessary to comply with Law or to address a material risk to the health or safety of any person or the Environment or any Improvements.

- c. Pursuant to Section 25.5 of the Project Agreement, completion of any Reinstatement Work shall be subject to Acceptance by the Enterprises.

- d. If the CC Termination Date occurs prior to the completion of all Reinstatement Work, the Construction Contractor shall pay, or arrange for payment of, all remaining Physical Damage Proceeds (excluding those held by the Enterprises in the Physical Damage Proceeds Reserve) to the Developer. For certainty, the Developer may include any such proceeds that are owed but not yet paid to them as part of the Termination Deduction Amount for purposes of calculating any Termination Amount pursuant to Schedule 7 (Compensation on Termination).

25.5.2. Physical Damage Proceeds Reserve

- a. The Construction Contractor shall ensure that, if the Physical Damage Proceeds received in respect of a single event (or a series of related events) are, in aggregate, in excess of (indexed), all such proceeds shall be paid to the Developer (for subsequent payment to the Enterprises pursuant to Section 25.5.2 of the Project Agreement) to be held as a reserve (the "Physical Damage Proceeds Reserve"). The Construction Contractor acknowledges and accepts that the Enterprises shall hold the Physical Damage Proceeds Reserve as a sub-account within its general accounts for purposes of Part 2, Sections 25.5.2.b and Part 2, 25.5.2.c and shall only withdraw monies therefrom in accordance with Sections 25.5.2.b and 25.5.2.c of the Project Agreement. For certainty, the Construction Contractor shall have no interest in the Physical Damage Proceeds Reserve other than its contractual right to reimbursement pursuant to Part 2, Section 25.5.2.b.
- b. Subject to the Pay-if-Paid provisions, the Developer shall promptly reimburse the Construction Contractor for reasonable and documented third-party costs and expenses incurred by the Construction Contractor to effect the Reinstatement Work to the extent that:
 - i. such work complies with the Accepted Reinstatement Plan;
 - ii. funds are available in the Physical Damage Proceeds Reserve; and
 - iii. such funds were paid into such reserve in connection with the event (or series of related events) to which such costs and expenses relate.
- c. Following completion of any Reinstatement Work in respect of which Physical Damage Proceeds are held by the Enterprises as a Physical Damage Proceeds Reserve, subject to the Pay-if-Paid provisions, the Developer shall promptly return any amounts remaining in such Physical Damage Proceeds Reserve to the Construction Contractor.
- d. If the CC Termination Date occurs prior to the completion of any Reinstatement Work, the Construction Contractor shall not be entitled to any amounts then standing to the credit of the Physical Damage Proceeds Reserve, subject to the Construction Contractor's continuing right to:
 - i. subject to the Pay-if Paid provisions, reimbursement pursuant to Part 2, Section 25.5.2.b after the CC Termination Date for such Reinstatement Work performed prior to the CC Termination Date; and
 - ii. except in the case of a termination for Construction Contractor Default and subject to the Pay-if Paid provisions, receive any amounts due under Part 2, Section 25.5.2.c but not returned prior to the CC Termination Date (but without double-counting with respect to the calculation of any Termination Amount).

25.6. Intentionally Omitted

25.7. Intentionally Omitted

PART J: EQUITY AND PROJECT DEBT

26. INTENTIONALLY OMITTED

27. INTENTIONALLY OMITTED

28. INTENTIONALLY OMITTED

29. REFINANCING

29.1. Cooperation

The Construction Contractor shall cooperate as reasonably requested by the Developer in connection with any Refinancing, including entering into a new lenders' direct agreement (on substantially the same terms as the Lenders' CC Direct Agreement) in connection therewith and providing customary legal opinions, certificates and other documents. The Developer agrees to pay any reasonable costs (including any mutually agreed internal costs) of the Construction Contractor in connection with any such refinancing.

30. TAXES

30.1.1. The Construction Contractor shall pay, prior to delinquency, all Taxes, including, for certainty, all Ad Valorem and Possessory Interest Taxes and all State Sales Taxes, in each case in respect of the Construction Contractor's performance of the CC Work, the Construction Contractor's obligations under this Agreement, the Construction Contractor's interests in and rights to the Site and the Project License and any other Construction Contractor-Related Entity interest in this Agreement and the Project. Subject to Part 2, Section 30.1.6 and the Construction Contractor's rights arising as a result of the occurrence of any Compensation Event as described in paragraph c.i. of the definition thereof in Part A of Annex A (Definitions and Abbreviations), the Developer shall not be responsible for any Taxes levied on the Construction Contractor or on any other Construction Contractor-Related Entities.

30.1.2. Subject to Part 2, Section 30.1.6, the Construction Contractor accepts sole responsibility for, and agrees that it shall have no right to claim a Supervening Event or to any other Claim for relief due to, its misinterpretation of Laws in relation to Taxes or incorrect assumptions regarding applicability of Taxes.

30.1.3. The Construction Contractor shall promptly notify the Developer (for notification of the Enterprises) after it becomes aware that it (or any other Construction Contractor-Related Entity) may be legally obligated to pay:

- a. any:
 - i. ad valorem property tax imposed by a Governmental Authority under the laws of the State; or
 - ii. possessory interest property tax pursuant to Articles 1-14 of Title 39, C.R.S. (including, for certainty, C.R.S. § 39-1-103 (17)),
(each an "Ad Valorem and Possessory Interest Tax"); or
- b. any sales and use tax ("State Sales Tax") imposed by the State under the laws of the State (excluding, for certainty, any sales and use tax imposed by the City of Denver or any other Governmental Authority that is not the State),

in each case in connection with the Construction Work and the O&M Work During Construction and the Project.

30.1.4. The Construction Contractor acknowledges the Developer's obligations to cooperate and coordinate with the Enterprises in relation to the reduction and mitigation of Taxes. The Construction Contractor shall cooperate and coordinate with the Developer and provide such information as is reasonably required by the Developer in order the Developer to satisfy its obligations pursuant to Section 30.1.4 of the Project Agreement. The Developer shall not make

any decision not to disclose any Project Records relating to the Construction Contractor, any other Construction Contractor-Related Entity, the Construction Work, or the O&M Work During Construction pursuant to Section 30.1.4 of the Project Agreement without the prior written consent of the Construction Contractor, such consent not to be unreasonably withheld, conditioned or delayed.

- 30.1.5. The Construction Contractor acknowledges and accepts that following Developer's decision not to disclose any Project Record pursuant to Section 30.1.4 of the Project Agreement, the Enterprises shall be relieved of their obligation to reimburse Developer pursuant to Section 30.1.6 of the Project Agreement with respect to such State Sales Tax. Where Part 2, Section 30.1.4 of this Agreement applies, the Construction Contractor shall assume the Enterprises' efforts to reduce or eliminate the Construction Contractor's liability for any State Sales Tax and the Developer shall be relieved of its obligation to reimburse the Construction Contractor pursuant to Part 2, Section 30.1.6 with respect to such State Sales Tax.
- 30.1.6. Subject to Part 2, Section 30.1.5, Equivalent Project Relief and the Pay-if-Paid Provisions, the Developer shall reimburse the Construction Contractor for the actual amount of any Ad Valorem and Possessory Interest Tax and State Sales Tax paid by the Construction Contractor or any other Construction Contractor-Related Entity in connection with the Construction Work and the O&M Work During Construction and the Project, excluding any such Tax imposed or owing as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any Construction Contractor-Related Entity no later than the date that is 60 Calendar Days after the Developer's receipt of a demand for such reimbursement, which demand shall include:
- a. all supporting evidence necessary to substantiate such demand, including, in the case of any State Sales Tax, evidence that the Construction Contractor or any relevant Construction Contractor-Related Entity submitted the requisite State Sales Tax exemption certificate for the transaction in question; and
 - b. evidence of Reasonable Efforts by the Construction Contractor and any other relevant Construction Contractor-Related Entities to mitigate the imposition and amount of the relevant Tax,

and satisfaction of both paragraphs a. and b. shall be conditions precedent to the Developer's reimbursement payment to the Construction Contractor.

31. RESTRICTIONS ON REVENUE GENERATING ACTIVITIES

31.1. Restrictions on Tolling

- 31.1.1. The Construction Contractor acknowledges and agrees that pursuant to Section 31.1 of the Project Agreement, the Enterprises (and CDOT) have exclusive rights to impose tolls or any other user fees (in any form) in relation to the Project, including the right to deposit and allocate any resulting revenues as they determine in their discretion.
- 31.1.2. The Construction Contractor hereby acknowledges and agrees that:
- a. it has no right to:
 - i. impose tolls or any other user fees (in any form) in relation to the Project; or
 - ii. directly or indirectly engage in any revenue generating business on any part of the Site in connection with the Project, other than the conduct of its business and activities solely related to the performance of its obligations pursuant to this Agreement in relation to the Project and the revenues it receives from the Developer pursuant to this Agreement;
 - b. it will not have any lien over or security interest in any toll revenues, user fees or other revenues generated by the Enterprises, CDOT or other Persons on any part of the Site or in connection with the Project.

31.2. Restrictions on Advertising

31.2.1. The Construction Contractor acknowledges and accepts that the Enterprises retain all rights relating to approving, planning and/or selling advertising on the Right-of-Way, any Additional Right-of-Way and any other Assets, and otherwise in connection with the Project.

31.2.2. The Construction Contractor shall:

- a. use Reasonable Efforts to cooperate with; and
- b. without prejudice to the Construction Contractor's rights arising as a result of the occurrence of any Compensation Event as described in paragraphs b.iv. and g.iii. of the definition thereof in Part A of Annex A (Definitions and Abbreviations), grant all necessary access to,

the Developer, the Enterprises and any Person authorized by the Enterprises in connection with the exercise of the Enterprises' retained rights under Section 31.2.1 of the Project Agreement.

PART K: DEFAULTS, REMEDIES AND TERMINATION

32. DEFAULTS AND REMEDIES

32.1. Construction Contractor Defaults and Cure Periods

32.1.1. The occurrence of any one of the events set out in the column titled “Construction Contractor Default” in the table below shall constitute a “Construction Contractor Default”. For purposes of this Agreement, “Construction Contractor Default Cure Period” means, in respect of a Construction Contractor Default, the cure period (if any) specified in the column titled “Cure Period” in the table below in the same row as such Construction Contractor Default, subject to extension in accordance with Part 2, Section 32.1.2.

Construction Contractor Defaults

<u>Construction Contractor Default</u>	<u>Cure Period</u>
(1) An Insolvency Event occurs in respect of the Construction Contractor.	None.
(2) An Insolvency Event occurs in respect of the Construction Guarantor unless, within 75 Calendar Days after the occurrence of such Insolvency Event: (a) the Construction Contractor has: (i) replaced the Construction Guarantor with a Guarantor that is Accepted by the Enterprises pursuant to Section 32.1.1(2) of the Project Agreement; or (ii) provided security for the Construction Guarantor’s guaranty in the form of a cash deposit, other payment or letter of credit in each case in an amount equal to the specified sum or specified maximum liability (or, absent such specified sum or maximum liability, the reasonably estimated maximum liability) under its guaranty.	
(3) Intentionally Omitted.	
(4) Intentionally Omitted.	
(5) The Substantial Completion Date does not occur on or prior to the CC Longstop Date.	
(6) A Noncompliance Default Event occurs.	
(7) A Closure Default Event occurs.	
(8) A Persistent Construction Contractor Breach occurs.	
(9) Any Construction Contractor-Related Entity commits a Prohibited Act and such entity is: (a) the Construction Contractor; or (b) any other Construction Contractor-Related Entity: (i) acting in concert with the Construction Contractor; or (ii) acting independently of the Construction Contractor, but with the Construction	

Construction Contractor Default	Cure Period
<p>Contractor’s prior knowledge, unless the Construction Contractor promptly notifies the Developer and, as required by Law, any other relevant Governmental Authorities of such Prohibited Act (in which case Construction Contractor Default number (28) in this Part 2, <u>Section 32.1.1</u> shall apply with respect to such Prohibited Act).</p> <p>(10) After exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment from bidding, proposing or contracting with any state-level, interstate or Federal Governmental Authority (distinguished from ineligibility due to lack of financial qualifications) (any such event, an “<u>Exclusion</u>”) of:</p> <ul style="list-style-type: none"> (a) the Construction Contractor; (b) Intentionally Omitted; (c) Intentionally Omitted; (d) the Construction Guarantor that is not: <ul style="list-style-type: none"> (i) replaced with a Guarantor Accepted by the Enterprises pursuant to Section 32.1.1(10) of the Project Agreement; or (ii) Intentionally Omitted, <p>in either case within 75 Calendar Days after the date of the relevant Exclusion; or</p> (e) any other Construction Contractor-Related Entity whose work is not completed at the date of the relevant Exclusion and that remains a Construction Contractor-Related Entity 75 Calendar Days after the date of the relevant Exclusion. <p>(11) Intentionally Omitted.</p> <p>(12) The Construction Contractor makes or permits a transfer or assignment in breach of Part 2, <u>Section 39.1</u>.</p> <p>(13) The Construction Contractor fails to procure or maintain any Contractor Bond required to be procured and maintained pursuant to Part 2, <u>Sections 9.3.1</u> and <u>9.3.2</u> (other than due to the provider of any such bond ceasing to qualify as an Eligible Surety).</p> <p>(14) The Construction Contractor fails to obtain and maintain, or cause to be obtained and maintained, any CC Insurance Policy in full compliance with, and as and when required under, this Agreement (other than any non-material deviation from the requirements of this Agreement pertaining to the amounts or terms of such Insurance Policy) and such failure continues for 10 Calendar Days.</p> <p>(15) The Construction Contractor’s aggregate liabilities due to the Developer under this Agreement exceed the CC Liability Cap set forth in Part 1, Article 10.1, or the Construction Contractor</p>	

Construction Contractor Default	Cure Period
<p>so asserts in writing.</p> <p>(16) The Lenders' CC Direct Agreement or the Enterprises' CC Direct Agreement becomes invalid, void or unenforceable with respect to the Construction Contractor, or the Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.) becomes invalid, void or unenforceable with respect to the Construction Guarantor.</p> <p>(17) Any Letter of Credit or the Construction Guarantee expires or terminates or otherwise ceases to be in full force and effect.</p> <p>(18) The Construction Contractor breaches its obligations under Part 2, <u>Section 53.8.2</u>.</p>	
<p>(19) The Construction Contractor fails to comply with any Safety Compliance Order pursuant to Part 2, <u>Section 23.1.3</u> and such failure directly results in a material and ongoing risk to:</p> <ul style="list-style-type: none"> (a) the health or safety of any person; (b) the Environment; (c) Improvements; (d) the community; or (e) property. <p>(20) The Construction Contractor fails to perform its obligations under Part 2, <u>Section 6</u>.</p> <p>(21) Intentionally Omitted.</p> <p>(22) The Construction Contractor fails to procure a replacement Contractor Bond pursuant to Part 2, <u>Sections 9.3.1</u> and <u>9.3.2</u> within 10 Calendar Days after the provider of any such Contractor Bond ceases to qualify as an Eligible Surety.</p> <p>(23) The Construction Contractor fails to procure a replacement Letter of Credit pursuant to Part 1, Article 11.3 within 10 Calendar Days after the issuer of any such Letter of Credit ceases to qualify as an Eligible Financial Institution.</p> <p>(24) The Construction Contractor fails to deliver to Developer, a remedial plan in accordance with Part 2, <u>Section 9.2.4.a</u> or the Construction Contractor fails to fully comply with the schedule or specific elements of, or actions required under any Approved remedial plan.</p>	<p>10 Calendar Days after the date on which the Developer delivers notice to the Construction Contractor of the occurrence of the relevant Construction Contractor Default.</p>
<p>(25) A breach of Federal Law or any requirement that in either case, pursuant to the express terms of <u>Schedule 15 (Federal and State Requirements)</u> gives rise to a default (excluding, for certainty, a default pursuant to <u>Section 5.4 of Schedule 15 (Federal and State Requirements)</u>) that may subsequently result in a termination of this Agreement by the Developer.</p> <p>(26) The Construction Contractor fails to make any payment to the Developer pursuant to or in relation to this Agreement when due (unless such payment is the subject of a good faith Dispute).</p>	<p>20 Calendar Days after the date on which the Developer delivers notice to Construction Contractor of the occurrence of the relevant Construction Contractor Default.</p>

Construction Contractor Default	Cure Period
<p>(27) An Abandonment occurs or the Construction Contractor abandons the Project.</p> <p>(28) Any Construction Contractor-Related Entity (other than the Construction Contractor):</p> <ul style="list-style-type: none"> (a) not acting in concert with the Construction Contractor; or (b) acting independently of the Construction Contractor to the extent that Construction Contractor Default number (9) in this Part 2, <u>Section 32.1.1</u> does not apply; <p>commits a Prohibited Act and:</p> <ul style="list-style-type: none"> (i) Intentionally Omitted; (ii) Intentionally Omitted; (iii) with respect to the Construction Guarantor, is not replaced with a Guarantor Accepted by the Enterprises pursuant to Section 32.1.1(22) of the Project Agreement within 75 Calendar Days after the date of the Prohibited Act; or (iv) with respect to any other Construction Contractor-Related Entity, remains a Construction Contractor-Related Entity 25 Calendar Days after the occurrence of the relevant Prohibited Act. 	
<p>(29) An Organizational Conflict of Interest was known, or should have been known, and was not disclosed to the Developer pursuant to the ITP before the Agreement Date.</p> <p>(30) The Construction Contractor fails to comply with any Governmental Approval, Permit or Law, or any Environmental Requirement, in any such case in any material respect.</p> <p>(31) The Construction Contractor fails to comply with any requirement of this Agreement pertaining to the amounts, terms, coverage documentation or evidencing of any CC Insurance Policy, other than:</p> <ul style="list-style-type: none"> (a) with respect to any failure to submit documents verifying insurance coverage and payment of insurance premiums and renewals that constitutes a CC Noncompliance Event; or (b) with respect to any failure that results in a Developer Default number (14) in this Part 2, <u>Section 32.1.1</u>. 	<p>20 Calendar Days (subject to extension in accordance with Part 2, <u>Section 32.1.2.a</u>) after the date on which the Developer delivers notice to the Construction Contractor of the occurrence of the relevant Construction Contractor Default.</p>
<p>(32) Intentionally Omitted.</p> <p>(33) Subject to Part 2, <u>Section 5.4</u>, any representation or warranty in this Agreement made by the Construction Contractor pursuant to this Agreement, or in any certificate, schedule, report, instrument, agreement or other document delivered by or on behalf of the Construction Contractor to the Developer</p>	<p>30 Calendar Days (subject to extension in accordance with Part 2, <u>Section 32.1.2.a</u>) after the date on which the Developer delivers notice to the Construction</p>

Construction Contractor Default	Cure Period
<p>pursuant to this Agreement, is false, misleading or inaccurate in any material respect when made or omits material information when made.</p>	<p>Contractor of the occurrence of the relevant Construction Contractor Default.</p>
<p>(34) A violation by the Construction Contractor of Part 2, <u>Section 53.5</u>.</p>	
<p>(35) A breach by the Construction Contractor of any of its material obligations under this Agreement or the Interface Agreement, including any written repudiation of this Agreement, other than any breach that:</p> <ul style="list-style-type: none"> (a) constitutes a Construction Contractor Default under any other paragraph of this Part 2, <u>Section 32.1.1</u>; (b) constitutes a CC Noncompliance Event; (c) results in the accrual of a Construction Closure Deduction; or (d) arises due to a Relief Event or Compensation Event. 	

32.1.2. For purposes of determining when any applicable Construction Contractor Default Cure Period has expired or when a cure of any relevant Construction Contractor Default has been effected the following provisions of this Part 2, Section 32.1.2 shall apply:

- a. with respect to any Construction Contractor Default number (29), (30), (31), (33), (34) or (35) in Part 2, Section 32.1.1 that requires a longer period to cure than the applicable Construction Contractor Default Cure Period, if the Construction Contractor has within 5 Calendar Days of the start of the relevant Construction Contractor Default Cure Period submitted a rectification plan to the Developer for Acceptance, then such Construction Contractor Default Cure Period shall be extended so that it expires on the earliest of:
 - i. the later of the date on which the Developer rejects such plan and the end of the Construction Contractor Default Cure Period absent any extension;
 - ii. the latest date reasonably necessary to effect the cure thereof as set out in the Accepted plan;
 - iii. if there is an Accepted plan, 90 Calendar Days after the date of the start of the applicable Construction Contractor Default Cure Period; or
 - iv. the date on which the Construction Contractor ceases its good faith efforts to cure such Construction Contractor Default in accordance with the Accepted plan;
- b. without prejudice to Part 2, Section 32.1.2.a, with respect to Construction Contractor Default number (33) in Part 2, Section 32.1.1, the cure will be complete when all necessary disclosures have been made and all adverse effects (if any) caused by the incorrect disclosure have been cured;
- c. with respect to any Construction Contractor Default number (9), (10), (28) or (29) in Part 2, Section 32.1.1, the cure must be Accepted by the Developer;
- d. with respect to the Construction Contractor Default number (14), (22) or (31) in Part 2, Section 32.1.1, the Developer shall have the right, but not the obligation, to effect a cure, at the Construction Contractor's expense, if such a Construction Contractor Default continues after the end of the applicable Construction Contractor Default Cure Period; and

- e. any requirement of prior notice of Construction Contractor Default from the Developer to the Construction Contractor to initiate the applicable Construction Contractor Default Cure Period shall be automatically waived if:
 - i. the Construction Contractor knew that the relevant Construction Contractor Default had occurred;
 - ii. the Construction Contractor failed to notify the Developer of the relevant Construction Contractor Default;
 - iii. the Construction Contractor knew (or reasonably should have anticipated) that as a result of such failure the Developer would not know of such Construction Contractor Default; and
 - iv. at the relevant time, the Developer did not know of the relevant Construction Contractor Default,

in which case the applicable Construction Contractor Default Cure Period shall start on the date that the Construction Contractor first knew that the relevant Construction Contractor Default had occurred.

32.2. Developer Remedies for Construction Contractor Default

32.2.1. If any Construction Contractor Default occurs and has not been cured by the expiry of the applicable Construction Contractor Default Cure Period, the Developer may in its discretion, subject to the Lenders’ rights pursuant to the Lenders’ CC Direct Agreement, exercise any rights and remedies available to it (under this Agreement, at Law or otherwise) for so long as such Construction Contractor Default continues uncured, including:

- a. terminating this Agreement pursuant to Part 2, Section 33.1.3;
- b. exercising their rights of self-help pursuant to Part 2, Sections 23.4.2 to 23.4.4 as provided in Part 2, Section 23.4.1.b;
- c. by notice to the Construction Contractor, granting Construction Contractor an extended Construction Contractor Default Cure Period (in addition to any other extension pursuant to Part 2, Section 32.1.2.a) which grant may be made subject to such conditions as the Developer may require in its discretion;
- d. making a demand upon and enforcing any Contractor Bond or Letter of Credit in accordance with its terms, with the proceeds of any such action to be applied to the satisfaction of the Construction Contractor’s obligations under this Agreement, including payment of amounts due to the Developer; and/or
- e. waiving such default in accordance with Part 2, Section 43.3.

32.2.2. The Developer’s rights and remedies with respect to the occurrence of any Construction Contractor Default are without limitation to its rights and remedies with respect to the occurrence of any other Construction Contractor Default.

32.3. Developer Defaults and Cure Periods

32.3.1. The occurrence of any one of the events set out in the column titled “Developer Default” in the table below shall constitute a “Developer Default”. For purposes of this Agreement, “Developer Default Cure Period” means, in respect of a Developer Default, the cure period specified in the column titled “Cure Period” in the table below in the same row as such Developer Default, subject to extension in accordance with Part 2, Section 32.3.2.

Developer Defaults

<u>Developer Default</u>	<u>Cure Period</u>
(1) Intentionally Omitted.	Intentionally Omitted.
(2) The Developer fails to make any payment to the Construction	20 Calendar Days after

Developer Default	Cure Period
Contractor under this Agreement when due (unless such payment is the subject of a good faith Dispute).	the date on which the Construction Contractor delivers notice to the Developer of the occurrence of the relevant Developer Default.
(3) Intentionally Omitted. (4) Intentionally Omitted. (5) Intentionally Omitted.	Intentionally Omitted.
(6) Intentionally Omitted. (7) The Developer makes an assignment or transfer in breach of Part 2, <u>Section 39.2</u> .	30 Calendar Days after the date on which the Construction Contractor delivers notice to the Developer of the occurrence of the relevant Developer Default.
(8) A breach or breaches by the Developer of any of its or their obligations under this Agreement (other than (i) any breach or breaches that constitute an Developer Default under any other paragraph of this Part 2, <u>Section 32.3.1</u> , and (ii) any breach or breaches by the Developer that arise as a result of a breach or breaches by the Enterprises of the Project Agreement) that (in the case of more than one breach, when taken together) substantially frustrates or renders it impossible for the Construction Contractor to perform all or a substantial part of its obligations or to exercise all or a substantial part of its rights under this Agreement.	60 Calendar Days after the date on which the Construction Contractor delivers notice to the Developer of the occurrence of the relevant Developer Default.
(9) Subject to Part 2, <u>Section 5.4</u> , any representation or warranty made by the Developer pursuant to Part 2, <u>Section 5.1.2</u> is false, misleading or inaccurate in any material respect when made or omits material information when made.	30 Calendar Days after the date on which the Construction Contractor delivers notice to the Developer of the occurrence of the relevant Developer Default, <u>provided</u> , that if such Developer Default cannot be cured within such time period despite the Developer's commencement of meaningful steps to cure immediately after receiving the default notice, then the Development Entity shall have such additional period of time, up to a maximum cure period of sixty (60) days, as is

Developer Default	Cure Period
	reasonably necessary to effect cure.

32.3.2. For purposes of determining when any applicable Developer Default Cure Period has expired or when a cure of any relevant Developer Default has been effected, the following provisions of this Part 2, Section 32.3.2 shall apply:

- a. with respect to any Developer Default number (9) in Part 2, Section 32.3.1 that, in the Developer’s reasonable determination, requires a longer period to cure than the applicable Developer Default Cure Period, if the Developer has within the relevant Developer Default Cure Period notified the Construction Contractor of such determination, then, provided that (I) the Developer has taken meaningful steps to cure such Developer Default before triggering such extension and (II) the Developer proceeds diligently to cure such Developer Default after such extension is made, such Developer Default Cure Period shall be extended to the earliest of:
 - i. the latest date reasonably necessary to effect the cure; or
 - ii. with respect to any Developer Default number (9) in Part 2, Section 32.3.1, 130 Calendar Days after the date of the end of the applicable Developer Default Cure Period; and
- b. with respect to Developer Default number (9) in Part 2, Section 32.3.1, the cure will be complete when all necessary disclosures have been made and all adverse effects (if any) caused by the incorrect disclosure have been cured.

32.4. Construction Contractor Remedies for Developer Default

32.4.1. If any Developer Default occurs and has not been cured within the applicable Developer Default Cure Period, the Construction Contractor may in its discretion, subject to the Lenders’ rights pursuant to the Lenders’ CC Direct Agreement:

- a. terminate this Agreement pursuant to Part 2, Section 33.1.4;
- b. by notice to the Developer, grant the Developer an extended Developer Default Cure Period (in addition to any other extension pursuant to Part 2, Section 32.3.2); and/or
- c. waive such default in accordance with Part 2, Section 43.3.

32.4.2. With respect to any Developer Default number (8) in Part 2, Section 32.3.1:

- a. If such Developer Default has not been cured within 30 Calendar Days after the commencement of the applicable Developer Default Cure Period, then the Construction Contractor may, upon 5 Calendar Days written notice to the Developer, stop the CC Work until such Developer Default has been cured.
- b. The suspension under this Section shall terminate upon the cure of such Developer Default, at which time the Construction Contractor shall as quickly as reasonably possible recommence performance of the CC Work.

32.4.3. The Construction Contractor’s rights and remedies with respect to the occurrence of any Developer Default are without limitation to its rights and remedies with respect to the occurrence of any other Developer Default.

33. TERMINATION

33.1. Termination Events

33.1.1. Exclusive Rights to Terminate

- a. Intentionally Omitted.

- b. This Part 2, Section 33, together with the other provisions of this Agreement expressly referred to in this Part 2, Section 33 and the provisions of the Lenders' CC Direct Agreement and the Enterprises' CC Direct Agreement, contain the entire and exclusive provisions and rights of the Developer and the Construction Contractor regarding termination of this Agreement, and any and all other rights to terminate at Law or in equity are hereby waived to the maximum extent permitted by Law, provided that termination of this Agreement shall not relieve the Construction Contractor, or the Construction Guarantor, insurer or any surety or other financial institution that provides a Contractor Bond or Letter of Credit, of its obligation for any Claims arising prior to termination.

33.1.2. Termination for Termination of the Project Agreement

- a. If the Project Agreement is terminated in accordance with Section 33 thereof, this Agreement shall automatically terminate as of the Project Agreement Termination Date. The Developer shall promptly deliver a Termination Notice to the Construction Contractor upon delivering or receiving any notice effecting a termination of the Project Agreement pursuant to the terms thereof.
- b. Intentionally Omitted.
- c. As a consequence of a Termination pursuant to Part 2, Section 33.1.2.a, the Developer or the Construction Contractor, as applicable, shall pay the Termination Amount to the other Party as determined pursuant to Section 1 of Schedule 7 (*Compensation on Termination*).
- d. Promptly upon (i) receipt by the Developer of the Enterprises' written notice of its election to terminate the Project Agreement or (ii) the Developer's delivery of a written notice of its election to terminate the Project Agreement, the Developer shall provide a copy of such notice to the Construction Contractor. Within 15 days of the Construction Contractor's receipt of such notice, the Construction Contractor shall provide the Developer with a written estimate of any amounts it reasonably believes are owed to it pursuant to Schedule 7 (*Compensation on Termination*), accompanied by all documentation reasonably required to support such estimate and a certification that such amounts are true and correct, and any other information that the Developer may reasonably request in respect thereof (such written estimate, the "CC Termination Compensation Estimate").

33.1.3. Termination for Construction Contractor Default

- a. If a Construction Contractor Default occurs and has not been cured within the applicable Construction Contractor Default Cure Period, the Developer may, in its discretion and subject to prior notice in accordance with Part 2, Section 33.1.3.b, terminate this Agreement at any time that such default is continuing by delivering to the Construction Contractor a Termination Notice to such effect.
- b. Any such termination for Construction Contractor Default shall be effective 30 Calendar Days from the date of the Termination Notice, or on such later date as the Developer may specify in such notice.
- c. As a consequence of any termination for Construction Contractor Default, the Construction Contractor shall pay the Termination Amount to Developer as determined pursuant to Section 2 of Schedule 7 (*Compensation on Termination*).

33.1.4. Termination for Developer Default

- a. If a Developer Default occurs and has not been cured within the applicable Developer Default Cure Period, the Construction Contractor may, in its discretion and subject to prior notice in accordance with Part 2, Section 33.1.4.b, terminate this Agreement at any time that such default is continuing by delivering to the Developer a Termination Notice to such effect.

- b. Any such termination for Developer Default shall be effective 30 Calendar Days from the date of the Termination Notice.
- c. As a consequence of any termination for Developer Default, the Developer shall be obligated to pay the Termination Amount to the Construction Contractor as determined pursuant to Section 3 of Schedule 7 (*Compensation on Termination*).

33.1.5. Intentionally Omitted

33.1.6. Intentionally Omitted

33.1.7. Intentionally Omitted

33.2. Consequences of Termination

On the CC Termination Date as determined pursuant to Part 2, Sections 33.1.2 through 33.1.4 this Agreement shall automatically terminate.

33.3. No Increased Termination Liabilities

- a. Notwithstanding any other provision of this Agreement, but subject to Part 2, Section 33.3.b, no otherwise effective amendment or waiver of any provision of, or exercise of any right under any Subcontract to which the Construction Contractor is a party shall, as between the Developer and the Construction Contractor, have the effect of increasing the amount of the Developer's termination liabilities as of the CC Termination Date as reflected in any Termination Amount.
- b. Part 2, Section 33.3.a shall not apply with respect to any such amendment, waiver, exercise of any right:
 - i. to the extent such constitutes an amendment or waiver of any provision of any Subcontract to which the Construction Contractor is a party, to the extent necessary to reflect a corresponding amendment to, or Change under, this Agreement;
 - ii. if, after giving effect to the implementation thereof, such amendment, waiver, exercise of any right would not increase the projected (in the case of amounts that may be determined in accordance with the Financial Model) or reasonably estimated maximum amount of the Developer's liabilities to the Construction Contractor as of the CC Termination Date relative to the projected or reasonably estimated, as applicable, maximum amount of such liabilities without giving effect to the implementation thereof; or
 - iii. if the Construction Contractor has obtained the Developer's prior written consent to the same resulting in a potential increase in the Developer's liabilities to the Construction Contractor of the kind referenced in Part 2, Section 33.3.b.ii, which consent shall:
 - A. reference this Part 2, Section 33.3.b.iii; and
 - B. be subject to the Developer's Acceptance, Approval, consent, approval or like assent as otherwise provided for in this Agreement with respect to the relevant amendment, waiver, exercise of any right, or otherwise (if not so provided) subject to the Developer's Approval.

33.4. Exclusivity of Remedy

Any Termination Amount irrevocably paid by the Developer or the Construction Contractor to the other Party shall be in full and final settlement of the Developer's or the Construction Contractor's, as applicable, rights and claims against the other Party for, or in connection with, breaches and/or termination of this Agreement whether under contract, tort, restitution or otherwise, but without prejudice to:

- a. any antecedent liability of the Developer to the Construction Contractor or of the Construction Contractor to the Developer, as the case may be, that arose prior to the CC Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in the determination of the Termination Amount (which amount, for certainty, shall in all cases be deemed to take into account any otherwise earned or payable CC Monthly Payment that remains unpaid on the CC Termination Date);
- b. any liabilities arising in respect of any breach by the Developer or the Construction Contractor after the CC Termination Date of any obligation under this Agreement that survives the CC Termination Date, to the extent such liability has not already been taken into account in the determination of any Termination Amount; and
- c. the Parties' respective rights, remedies, obligations, or liabilities under or in connection with the Interface Agreement, the Enterprises' CC Direct Agreement, the Lenders' CC Direct Agreement, or recourse to the Construction Security.

34. HANDOVER PREPARATIONS AND ACTIVITIES

34.1. Preparations for Handover

34.1.1. During:

- a. the final 100 Calendar Days prior to the anticipated Substantial Completion Date; or
- b. the period after the service of any Termination Notice,

as applicable, and in either case for a period of time thereafter as reasonably required by the Developer, the Construction Contractor shall, without limiting its other obligations under this Agreement, use Reasonable Efforts to cooperate and coordinate with the transfer with effect from the Substantial Completion Date or the CC Termination Date, as applicable, of responsibility for the CC Work to the Developer, the O&M Contractor and/or any other Person designated by the Developer.

34.1.2. For purposes of Part 2, Section 34.1.1, the Construction Contractor's obligations to cooperate and coordinate shall include:

- a. cooperating with the Developer and/or any Person designated by it, and providing reasonable assistance and advice concerning the CC Work and its transfer to the Developer, the O&M Contractor and/or to such other Person;
- b. promptly providing to the Developer and/or its designees with:
 - i. Site access pursuant to Part 2, Section 21.1.1; and
 - ii. pursuant to Part 2, Section 19.1, access to and, on request pursuant to Part 2, Section 19.1.3.c, copies of, all Project Records including all:
 - A. information on the identity, terms and conditions of employment of all employees of the Construction Contractor employed in the provision of the CC Work at such time or, with respect to any early termination of this Agreement, immediately prior to the service of any Termination Notice;
 - B. manuals;
 - C. equipment logs;
 - D. drawings;
 - E. files; and
 - F. specifications,

as reasonably required for the efficient transfer of responsibility of performance of the Project, and the Construction Contractor shall warrant that, to the best of its knowledge

and belief, the information contained in such Project Records is accurate in all material respects;

- c. using Reasonable Efforts to complete all reasonably necessary preliminary acts (including entering into any contracts) to ensure its ability to comply with its obligations under Part 2, Section 34.2.1 on and from the CC Termination Date, as applicable; and
- d. complying with Part 2, Section 12.1 where, for such purposes, an Other Department Project shall be deemed to prospectively include the Project following the future occurrence of the CC Termination Date, as applicable.

34.1.3. Intentionally Omitted.

34.2. Assignments and Transfers

34.2.1. Without limiting its other obligations under this Agreement, on the earlier of the Substantial Completion Date or the CC Termination Date, the Construction Contractor shall, unless the Developer elects in writing to the contrary, assign and transfer to the Developer, and/or any Person designated by the Developer, for no additional payment:

- a. the benefit of any and all direct contractual arrangements (as may be reasonably required by the Developer) that the Construction Contractor may have with any third parties in relation to the Project, provided that to the extent any such assignment and transfer shall be made to the Enterprises, such assignment and transfer shall be made subject to such terms and conditions as required by State Law to obtain the consent of the Colorado State Controller;
- b. to the extent not effected pursuant to any assignment and transfer made pursuant to Part 2, Section 34.2.1.a, all Governmental Approvals and Permits; and
- c. to the extent not effected pursuant to any assignment and transfer made pursuant to Part 2, Section 34.2.1.a, its rights, title and interest in and to:
 - i. the Transferrable Assets;
 - ii. warranties associated with the Transferrable Assets and any Warranted Elements (including those referenced in Part 2, Section 9.4.6); and
 - iii. all Project Intellectual Property (excluding any Proprietary Intellectual Property, which shall remain subject to the license granted pursuant to Part 2, Section 52.1);

in the case of software (which, for certainty, shall remain subject to the license granted pursuant to Part 2, Section 52.1.1.) together with:
 - iv. administrator access to each proprietary system software package and workstation, so that the Developer can maintain the software system and create users as required for the use of each software package; and
 - v. an agreement for the use and maintenance of any proprietary software product that is not commercial off-the-shelf software for a period of five years from the CC Termination Date;

provided that if, for any reason, the Construction Contractor cannot assign and transfer its interest in any of the foregoing, it shall declare a trust of all its beneficial interest in the same for the benefit of the Developer and/or its designee, or use Reasonable Efforts to make equivalent arrangements (including with respect to Transferrable Assets not owned by the Construction Contractor through a license to use the same as necessary in connection with the Project) to provide the Developer with equivalent rights and protections. The Construction Contractor hereby irrevocably and unconditionally appoints the Developer as the Construction Contractor's lawful attorney (and to the complete exclusion of any rights that the Construction Contractor may have in such regard) for the purpose of generally executing or approving such deeds or documents and

doing any such acts or things necessary to give effect to the provisions of this Part 2, Section 34.2.1 as the Developer may in its discretion think fit.

- 34.2.2. The Construction Contractor shall promptly after, and in any event no later than 15 Working Days after the CC Termination Date hand over to the Developer all Project Records and other Work Product owned by the Developer pursuant to Part 2, Section 7.3.3.b (or complete and accurate copies to the extent originals are not required by the Developer) by whatever means the Developer reasonably requires that are in the possession, custody or power of the Construction Contractor and other Construction Contractor-Related Entities.

34.3. No Contrary Activities

The Construction Contractor shall not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate any of the activities contemplated under Part 2, Section 34.1 or any transfer or assignment contemplated under Part 2, Section 34.2.

PART L: LIMITATIONS ON LIABILITY

35. REMEDIES AND LIABILITY

35.1. Construction Contractor's Sole Remedies

Subject to Part 2, Section 35.2, the Construction Contractor's sole remedy in relation to matters for which an express right or remedy is stated in this Agreement, including as the result of the occurrence of any Supervening Event, shall be that right or remedy and the Construction Contractor shall have no additional right or remedy however arising.

35.2. No Double Recovery

Notwithstanding any other provision of this Agreement, no Party shall be entitled to recover compensation under this Agreement or any other agreement in relation to the Project in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss pursuant to this Agreement or otherwise.

35.3. Developer's Sole Remedy for Certain Construction Contractor Failures to Perform Work

Without prejudice to:

- a. any other express right of the Developer pursuant to this Agreement (other than the right of a Principal Indemnified Party to be indemnified pursuant to Part 2, Section 24.2 from and against Claims asserted against it and/or Losses suffered by it, except for its right to be indemnified in respect of Claims and/or Losses referred to in Part 2, Sections 35.3.c and 35.3.d); and
- b. the Developer's right to claim, on or after termination of this Agreement, the amount of its reasonable Losses suffered as a result of, or incurred by it as a result of rectifying or mitigating the effects of, any breach of this Agreement by the Construction Contractor or the occurrence of any Construction Contractor Default, save to the extent that the same has already been recovered by the Developer pursuant to this Agreement or has been taken into account in the calculation of any Termination Amount,

the sole remedy of the Developer in respect of any CC Noncompliance Event, Non-Permitted Closure or any failure by the Construction Contractor specified in any of Sections 1.3.1.a, 1.3.1.b, 1.3.2.a, 1.3.2.b or 1.3.2.c of Schedule 15 (*Federal and State Requirements*) shall be the operation of Schedule 6 (*Performance Mechanism*), provided that such limitation shall not apply in respect of:

- c. Claims asserted against a Principal Indemnified Party by any other Person (including, for certainty, an Indemnified Party who is not a Principal Indemnified Party) and/or Losses suffered by a Principal Indemnified Party as a result of any such Claim; or
- d. Losses suffered by a Principal Indemnified Party as a result of any of the events or circumstances referred to in Part 2, Sections 24.2.b, 24.2.d, 24.2.e or 24.2.g (other than, in the case of any Non-Permitted Closure, loss of use of any travel lane, ramp, cross street, shoulder, sidewalk or driveway).

35.4. Non-financial Remedies

Without prejudice to the other rights and remedies under the express terms of this Agreement, nothing in Part 2, Sections 35.2 and 35.3 shall prevent or restrict the right of the Developer or the Construction Contractor to seek any non-financial remedies from the court pursuant to the Dispute Resolution Procedure.

35.5. Available Insurance

The Construction Contractor shall not be entitled to any payment or credit (or any portion of either thereof) which would have been due, or from which it would have otherwise received a benefit, under this Agreement to the extent that it is (or, with respect to Part 2, Section 35.5.a only, should

be) able to recover the amount or receive the benefit of such payment or credit (or such portion) under, without duplication:

- a. any Insurance Policy (whether or not such insurance has in fact been effected or, if effected, has been vitiated, cancelled or declared void as a result of any act or omission of the Construction Contractor (or any other Construction Contractor-Related Entity), including due to non-disclosure or under-insurance), but excluding any insurance coverage that is unavailable as the result of any breach of this Agreement by the Developer or violation of Law by the Developer;
- b. any other Project-specific policy of insurance that the Construction Contractor has taken out and maintains; or
- c. any other policy of insurance that the Construction Contractor is entitled to claim under as an additional insured,

paragraphs a., b. and c. together, the “Available Insurance”.

35.6. Waiver of Consequential Damages

- a. Subject to Part 2, Section 35.6.b, neither Party shall be liable to the other for any Indirect Losses.
- b. The limitation set out in Part 2, Section 35.6.a shall not apply to:
 - i. any amounts expressly payable pursuant to this Agreement;
 - ii. any Monthly Construction Closure Deduction the Developer is entitled to make pursuant to Schedule 6 (Performance Mechanism);
 - iii. The Construction Contractor’s liability for:
 - A. Claims and/or Losses (including defense costs) to the extent that they are required to have been covered by Available Insurance;
 - B. fines and/or penalties issued by a Governmental Authority arising out of or relating to any Construction Contractor Release of Hazardous Substances; and
 - C. amounts payable by the Construction Contractor under an indemnity pursuant to this Agreement (but only to the extent such indemnity relates to a Claim asserted and/or Losses suffered by any Person other than a Principal Indemnified Party);
 - iv. any Party’s liability for Losses arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith or gross negligence on the part of the relevant Party (including, with respect to the Construction Contractor, that of any other Construction Contractor-Related Entity, and with respect to the Developer, any Developer-Related Entity),
 - v. Delay Liquidated Damages; and
 - vi. any loss or reduction of Milestone Payments, the Substantial Completion Payment or Performance Payments, in the case of the Developer, and any loss or reduction of the Contract Price, in the case of the Construction Contractor.

PART M: CHOICE OF LAW, JURISDICTION AND DISPUTE RESOLUTION

36. CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, other than any provision thereof that permits or requires the application of the laws of another jurisdiction, and regardless of any other jurisdiction's choice of law rules. Any provision incorporated herein by reference which purports to negate this or any other Special Provision, in whole or in part, shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

37. JURISDICTION; WAIVER OF JURY TRIAL

37.1. Jurisdiction

- a. Intentionally Omitted.
- b. Each of the Parties hereby irrevocably submits to the jurisdiction of the United States District Court of Colorado and the State District Court of Colorado for the City and County of Denver with regard to any Dispute and irrevocably waives, to the fullest extent permitted by applicable Law:
 - i. any objection it may have at any time to the laying of venue of any such action or proceeding in such court in accordance with this Part 2, Section 37.1;
 - ii. any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum; and
 - iii. the right to object, with respect to any such action or proceeding, that such court does not have any jurisdiction over such Party.

37.2. Consent to Service of Process

Each Party irrevocably consents to service of process as provided for in Part 2, Section 49.1.2.

37.3. Waiver of Jury Trial

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING. Each Party hereby:

- a. certifies that no Representative or agent or attorney of any such Person has represented, expressly or otherwise, that any such Person would fail to enforce or would otherwise challenge the foregoing waiver in the event of any suit, action or proceedings relating to this Agreement; and
- b. acknowledges that it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Part 2, Section 37.

38. DISPUTE RESOLUTION

Except as expressly set out in this Agreement and subject to Part 2, Section 37, any Dispute shall be resolved in accordance with the provisions of Schedule 25 (*Dispute Resolution Procedure*).

PART N: MISCELLANEOUS

39. ASSIGNMENTS AND TRANSFERS

39.1. Assignments and Transfers by the Construction Contractor

Except as contemplated by, and in accordance with, the Enterprises' CC Direct Agreement or the Lenders' CC Direct Agreement, the Construction Contractor shall not effect, and shall not permit, any assignment, transfer, mortgage, pledge or encumbrance of any of its interests in the Project, the Site or the CC Work, or its interests in, or rights or obligations under this Agreement, the Subcontracts, any Contractor Bond and the Insurance Policies, without the Developer's Approval.

39.2. Assignments and Transfers by the Developer

Subject to Part 2, Section 39.3, except for assignments and transfers made in compliance with Section 34.2.1.a of the Project Agreement, the Developer shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Construction Contractor except as contemplated by, and in accordance with, the Enterprises' CC Direct Agreement or the Lenders' CC Direct Agreement,.

39.3. Security

The provisions of Part 2, Section 39.2 shall not apply to the grant of any security interest in connection with any financing extended to the Developer (directly or indirectly) under the Financing Documents or in connection with any Refinancing, or to the enforcement of the same.

40. BINDING EFFECT; SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the Developer and the Construction Contractor and each of their respective permitted successors and assigns.

41. SURVIVAL

The following provisions of this Agreement shall survive expiration or earlier termination of this Agreement and/or completion of the Work:

- a. each Party's representations and warranties made pursuant to Part 2, Section 5.1 and, pursuant to Part 2, Section 6.2, subsequently repeated;
- b. all rights with respect to Contractor Bonds, the Letters of Credit and the Construction Guarantee;
- c. all Warranties with respect to the Warrantied Elements pursuant to Part 2, Section 9.4;
- d. the indemnifications, limitations and releases set out in Part 2, Sections 24 and 35;
- e. the Dispute Resolution Procedure;
- f. Part 2, Sections 25.5.2.b and 25.5.2.c to the extent provided for in Part 2, Section 25.5.2.d;
- g. the handover provisions set out in Part 2, Section 34;
- h. all provisions related to the consequences of termination of this Agreement, including Part 2, Sections 33.1.7, 33.3 and 33.4;
- i. Part 2, Section 52;
- j. Part 2, Section 55;
- k. Section 23.6.1 of Schedule 17 (*Environmental Requirements*);
- l. any provision which obligates the Construction Contractor or the Developer to reimburse the other Party for any cost and expense incurred by them prior to the termination of the Agreement, unless already settled as part of the applicable Termination Amount or otherwise;

- m. any other provisions which, either expressly or by their context, are intended to operate after termination or expiration of this Agreement and/or completion of the CC Work; and
- n. any other provisions (including Part 2, Section 15) if and to the extent necessary for the interpretation or application of the foregoing.

42. CONSTRUING THIS AGREEMENT

42.1. Entire Agreement

- 42.1.1. This Agreement constitutes the entire agreement among the Developer and the Construction Contractor concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements, either oral or written, among the Parties with respect to their subject matter.
- 42.1.2. Each of the Parties acknowledges that, except as expressly provided in this Agreement, no Party enters into this Agreement on the basis of, and no Party relies, or has relied, upon, any statement, representation, warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any Person (whether a Party to this Agreement or not) except those made pursuant to Part 2, Section 5.1, subsequently repeated, where the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement), provided that this Part 2, Section 42.1.2 shall not apply to any statement, representation or warranty made fraudulently, recklessly, in bad faith, as a result of gross negligence, willfully or criminally, or to any provisions of this Agreement which were induced by the same, for which the remedies available shall be all those available under the law governing this Agreement.

42.2. Interpretation

- 42.2.1. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and pursuant to its fair meaning and not strictly for or against any Party.
- 42.2.2. Intentionally Omitted.
- 42.2.3. The Construction Contractor further acknowledges and agrees that it has independently reviewed this Agreement and the Project Agreement with legal counsel and other advisors and that the Construction Contractor has, itself or through other arrangements, the requisite experience and sophistication to understand, interpret and agree to this Agreement. Accordingly, in the event of any ambiguity in, or dispute regarding the interpretation of, the provisions of this Agreement, the terms of this Agreement shall not be construed against the Persons that prepared them.

42.3. Severability

- 42.3.1. Notwithstanding Part 2, Section 2.4.1, if any provision (or part of any provision) of this Agreement is ruled invalid (including due to Change in Law) by a court having proper jurisdiction, then the Parties shall:
 - a. promptly meet and negotiate a substitute for such provision or part thereof which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and
 - b. if necessary or desirable, apply to the court which declared such invalidity for an interpretation of the invalidated provision (or part thereof) to guide the negotiations.
- 42.3.2. If any provision (or part of any provision) of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such provision (or part thereof) shall not affect the validity, legality and enforceability of any other provision of (or the other part of such provision) or any other documents referred to in this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had never been contained herein.

43. AMENDMENTS AND WAIVERS**43.1. Amendments**

This Agreement may only be amended by a written amendment duly executed by both Parties, unless the amendment to this Agreement is expressly allowed or required to be made in any other manner pursuant to this Agreement.

43.2. Rights and Remedies Cumulative

Except to the extent otherwise expressly provided in this Agreement, including in Part 2, Sections 33.4 and 35, the rights and remedies of the Developer hereunder are cumulative and are not exclusive of any rights or remedies that the Developer would otherwise have.

43.3. Waivers

Except to the extent otherwise expressly provided in this Agreement:

- a. any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be approved in the discretion of the Party giving it and shall be effective only if it is in writing by such Party, and only in the specific instance, for the specific time, subject to the specific conditions and for the specific purpose for which it has been given;
- b. no failure on the part of any Party to exercise, and no delay in exercising, any right or power under this Agreement shall operate as a waiver of such right or power; and
- c. no single or partial exercise of any right or power under this Agreement, including any right to give or withhold any consent, approval or Acceptance, nor any abandonment or discontinuance of steps to enforce such a right or power, shall preclude or render unnecessary any other or further exercise of such right or the exercise of any other right.

44. SET-OFF AND DEFAULT INTEREST

44.1.1. The Parties shall each have their respective set-off rights pursuant to Section 5 of Part 3 of Schedule 4 (*Payments*) with respect to their respective payment obligations under this Agreement.

44.1.2. In the event that any of the Parties fails to pay any amount under this Agreement on the due date therefor, interest shall apply and be calculated pursuant to Part 1, Article 12.15.

45. LIMITATION ON THIRD-PARTY BENEFICIARIES

Each Warranty Beneficiary is a third-party beneficiary of (a) the Warranties in relation to its Warrantied Elements and (b) the obligations of the Construction Contractor under Part 2, Sections 9.4.1 to 9.4.5 to the extent that such obligations relate to its Warrantied Elements. It is not otherwise intended by any of the provisions of this Agreement to create any third-party beneficiary rights hereunder, or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof. Notwithstanding the foregoing, the duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed by Law.

46. INDEPENDENT CONSTRUCTION CONTRACTOR**46.1. Construction Contractor as an Independent Project Contractor**

The Construction Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Construction Contractor nor any agent or employee of the Construction Contractor shall be deemed to be an agent or employee of the Developer. The Construction Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the Developer and the Developer shall not pay for or otherwise provide such coverage for the Construction Contractor or any of its agents or employees. Unemployment insurance benefits will be available to the Construction Contractor and its employees and agents only if such coverage is made available by the Construction

Contractor or a third party. The Construction Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Construction Contractor shall not have authorization, express or implied, to bind the Developer to any agreement, liability or understanding, except as expressly set out herein.

46.2. No Partnership or Similar Relationship

46.2.1. Nothing in this Agreement is intended or shall be construed to create any partnership, joint venture or similar relationship between the Construction Contractor and the Developer.

46.2.2. The Parties do not have or express any intention to form or hold themselves out as a de jure or de facto partnership, joint venture or similar relationship, to share net profits or net losses, or to give the Developer or the Construction Contractor any rights to direct or control the activities of the other or their respective Affiliates, subcontractors or consultants, except as otherwise expressly provided in this Agreement.

46.3. No Relationship with the Construction Contractor's Employees and Subcontractors

46.3.1. In no event shall the relationship between the Developer and the Construction Contractor be construed as creating any relationship whatsoever, including, for certainty, a contractual relationship, between the Developer and:

- a. the Construction Contractor's employees;
- b. any Subcontractor; or
- c. any other Person.

46.3.2. Neither the Construction Contractor nor any of its employees or Subcontractors is or shall be deemed to be an employee of the Developer.

46.3.3. Except to the extent as otherwise expressly provided in this Agreement, the Construction Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and Subcontractors and has complete and sole responsibility as a principal for its agents, for employees and all Subcontractors and for all other Persons that the Construction Contractor or any Subcontractor hires to perform or assist in performing the CC Work.

47. NO PERSONAL LIABILITY

The Developer's authorized representatives, including the Developer's Representative, are acting solely as agents and representatives of the Developer when carrying out the provisions of or exercising the power or authority granted to them under this Agreement, and, as such, none of them shall be liable either personally or as employees of the Developer for actions in their ordinary course of employment.

48. NO FEDERAL GOVERNMENT OBLIGATIONS

The Construction Contractor acknowledges and agrees that, notwithstanding any concurrence or approval by the United States Federal government in of the solicitation and award of the Project Agreement, the United States Federal government is not a party to the Project Agreement or this Agreement and shall not be subject to any obligations or liabilities to the Enterprises, the Developer, the Construction Contractor or any other Person (whether or not a Party to the Project Agreement or this Agreement) pertaining to any matter resulting from the Project Agreement or this Agreement.

49. NOTICES

49.1. Methods of Notice Submission

49.1.1. Any notice, and any other Approval, Acceptance, consent, approval or like assent, comment, Deliverable, election, demand, direction, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made by a Party under this

Agreement (each, a “notice” or, alternatively, a “Notice”) to another Party must be given in accordance with Part 1, Article 14.

49.1.2. Intentionally Omitted

49.2. Intentionally Omitted

49.3. Changes in Address

The Parties will notify each other in writing of any change of address and/or contract information, such notification to become effective five Working Days after notification.

50. FURTHER ASSURANCES

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

51. COSTS AND EXPENSES OF THE PARTIES

Except as otherwise expressly provided in this Agreement, each Party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and performance of this Agreement and all other related agreements.

52. INTELLECTUAL PROPERTY RIGHTS

52.1. Grant of License, Ownership and Use

52.1.1. The Construction Contractor hereby grants to (or, with respect to any Third Party Intellectual Property, shall provide to or obtain for) the Developer and the Enterprises a non-exclusive, non-transferable (other than to CDOT), irrevocable, fully paid up and sub-licensable license to use the Project Intellectual Property and any Third Party Intellectual Property only:

- a. excluding the Proprietary Intellectual Property and any Third Party Intellectual Property, for the purposes of this Project or any other bridge, highway, street and road or other transportation facility of any mode (and any project related thereto) owned and operated by the Enterprises or any other State Governmental Authority, including any Related Transportation Facility; and
- b. in respect of the Proprietary Intellectual Property and, subject to Part 2, Section 52.1.1.d, any Third Party Intellectual Property:
 - i. to the extent reasonably necessary to effect integration with any Other Department Project; and
 - ii. for the purposes of this Project,

provided that:

- c. the granting of such license and the Developer’s and the Enterprises’ right to exercise their rights thereunder shall not be construed to provide the Developer with greater rights to oversee, direct, manage and engage in the Project and the CC Work than they would otherwise have under this Agreement, and the Developer agrees that any use of Project Intellectual Property in violation of the same by themselves or any of their sublicenses shall be at their own risk, cost and expense; and
- d. The Construction Contractor may, to the extent it is reasonably unable to comply with Part 2, Section 52.1.1.b with respect to any Third Party Intellectual Property, comply with its obligations under Part 2, Section 52.1.1.b through functionally equivalent alternative arrangements subject to the consent of the Developer (such consent not to be unreasonably withheld).

52.1.2. Subject to Part 2, Section 52.3, the Construction Contractor shall deliver to the Developer (for delivery to the Department pursuant to Section 52.1.2 of the Project Agreement) copies of all

Project Intellectual Property used in providing the CC Work promptly following delivery of written request from the Developer. Subject to the terms of this Agreement, including Part 2, Sections 7.3.3 and 34.2.1.c.iii, Project Intellectual Property shall remain exclusively the property of the Construction Contractor (or, as applicable, another Person), notwithstanding any delivery of copies thereof to the Developer.

52.2. Right to Purchase

The Construction Contractor acknowledges and accepts the right of the Enterprises to purchase from the Developer a license to use the Proprietary Intellectual Property pursuant to Section 52.2 of the Project Agreement. If the Enterprises notifies the Developer that the Enterprises seeks to exercise such purchase right, the Construction Contractor shall consult in good faith with the Developer and the Enterprises in an attempt to come to an agreement as to the terms of such purchase, acting reasonably. If requested by the Developer, the Construction Contractor shall use Reasonable Efforts to procure for the Developer and the Enterprises a right to purchase an equivalent license to use any Third Party Intellectual Property.

52.3. Access to Intellectual Property

The Construction Contractor shall deliver and/or grant access to Project Intellectual Property comprised of software, source code and/or source code documentation directly to the Developer and the Enterprises for purposes of fulfilling the Construction Contractor's obligations under Part 2, Section 52.1, and enabling the Developer and the Enterprises to exercise their rights pursuant to the license granted to them pursuant to Part 2, Section 52.1.1.

53. SPECIAL PROVISIONS

53.1. Intentionally Omitted

53.2. Intentionally Omitted

53.3. Compliance with Law

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

53.4. Intentionally Omitted

53.5. Software Piracy Prohibition

Funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Construction Contractor hereby certifies and warrants that, during the term of this Agreement and any extensions, the Construction Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of funds payable hereunder. If the Developer determines that the Construction Contractor is in violation of this provision, the Developer may exercise any remedy available under this Agreement, including, without limitation, termination of this Agreement pursuant to Part 2, Section 32.2.1.a for Construction Contractor Default number (33) in Part 2, Section 32.1.1, as well as any remedy consistent with Federal copyright laws or applicable licensing restrictions.

53.6. Intentionally Omitted

53.7. Intentionally Omitted

53.8. Public Contracts for Services

53.8.1. The Construction Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the CDOT

program established pursuant to C.R.S. § 8-17.5-102(5)(c), the Construction Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to the Construction Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Construction Contractor:

- a. shall not use E-Verify Program or CDOT program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed;
- b. shall notify the Subcontractor (if applicable) and the Developer (for notification of the Enterprises) within two Calendar Days if the Construction Contractor has actual knowledge that the Construction Contractor or a Subcontractor is employing or contracting with an illegal alien for work under this Agreement;
- c. shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within two Calendar Days of receiving the notice; and
- d. shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. § 8-17.5-102(5), by the Colorado Department of Labor and Employment.

If the Construction Contractor participates in the CDOT program, the Construction Contractor shall deliver to the Developer (for delivery to the Enterprises) a written, notarized affirmation, affirming that the Construction Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the CDOT program. If the Construction Contractor fails to comply with any requirement of this provision or C.R.S. § 8-17.5-101, *et seq.*, the Developer agency may terminate this Agreement for breach and, if so terminated, the Construction Contractor shall be liable for damages.

53.8.2. The Construction Contractor shall stop employing or contracting with an illegal alien for work under this Agreement within two Calendar Days of the giving of any notice pursuant to Part 2, Section 53.8.1.b in relation to an employee of the Construction Contractor or delivery of a notice from Developer to the Construction Contractor of the Developer's actual knowledge that the Construction Contractor is employing or contracting with an illegal alien for work under this Agreement. Failure of the Construction Contractor to comply with its obligations pursuant to this Part 2, Section 53.8.2 shall be a Construction Contractor Default.

54. COUNTERPARTS

This Agreement (and an amendment or waiver in respect to this Agreement) may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each of the Parties shall constitute a full and original instrument for all purposes.

55. CONFIDENTIALITY

55.1.1. Except as set forth in this Part 2, Section 55, each Party shall hold in confidence for a period ending five (5) years after the earlier of (i) Final Acceptance or (ii) the earlier termination hereof, any confidential information (marked as such) supplied to it by the other Party or otherwise related to the Project. The Construction Contractor shall inform its Subcontractors, suppliers, vendors and employees of its obligations under this Part 2, Section 55 and shall require each of its Subcontractors, Suppliers, vendors and employees to execute confidentiality arrangements substantially in the form of this Part 2, Section 55. Notwithstanding the foregoing, each Party may disclose the following categories of information or any combination thereof:

- a. information which was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of the other Party or, in the case of the Construction Contractor, any Subcontractor;
- b. information that such Party can show was lawfully in its possession prior to receipt thereof from the other party through no breach of any confidentiality obligation;

- c. information received by such Party from a third party having no obligation of confidentiality with respect thereto;
- d. information at any time developed independently by such Party provided it is not developed from otherwise confidential information;
- e. information disclosed pursuant to and in conformity with the law or a judicial order or in connection with any legal proceedings or arbitration procedures;
- f. information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries or reporting required by a Governmental Authority if such Party informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of such information; and
- g. information required to be disclosed pursuant to the Project Agreement (including, without limitation, Section 19 of the Project Agreement and Section 20 to the Project Agreement).

55.1.2. The provisions of this Part 2, Section 55 shall continue in full force and effect in accordance with their terms, and shall survive any termination of this Agreement.

55.1.3. The Construction Contractor shall not issue any press or similar media release or any advertisement, or publish, release or disclose any photograph or other information concerning this Agreement or the Project without the express prior written consent of Developer, which consent shall not be unreasonably withheld. The Construction Contractor shall include this restriction in all Subcontracts and purchase orders. The Construction Contractor shall give prior notice to Developer of any information contained in documents filed with public authorities or any other public disclosure which would result in the dissemination of confidential information. The Developer when marketing the Project may use the Construction Contractor's name and logo. The Developer shall provide the Construction Contractor a copy for review and comment where any press release or any paid advertisement containing the name or logo of the Construction Contractor, or any of the Construction Contractor's parent entities, and may require the Construction Contractor to make a responding press release.

56. TIME OF THE ESSENCE

Without prejudice to any provision of this Agreement relating to liquidated damages, delay or termination for default relating to delay, time is of the essence in the performance of this Agreement.

57. MANDATORY TERMS

57.1. Project Agreement Mandatory Terms

57.1.1. The Construction Contractor acknowledges and agrees:

- a. it has read and reviewed the Project Agreement and understands the obligations relating to the design and construction of the Project set forth therein;
- b. that:
 - i. the Colorado General Mechanics' Lien Statute, C.R.S. §§ 38-22-101, et seq., is not available to it as a remedy for non-payment with respect to the Project and, as such, the Construction Contractor shall not file or permit to be filed any mechanics' lien, materialmen's lien, or other lien against the Enterprises or CDOT, or the Project, in the records of the Clerk and Recorder of the City of Denver or in any other real property records;
 - ii. notwithstanding Part 2, Section 57.1.1.b.i, the Colorado Contractor's Bond and Lien on Funds Statute, C.R.S. §§ 38-26-101, et seq., provides remedies to public authorities and subcontractors in the event of a non-payment of a subcontractor (which remedies are in the form of deductions by the public authority from

payments to the contractor and liens by subcontractors against relevant payment bonds) and, therefore, pursuant to C.R.S. §§ 38-26-107 and, as contemplated by Section 5 of Schedule 5 (Milestone Payments) of the Project Agreement, if the Construction Contractor has an unpaid claim under this Agreement, the Construction Contractor may file a verified statement of the amount due and unpaid with the Enterprises at any time up to and including, but not after, the Substantial Completion Date (following which filing the Enterprises shall be entitled to withhold funds from the Developer pursuant to Section 5(a)(i) of Part 3 of Schedule 4 (Payments) of the Project Agreement as a result of such claim); and

- iii. the Construction Contractor shall execute and deliver any lien waiver as and when required to be executed by it pursuant to Sections 2.4(b)(ii) or 2.4(b)(iii) of Part 2 of Schedule 4 (Payments) of the Project Agreement or Sections 4(c)(ii) or 4(c)(iii) of Schedule 5 (Milestone Payments) of the Project Agreement;
- c. that:
 - i. all notices, documentation and other information required to be delivered by the Developer to the Enterprises or, as applicable, the Department pursuant to the Project Agreement shall be directly delivered by the Developer and not by the Construction Contractor acting, directly or indirectly, on the Developer's behalf, except to the extent that the Enterprises Approve in advance the direct delivery of such type of notice by the Construction Contractor to the Enterprises or, as applicable, the Department; and
 - ii. the Enterprises (and the Department) may, in their discretion, disregard any notice delivered by the Construction Contractor contrary to Part 2, Section 57.1.1.c.i;
- d. to:
 - i. participate in meetings between the Developer and Enterprises where requested in writing by either the Developer or the Enterprises; and
 - ii. cooperate with any reasonable requests for information or assistance provided to the Construction Contractor through the Dispute Resolution Procedures (as defined in the Project Agreement), except to the extent that such cooperation would require the Construction Contractor to assume any legal liability; and
- e. that any amendment or waiver to this Agreement which would result in a violation by the Developer of Part A of Schedule 16 to the Project Agreement shall be null and void unless Approved by the Enterprises;

57.1.2. In accordance with Appendix E of Schedule 15 to the Project Agreement, the Construction Contractor hereby agrees that:

- a. The Construction Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Construction Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- b. The Construction Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Construction Contractor, state that all qualified applicants

will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin;

- c. The Construction Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Construction Contractor's legal duty to furnish information;
- d. The Construction Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of Construction Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- e. The Construction Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor;
- f. The Construction Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders;
- g. In the event of the Construction Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Construction Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law;
- h. The Construction Contractor will include the provisions of Sections 1 to 8 of Appendix E to Schedule 15 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Construction Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Construction Contractor may request the United States to enter into such litigation to protect the interests of the United States.

57.2. TIFIA Requirements

57.2.1. Within three Working Days after the Construction Contractor learns of their occurrence, the Construction Contractor shall give the Developer written notice of (x) any of the following events, setting forth details of such event, or (y) receipt of any of the following notices, as applicable:

- a. any change in the direct equity ownership of the Construction Contractor; and


- b. any failure to receive or delay in receiving any Governmental Approval for NTP2 or in making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any Key Milestone (including the then-current projected Substantial Completion Date), together with a written explanation of the reasons for such failure or delay and the Construction Contractor's plans to remedy or mitigate the effects of such failure or delay.
- 57.2.2. The Construction Contractor shall provide the Developer with any further information reasonably requested by the Developer from time to time concerning the matters described in Part 2, Section 57.2.1.
- 57.2.3. Pursuant to 46 C.F.R. Part 381, the Construction Contractor hereby agrees as follows and shall insert the following clauses in contracts entered into by the Construction Contractor pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the CC Work:
- a. At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with CC Monthly Payments, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vehicles, if available.
 - b. Within ten (10) days following the date of loading for shipments originating within the United States or within twenty (20) Business 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 (i) above shall be furnished to the Developer.
- 57.2.4. On or before the third-to-last Working Day of any calendar month during the Construction Period the Construction Contractor shall deliver to the Developer a report executed by Construction Contractor that provides:
- a. an assessment of the overall construction progress of the Project since the date of the last report and since the Financial Close Date, together with an assessment of how such progress compares to the Project Schedule;
 - b. specifies the most recent projections for the Substantial Completion Date and certifies that the Construction Contractor will achieve Substantial Completion by the PA Longstop Date;
 - c. provides a detailed description of any material problems (including actual and anticipated cost and/or schedule overruns, if any, or the failure to receive, or delay in receiving, any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority) encountered or anticipated in connection with the construction of the Project since the date of the last report, together with an assessment of how such problems may impact the Project Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems; and
 - d. specifies the delivery status of major equipment and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Project Schedule.
- 57.2.5. The Construction Contractor shall respond to reasonable inquiries from the Developer, and at the Developer's request, the Lenders, regarding reports delivered pursuant to Part 2, Section 57.2.4, the construction of the Project, and the Construction Contractor's performance of its obligations under this Agreement, including matters pertaining to any Subcontract.

[remainder of page left intentionally blank; signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

KIEWIT MERIDIAM PARTNERS LLC

By:



John Dionisio
Authorized Person

KIEWIT INFRASTRUCTURE CO.

By:

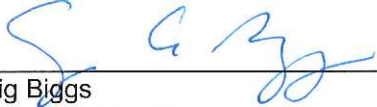
Craig Biggs
Senior Vice President

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

KIEWIT MERIDIAM PARTNERS LLC

By: _____
John Dionisio
Authorized Person

KIEWIT INFRASTRUCTURE CO.

By:  _____
Craig Biggs
Senior Vice President

ANNEX A: DEFINITIONS AND ABBREVIATIONS

Part A: Definitions

Except as otherwise specified herein, or as the context may otherwise require, the following terms have the respective meanings set out below for all purposes of this Agreement:

“ <u>Abandonment</u> ”	means either: <ol style="list-style-type: none"> a. the Construction Contractor demonstrates through statements, acts or omissions an intent not to perform, or continue to perform, a material part of the CC Work; or b. the failure to perform a material part of the CC Work for a continuous period of 30 Calendar Days (except to the extent that such failure is substantially consistent with the then current Project Schedule and does not otherwise constitute a breach of this Agreement), <p>in each case unless such intention or failure is otherwise expressly permitted or excused pursuant to this Agreement, including as a result of the occurrence of any Compensation Event or Relief Event.</p>
“ <u>Acceptance</u> ”	has the meaning given to it in Part 2, <u>Section 2.2.3.a</u> and “ <u>Accept</u> ”, “ <u>Acceptable</u> ” and “ <u>Accepted</u> ” shall be similarly construed.
“ <u>Access Permit</u> ”	means any Special Permit and any Utility Permit.
“ <u>Account Balances</u> ”	means, in respect of each bank account and/or trust account held by or on behalf of the Construction Contractor (for certainty, excluding the Physical Damage Proceeds Reserve), the balance of such account as of the CC Termination Date.
“ <u>Active Traffic Management</u> ”	means real-time management of traffic using ITS and/or Variable Message Signs.
“ <u>Activity</u> ”	means each task or sub-task that is identified by the Construction Contractor as being necessary to complete the CC Work, and that is included in the Project Schedule as a subcomponent of the Work Breakdown Structure.
“ <u>Ad Valorem and Possessory Interest Tax</u> ”	has the meaning given to it in Part 2, <u>Section 30.1.3.a</u> .
“ <u>Additional Obligations</u> ”	means the obligations of the Construction Contractor set forth in Attachment G, which, for the avoidance of doubt, are in addition to the Construction Contractor’s obligations to carry out the Construction Work and the O&M Work During Construction.
“ <u>Additional Right-of-Way</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Additional ROW Parcels</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Additional Survey Data</u> ”	means any survey data other than the Supplied Survey Data.
“ <u>Additional Warranties</u> ”	means those warranties that the Construction Contractor is required to provide pursuant to <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
“ <u>ADR</u> ”	shall have the meaning given to it in <u>Section 2(b)</u> of <u>Part A</u> of <u>Schedule 16</u> (<i>Mandatory Terms</i>).
“ <u>Affected Party</u> ”	has the meaning given to it in the definition of Force Majeure Event in this <u>Part A</u> of <u>Annex A</u> (<i>Definitions and Abbreviations</i>).

<u>“Affiliate”</u>	means, in relation to any Person: <ol style="list-style-type: none"> a. any other Person having Control of that Person; b. any other Person over whom that Person has Control; and c. any Person over whom any other Person referred to in paragraph <u>a.</u> of this definition also has Control.
<u>“Age”</u>	means the elapsed time since an Element was first constructed or installed or if applicable, last reconstructed, rehabilitated, restored, renewed or replaced.
<u>“Agreed or Determined”</u>	has the meaning given to it in Part 2, <u>Section 2.2.1.</u>
<u>“Agreement”</u>	has the meaning given to it in the Preamble to Part 1 and, for certainty, includes this <u>Annex A (Definitions and Abbreviations)</u> and the Schedules and the Attachments thereto.
<u>“Agreement Date”</u>	means the date of this Agreement.
<u>“Annual O&M Report”</u>	has the meaning given to it in <u>Section 13.2 of Schedule 11 (Operations and Maintenance Requirements).</u>
<u>“Appendix B Parcel”</u>	means any ROW Parcel listed in <u>Appendix B (Known Hazardous Substances Parcels)</u> of <u>Schedule 17 (Environmental Requirements).</u>
<u>“Appendix B Parcel Costs”</u>	means the aggregate amount of Excess Costs resulting from the occurrence of all Appendix B Parcel Unexpected Hazardous Substances Events (for certainty, whether or not such events are also Compensation Events), excluding any such event: <ol style="list-style-type: none"> a. that resulted in aggregate Excess Costs equal to or less than ; and b. to the extent that it arose as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any Construction Contractor-Related Entity.
<u>“Appendix B Parcel Relief Start Date”</u>	means the Calendar Day on which the aggregate amount of Appendix B Parcel Costs first equals or exceeds
<u>“Appendix B Parcel Unexpected Hazardous Substances Event”</u>	the encountering or discovery of collectively all Unexpected Hazardous Substances on, in or under an individual Appendix B Parcel.
<u>“Applicable Tax”</u>	has the meaning given to it in the Project Agreement.
<u>“Approval”</u>	has the meaning given to it in Part 2, <u>Section 2.2.3.b</u> and <u>“Approve”</u> and <u>“Approved”</u> shall be similarly construed.
<u>“As-Built”</u>	means the revised set of drawings, specifications, documents, data and surveys submitted by the Construction Contractor and Accepted by the Developer pursuant to <u>Schedules 8 (Project Administration)</u> and <u>10 (Design and Construction Requirements)</u> and showing the exact dimensions, geometry, and location of completed Construction Work.
<u>“Asset”</u>	means any physical asset used from time to time by the Construction Contractor or a Subcontractor to perform its obligations under this Agreement or any Subcontract, including any:

- a. Element;
- b. land or buildings (whether or not part of or on the Site);
- c. plant or machinery;
- d. equipment;
- e. spare parts; and
- f. tools.

<u>“Asset Condition Inspections”</u>	means those inspections required to be conducted pursuant to <u>Section 8 of Schedule 11 (Operations and Maintenance Requirements)</u> to determine the condition of all Elements and to identify structural and non-structural deficiencies which may present a potential safety hazard.
<u>“Authority Having Jurisdiction”</u>	means the Denver Fire Department.
<u>“Automated Vehicle Locator (AVL) System”</u>	means the system described in <u>Section 12 of Schedule 11 (Operations and Maintenance Requirements)</u> .
<u>“Automatic License Plate Recognition”</u>	means a camera-based system used to obtain an image of a vehicle’s license plate if a transponder is not detected.
<u>“Automatic Traffic Recorder”</u>	means a system that continuously collects vehicle volume and functional classification data using in-pavement loops and piezoelectric sensors.
<u>“Automatic Vehicle Identification Reader”</u>	means the system that is installed at each tolling point and used to read tag information stored inside each transponder.
<u>“Available Insurance”</u>	has the meaning given to it in Part 2, <u>Section 35.5</u> .
<u>“Average Daily Traffic”</u>	means the average total traffic, in both directions, in one Calendar Day.
<u>“Bare and Wet Pavement”</u>	means when a minimum of 95% of the driving surface (edge line to edge line) including shoulders is free of snow, slush and/or ice.
<u>“Baseline Asset Condition Inspection Plan”</u>	has the meaning given to it in <u>Section 2.3.2 of Schedule 11 (Operations and Maintenance Requirements)</u> .
<u>“Baseline Inspections”</u>	has the meaning given to it in <u>Section 2.3.1.a of Schedule 11 (Operations and Maintenance Requirements)</u> .
<u>“Baseline Schedule”</u>	means the logic-based Critical Path schedule for all Construction Work and all O&M Work During Construction which has been prepared by the Construction Contractor based on the Proposal Schedule and Approved by the Enterprises pursuant to <u>Section 3.3.4.a. of Schedule 8 (Project Administration)</u> .
<u>“Baseline Substantial Completion Date”</u>	means the Baseline Substantial Completion Target Date, as such date may be extended from time to time pursuant to: <ol style="list-style-type: none"> a. Part 2, <u>Section 15.3.1.c.iii</u>, as a result of the occurrence of a Supervening Event; or b. a Change documented in a Change Order.
<u>“Baseline Substantial Completion Target Date”</u>	<u>“Baseline Substantial Completion Target Date”</u> means March 25, 2022.”

<u>“BE”</u>	has the meaning given in Recital A of Part 1.
<u>“BE Trustee”</u>	means Zions Bank, a division of ZB, National Association, the successor trustee under the Master Indenture.
<u>“Beneficial Reuse and Materials Management Plan”</u>	means the “Beneficial Reuse and Materials Management Plan” provided in the Reference Documents.
<u>“Best Management Practices”</u>	has the meaning established by applicable Environmental Law governing the particular environmental media or source of Hazardous Substances such practices are intended to address or, in the absence of a particular definition under Environmental Law, shall refer to best practices commonly used to avoid a Release or exacerbation of a Release with respect to the relevant environmental media or source of Hazardous Substances.
<u>“BNSF”</u>	means BNSF Railway Company.
<u>“BNSF Crossing”</u>	means the existing and/or proposed crossing by the BNSF Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.5 of Schedule 10</u> (<i>Design and Construction Requirements</i>).
<u>“BNSF RRA”</u>	means the railroad agreement between CDOT and BNSF dated in relation to the Project, a draft of which agreement was provided to the Construction Contractor as one of the Reference Documents numbered 29.10.10.03.
<u>“BNSF Work”</u>	means all duties and services to be furnished and provided by BNSF as required by the BNSF RRA.
<u>“Bond Financing”</u>	has the meaning given to it in the Project Agreement.
<u>“Bonds”</u>	means the bonds to be issued by BE pursuant to the Indenture.
<u>“Bonds Closing Date”</u>	means the date the Bonds are issued and all conditions specified in Section 13(c) of the TIFIA Loan Agreement have been satisfied or waived in writing by TIFIA.
<u>“Build America Bureau”</u>	means the Build America Bureau within the US DOT.
<u>“Calendar Day”</u>	means a calendar day as determined by reference to the time and date in Denver, Colorado, and “ <u>day</u> ” means any such calendar day.
<u>“Calendar Year”</u>	means each consecutive period of 12 months commencing on January 1 and ending on December 31 as each such day shall be determined by reference to the time and date in Denver, Colorado.
<u>“Cash Security Account”</u>	has the meaning given in Part 1, Article 11.6.4.
<u>“Category 1 Defect”</u>	means an O&M Defect in an Element or any part of an Element which causes or has the potential to cause any one or more of the following: <ul style="list-style-type: none"> a. an immediate or imminent health or safety hazard, nuisance or other similar immediate or imminent risk to Users or workers (including for example inconveniences such as delays and detours, rough rides, obstacles, slippery conditions, or issues requiring Users to make sudden evasive maneuvers); b. an immediate or imminent risk of structural failure; c. an immediate or imminent risk of damage to a third party's property or equipment; and

- d. an immediate or imminent risk of damage to the Environment or any Improvements.
- “Category 2 Defect” means an O&M Defect in an Element or any part of an Element other than a Category 1 Defect.
- “CC Change Order” has the meaning given to it in Section 1.2.f of Schedule 24 (*Change Procedure*).
- “CC Insurance Policies” has the meaning given to it in Part 2, Section 25.1.1.
- “CC Liability Cap” has the meaning given in Part 1, Article 10.1.
- “CC Longstop Date” means the date that is 225 Calendar Days before the PA Longstop Date.
- “CC Monthly Payment” has the meaning given in Part 1, Article 12.2.
- “CC Monthly Payment Application” has the meaning given in Part 1, Article 12.3.
- “CC Monthly Payment Certificate” has the meaning given in Part 1, Article 12.12.
- “CC Noncompliance Event” means any breach or failure by the Construction Contractor to meet the minimum performance requirements set forth in Table 6A.1 and Table 6A.2 to the Agreement.
- “CC Noncompliance Points” means the points that may be assessed for the CC Noncompliance Events, as set forth in Table 6A.1 and Table 6A.2.
- “CC Project Documents” means:
- a. this Agreement;
 - b. the Construction Guarantee;
 - c. each Letter of Credit provided under Part 1, Article 11;
 - d. each Contractor Bond delivered pursuant to Part 2, Section 9.3;
 - e. the Interface Agreement;
 - f. the Lenders’ CC Direct Agreement;
 - g. the Enterprises’ CC Direct Agreement; and
 - h. the Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.).
- “CC Term” has the meaning given in Part 1, Article 3.1.
- “CC Termination Compensation Estimate” has the meaning given to it in Part 2, Section 33.1.2.d.
- “CC Termination Date” means the earlier of:
- a. the effective date of any termination of this Agreement in accordance with the provisions set forth in Part 2, Section 33; and
 - b. the later of (i) the date on which the Construction Contractor has satisfied all of its obligations in respect of Latent Defects pursuant to Part 1, Article 9.2, and (ii) the end of the Latent Defect Remedy Period.

“ <u>CC Work</u> ”	means all of the work and services and performance of obligations, or any of it, to be undertaken or provided by the Construction Contractor pursuant to this Agreement, including the Construction Work, the O&M Work During Construction and the Additional Obligations, but excluding the Excluded Obligations.
“ <u>CCD Identified Future Improvements</u> ”	means all projects listed in <u>Sections 1.17.1</u> and <u>1.17.3</u> of <u>Section 1</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
“ <u>CDOT</u> ”	has the meaning given in Recital A of Part 1.
“ <u>CDOT Roadways</u> ”	means I-270, I-225, Vasquez Boulevard, Colorado Boulevard and Quebec Street, in each case including the ramps up to the intersecting cross-roadway (including directional island and free-flow turn lane where present).
“ <u>CDOT Standard Specifications</u> ”	has the meaning given to it in <u>Section 1.1</u> of <u>Appendix A</u> to <u>Schedule 10A</u> (<i>Applicable Standards and Specifications</i>).
“ <u>Chairperson</u> ”	has the meaning given to it in <u>Section 5.c.iii</u> of <u>Schedule 25</u> (<i>Dispute Resolution Procedure</i>).
“ <u>Change</u> ”	means any change in the CC Work relative to what is otherwise permitted or required under this Agreement, including any change or addition to, or replacement of, a Project Standard.
“ <u>Change in Costs</u> ”	means: <ul style="list-style-type: none"> a. except to the extent paragraphs <u>b.</u> or <u>c.</u> of this definition apply, in respect of: <ul style="list-style-type: none"> i. any Compensation Event (but, in the case of a Compensation Event falling within paragraph c.ii of the definition thereof in this <u>Part A</u> of <u>Annex A</u> (<i>Definitions and Abbreviations</i>), subject to the proviso to the definition of Qualifying Change in Law in this <u>Part A</u> of <u>Annex A</u> (<i>Definitions and Abbreviations</i>)); or ii. any Construction Contractor Change documented in a Change Order, but only for purposes of estimating costs pursuant to <u>Sections 2.1</u> (subject to the proviso to such Section) and <u>2.2.c</u> of <u>Schedule 24</u> (<i>Change Procedure</i>) and of calculating net savings pursuant to <u>Section 3</u> of <u>Schedule 24</u> (<i>Change Procedure</i>)), the effect of such Compensation Event or Construction Contractor Change (whether such effect is (I) of a one-off or recurring nature and/or (II) positive or negative) on the actual or anticipated losses, charges, liabilities and costs and expenses of Developer, including, as relevant and without double counting: iii. any reasonable external professional costs and expenses incurred: <ul style="list-style-type: none"> A. in complying with the Construction Contractor’s obligations under Part 2, <u>Section 15.2.2</u>; B. in respect of any such Compensation Event

(other than any such event as described in paragraphs d. and e., of the definition thereof in this Part A of Annex A (Definitions and Abbreviations)), in preparing any related Supervening Event Submission (or any update thereof) in compliance with Part 2, Section 15.1; and

- C. in respect of any Compensation Event as described in paragraphs d. or e. of the definition thereof in this Part A of Annex A (Definitions and Abbreviations), in complying with Sections 1.1.c and 1.2 of Schedule 24 (Change Procedure);
 - iv. any expenditure that is treated as a capital expenditure in accordance with GAAP;
 - v. any operating, maintenance or replacement costs;
 - vi. any employment and labor costs; and
 - vii. with respect to any insurance that the Construction Contractor is required to obtain and maintain, or cause to be obtained and maintained, pursuant to Part 2, Sections 25.1.1 and 25.1.2.c, any change in premiums, premium tax or broker's fees and expenses, including any change therein resulting from:
 - A. a change in the amount of any deductible or in any amount of coverage; and
 - B. any other change in such insurance, including to Insurance Terms;
 - viii. Intentionally Omitted:
- in all cases for purposes of this paragraph a. of this definition:
- ix. other than with respect to paragraphs a.iii., or a.vii. of this definition, as any amounts falling within this definition of Change in Costs are calculated or otherwise taken into account (including through mark-ups) in accordance with Appendix A to Schedule 24 (Change Procedure); and
 - x. excluding:
 - A. any internal costs, fees or expenses of any Construction Contractor-Related Entity except to the extent expressly permitted in accordance with Appendix A to Schedule 24 (Change Procedure); and
 - B. any costs or expenses that are expressly provided to be incidental and excluded pursuant to the terms of Schedule 17 (Environmental Requirements);
- b. subject to Part 2, Sections 15.7.1.d.ii, in respect of any:

- i. Non-Appendix B Parcel Unexpected Hazardous Substances Event; or
 - ii. Appendix B Parcel Unexpected Hazardous Substances Event,
- Excess Costs; and
- c. in respect of any Unexpected Groundwater Contamination Event, Excess Groundwater Costs.

“Change in Law”

means the coming into effect after the Setting Date of:

- a. the enactment, promulgation or adoption of any Law;
- b. a binding change in the judicial or administrative interpretation of any Law; or
- c. any modification (including repeal) of any Law,

in each case, by a Governmental Authority that:

- d. is materially different from or inconsistent with Law as in effect prior to the coming into effect of the relevant change as referenced in paragraphs a., b. or c. of this definition; and
- e. was not (in the same or substantially similar form and substance to that which later comes into effect) pending, passed or adopted, including in the form of a bill or draft, as of the Setting Date,

provided that Change in Law shall exclude any such enactment, promulgation, adoption, change or modification of any (i) Federal Law (other than any Public Safety Order), (ii) State or local labor Law or (iii) State or local tax Law in each of cases (i), (ii) or (iii) of general applicability.

“Change Order”

means either a PA Change Order or a CC Change Order.

“Circuit Time for Plowing”

means the total time required to fully service a designated Snow Route calculated from the time the plow vehicle leaves the yard to the time it has completed the plowing operation on the entire plow route.

“Circuit Time for Spreading”

means the total time required to fully service a designated salt or liquid anti-icing/de-icing Snow Route calculated from the time the Spreader vehicle leaves the yard to the time it completes the route.

“City of Denver”

means the City and County of Denver, Colorado.

“Civil Rights Requirements”

has the meaning given to it in Section 1.1.1 of Schedule 15 (*Federal and State Requirements*).

“Claim”

means any claim, demand, action, cause of action, proceeding (legal or administrative), investigation, judgment, demand, suit, dispute or liability.

“Closed Circuit Television”

means cameras used for monitoring travel conditions.

“Closure”

means that all or part of any travel lane, ramp, cross street, shoulder, sidewalk or driveway within the O&M Limits is closed or blocked, or that the use thereof is otherwise restricted, for a period of any duration.

“Closure Deduction Period”

means, in respect of any Non-Permitted Closure, each continuous period of 15 minutes commencing from and including:

- a. subject to paragraph b. of this definition, the

commencement time of such Non-Permitted Closure; or

- b. in the case of any Closure that is deemed to be a Non-Permitted Closure pursuant to Section 2.11.14.c or 2.11.14.d of Schedule 10 (*Design and Construction Requirements*), the expiry of the 30 minute period referred to in the relevant Section,

provided that, for certainty, the Closure Deduction Period during which the relevant Closure actually ends (or is deemed to end in accordance with the proviso to the definition of Non-Permitted Construction Closure in this Part A of Annex A (*Definitions and Abbreviations*)) will have a duration of less than 15 minutes and any reference in Schedule 6 (*Performance Mechanism*) to a "partial" Closure Deduction Period shall be deemed to refer to such Closure Deduction Period in respect of the relevant Non-Permitted Closure.

"Closure Default Event"

means the occurrence of any of the following:

- a. during the Construction Period, the cumulative amount of Construction Closure Deductions accrued during:
 - i. any rolling 4 month period equals or exceeds
or
 - ii. any rolling 12 month period equals or exceeds
- b. Intentionally Omitted,

provided that, for certainty, any Construction Closure Deduction that is being disputed in good faith by the Construction Contractor shall be disregarded for purposes of determining whether a Closure Default Event has occurred until such time as it has been Agreed or Determined that the relevant deduction was valid.

"Collateral Agent"

means U.S. Bank National Association, and its successors and permitted assigns.

"Command Control and Monitoring System"

means the integrated overarching system required to monitor, control and implement the various fire, life safety, and other systems located in the Cover.

"Communication"

has the meaning given in Part 1, Article 5.5.

"Compensable Construction Period Event"

has the meaning given to it in Part 2, Section 15.7.1.

"Compensable Costs"

means, with respect to a Compensation Event only, any Change in Costs for which the Developer is otherwise obligated to compensate the Construction Contractor in respect of such event as determined pursuant to Part 2, Section 15.3 (for certainty, net of any amount that the Construction Contractor is (or, pursuant to Part 2, Section 35.5.a, should be) entitled to recover under any Available Insurance).

"Compensation Event"

means:

- a. any:
 - i. breach of the Project Agreement by the Enterprises;
or

- ii. violation of Law by the Enterprises,
except to the extent such breach or violation is a Compensation Event under any other paragraph of this definition;
- b. any:
 - i. failure by the Developer to provide the Construction Contractor with Possession of any ROW Parcel by:
 - A. other than with respect to the Existing CDOT Right-of-Way, the applicable date specified in the “Date First Available for Possession” column in the table in Appendix A to Schedule 18 (Right-of-Way);
 - B. with respect to the Existing CDOT Right-of-Way, issuance of NTP2; and
 - C. with respect to the Maintenance Yard, the Snow and Ice Control Commencement Date;
 - ii. failure by the Developer to continuously provide the Construction Contractor with Possession of any ROW Parcel or any Additional ROW Parcel from the applicable Project License Start Date to the applicable Project License End Date;
 - iii. failure by the Enterprises to comply with their obligation to complete Property Management of certain ROW Parcels pursuant to Sections 2.2.2 and 2.2.3 of Schedule 18 (Right-of-Way) to the Project Agreement; or
 - iv. provision by the Developer to the Construction Contractor of Possession of any ROW Parcel subject to the rights of other Persons, restrictions or qualifications that were not identified, disclosed, expressly anticipated or in existence on or prior to the Setting Date as determined by reference to:
 - A. the terms of this Agreement and each Third Party Agreement;
 - B. Law;
 - C. any title commitment in relation to this Project in the possession of or made available to the Preferred Proposer and/or the Construction Contractor-Related Entities;
 - D. the Reference Documents;
 - E. Beneficial Reuse and Materials Management Plan; and
 - F. Public ROW Records;
- c. any:

- i. Discriminatory Change in Law; or
- ii. Qualifying Change in Law,
(excluding any resulting Enterprise Change or Developer Change made pursuant to Part 2, Section 8.6.2 of this Agreement);
- d. delivery of a Directive Letter pursuant to Section 1.4.a or Section 1.5.a of Schedule 24 (*Change Procedure*);
- e. an Enterprise Change or a Developer Change documented in a Change Order;
- f. any of the following:
 - i. any Non-Appendix B Parcel Unexpected Hazardous Substances Event;
 - ii. any Appendix B Parcel Unexpected Hazardous Substances Event that:
 - A. occurs during the Construction Period and:
 - I. prior to the Appendix B Parcel Relief Start Date, but only with respect to, and to the extent of, the effects of such event on the Construction Work that are continuing on or after the Appendix B Parcel Relief Start Date; or
 - II. on or after the Appendix B Parcel Relief Start Date;
 - iii. any Unexpected Groundwater Contamination Event;
 - iv. any Unexpected Utility Condition Event;
 - v. the encountering or discovery of any:
 - A. Unexpected Geological Conditions;
 - B. Unexpected Historically Significant Remains; or
 - C. Unexpected Endangered Species; or
 - vi. any Unexcused Utility Owner Delay; or
- g. any incident of physical damage to an Element of the Project or delay of or disruption to the Construction Work or the O&M Work During Construction caused by:
 - i. installation, testing or maintenance of any ETC or ITS Elements by the ETC System Integrator pursuant to the E-470 TSA or the E-470 Installation Agreement;
 - ii. the construction, operation or maintenance of any Other Department Project, or any other facility, infrastructure or project constructed, operated and/or maintained by or on behalf of either Enterprise and/or CDOT, within or in the vicinity of the Right-of-Way, but only to the extent not

- constructed, operated or maintained by the Construction Contractor (or another Person under common Control with Construction Contractor) pursuant to this Agreement or otherwise; or
- iii. the installation by the Enterprises or the Developer of any advertising on the Right-of-Way or any Additional Right-of-Way;
- h. any breach by the City of Denver of the Denver IGA that results in:
 - i. the assessment of fees or expenses on the Construction Contractor that are waived or suspended by the City of Denver under Section 4.A.(i)-(iii) and Exhibit B of the Denver IGA; or
 - ii. the City of Denver not accepting the quantum of fill dirt specified in Section 4.D of the Denver IGA, provided that such fill dirt satisfies the requirements specified in the Denver IGA and Reference Document 29.17.11;
 - i. any:
 - i. Enterprise Release of Hazardous Substances; or
 - ii. Loss by the Construction Contractor as a result of it being held liable as generator under 40 CFR Part 262 or arranger under CERCLA Section 107(a) with respect to any Hazardous Substances for which the Construction Contractor is not identified as the generator and arranger pursuant to Section 23.6.1.a of Schedule 17 (Environmental Requirements) notwithstanding the Parties' agreement pursuant to Section 23.6.1.b of Schedule 17 (Environmental Requirements); or
 - iii. Third Party Release of Hazardous Substances that occurs during the Operating Period;
 - j. any physically intrusive inspection conducted pursuant to Part 2, Section 21.2.1 to the extent such inspection constitutes a Compensation Event pursuant to Part 2, Section 21.2.2.b.ii;
 - k. the issuance of any Safety Compliance Order, excluding any such order or part thereof that orders or directs Safety Compliance that the Construction Contractor is otherwise obligated to implement pursuant to this Agreement;
 - l. any suspension by the Enterprises or the Developer pursuant to Part 2, Section 23.3.1 to the extent such suspension constitutes a Compensation Event pursuant to Part 2, Section 23.3.2;
 - m. any Required Action by the Enterprises that is not taken in response to or because of the Construction Contractor's breach of its obligations under this Agreement or any Construction Contractor Default;

- n. Construction Contractor's obligation to comply with Part 2, Section 12.2.b with respect to any Related Transportation Facility that:
- i. existed on the Setting Date to the extent the relevant configuration, design and use of such facility was not Known or Knowable on such date; or
 - ii. did not exist on the Setting Date and:
 - A. is not a CCD Identified Future Improvement; or
 - B. is a CCD Identified Future Improvement, but only to the extent the configuration, design and/or use of such improvement was not Known or Knowable on such date,

in the case of either i. or ii., to the extent such obligation requires any expenditure that would be treated as a capital expenditure in accordance with GAAP;
- o. any:
- i. execution of:
 - A. *[Reserved.]*;
 - B. an RRA on terms not materially consistent with the terms set out in the most recent draft of such agreement provided to the Construction Contractor as one of the Reference Documents numbered 29.10.10.03 on or prior to the Final Project Information Date; or
 - C. the Cover Maintenance Agreement on terms not materially consistent with the terms set out in the most recent draft of such agreement provided to the Construction Contractor as Reference Document numbered 29.10.14.10 on or prior to the Final Project Information Date;
 - ii. designation by the Enterprises of a new Third Party Agreement pursuant to Section 8.5.2 of the Project Agreement;
 - iii. material amendment or modification to a Third Party Agreement (other than any Sprint Reimbursement Agreement);
 - iv. 100% Trackwork Plans and Specifications in respect of the UPRR Crossing as referred to in Section 10.1.2.b.i of Schedule 10 (*Design and Construction Requirements*) is approved by UPRR after the Setting Date on terms not materially consistent with the most recent version of such plans and specifications provided as Reference Document 29.10.10.01 on or prior to such date; or
 - v. *[Reserved.]*;

- p. the issuance of any temporary restraining order, preliminary or permanent injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits the prosecution of a material part of the CC Work; and
- q. any failure by the City of Denver:
 - i. to have the EADP (as defined in the Denver IGA) segment from Pond 7A (Brighton West Pond) to the South Platte River operational by June 1, 2018;
 - ii. to have the portion of the EADP not referred to in paragraph q.i. of this definition operational by September 1, 2019;
 - iii. to have the TBDP (as defined in the Denver IGA) operational by September 1, 2019; or
 - iv. to construct the TBDP (including, for certainty, the EADP) materially in accordance with the specifications in the Denver IGA;

in each case unless and to the extent such event arises as a result of any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any Construction Contractor-Related Entity.

“Construction Closure Deduction”

means, in respect of each full or partial Closure Deduction Period that commences in respect of:

- a. any Non-Permitted Construction Closure on I-70 Mainline, I-270 or I-225, \$5,000 in respect of the Closure of each lane, shoulder or ramp; or
- b. any other Non-Permitted Construction Closure, \$2,000 in respect of the Closure of each lane, shoulder, ramp, sidewalk or driveway.

“Construction Contract”

means this Agreement, as amended, restated or otherwise modified from time to time.

“Construction Contract Amendment”

“Construction Contract Amendment” means the First Amendment to the Design and Construction Contract dated as of December 21, 2017 among the Developer and the Construction Contractor.”

<u>“Construction Contractor”</u>	has the meaning given in the preamble to Part 1.
<u>“Construction Contractor Agreements”</u>	has the meaning given to it in <u>Part A</u> of <u>Schedule 2</u> (<i>Representations and Warranties</i>).
<u>“Construction Contractor Change”</u>	means a Change initiated by the Construction Contractor pursuant to a Construction Contractor Change Notice.
<u>“Construction Contractor Change Notice”</u>	has the meaning given to it in Part 2, <u>Section 14.1.2</u> .
<u>“Construction Contractor Default”</u>	has the meaning given to it in Part 2, <u>Section 32.1.1</u> .
<u>“Construction Contractor Default Cure Period”</u>	has the meaning given to it in Part 2, <u>Section 32.1.1</u> .
<u>“Construction Contractor Employee Redundancy Payments”</u>	means the amount of all payments of wages earned, accrued unused vacation time, and any other payments required by Law or required by the Construction Contractor’s employment agreement with the Construction Contractor’s employees, which in each case have been or will be reasonably incurred by the Construction Contractor as a direct result of termination of this Agreement.
<u>“Construction Contractor-Related Entities”</u>	means: <ul style="list-style-type: none"> a. the Construction Contractor; b. the Construction Guarantor; c. Subcontractors (of any tier); d. any other Persons (except, for certainty, the Developer or the Enterprises) performing any of the Construction Work or the O&M Work During Construction for or on behalf of the Construction Contractor; e. any other Persons (except, for certainty, the Developer, the Enterprises and any members of the general public that use or access the Project) for whom the Construction Contractor may be legally or contractually responsible; and f. the employees, agents, officers, directors, representatives and consultants of any of the foregoing.
<u>“Construction Contractor Release of Hazardous Substances”</u>	means any Release of Hazardous Substances on, in, under, from or in the vicinity of the Site caused by the Construction Contractor or any other Construction Contractor-Related Entity to the extent such Release: <ul style="list-style-type: none"> a. arises as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of the Construction Contractor or any other Construction Contractor-Related Entity; or b. constitutes the Release of Hazardous Substances arranged to be brought onto the Site by the Construction Contractor or any other Construction Contractor-Related Entity.
<u>“Construction Contractor’s Change Response”</u>	has the meaning given to it in <u>Section 1.1.c.i</u> of <u>Schedule 24</u> (<i>Change Procedure</i>).

<u>“Construction Contractor’s Representative”</u>	has the meaning given to it in Part 2, <u>Section 18.2.1.a</u> .
<u>“Construction Contractor-risk Permit Area”</u>	means any Permit Area: <ul style="list-style-type: none"> a. which is adjacent to the Additional Right-of-Way but not the Right-of-Way; and/or b. for which access and/or use is required to be procured by the Construction Contractor pursuant to a Permit for which the Construction Contractor bears all risk of delay and/or all risk of cost pursuant to Part 2, <u>Section 8.4.3.b</u>.
<u>“Construction Goal Deduction”</u>	means the amount determined as “CGD” in accordance with <u>Section 1(c)</u> of <u>Part 1</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Construction Guarantee”</u>	means the guarantee by the Construction Guarantor in the form attached as Attachment A.
<u>“Construction Guarantor”</u>	means Kiewit Infrastructure Group Inc.
<u>“Construction Management Office Space”</u>	has the meaning given to it in Section 1.a of Attachment G.
<u>“Construction Period”</u>	means the period that begins on the earlier to occur of the date of issuance of NTP1 and the Financial Close Date and ends on (and including) the Substantial Completion Date.
<u>“Construction Period OJT Goal”</u>	has the meaning given to it in <u>Section 6.3.1.a</u> of <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
<u>“Construction Period Payment”</u>	means each of the Milestone Payments anticipated to be made by the Enterprises to the Developer in the Financial Model.
<u>“Construction of Relocation Acceptance Letter”</u> or <u>“CRAL”</u>	means a letter in the form set out in <u>Appendix D</u> to <u>Section 4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
<u>“Construction Security”</u>	means, collectively, the Cash Security Account, the Construction Guarantee, each Letter of Credit, and the Contractor Bonds.
<u>“Construction Standards”</u>	means: <ul style="list-style-type: none"> a. the standards and specifications listed in <u>Schedule 10A</u> (<i>Applicable Standards and Specifications</i>) including, for certainty: <ul style="list-style-type: none"> i. the CDOT Standard Specifications; and ii. the Standard Special Provisions; b. the Project Special Provisions; c. any other standards and specifications expressly referenced in this Agreement as applicable to the Construction Work (for certainty, excluding any Laws, Governmental Approvals or Permits); and d. any other standards and specifications that apply to the Construction Work (excluding, for certainty, any Laws, Governmental Approvals or Permits), including as a result of

Developer's methods of performing the Construction Work,

in each case in the form published or otherwise in effect as of the Final Project Information Date and as modified by the express terms of this Agreement (subject to change, addition or replacement made pursuant to Part 2, Section 8.6).

"Construction Work" means all administrative, design, installation, compliance, permitting, support services, Utility Work, construction related obligations and all other tasks to be performed and provided by the Construction Contractor required to comply with all requirements set out in Schedule 10 (*Design and Construction Requirements*) and any other provisions of this Agreement applicable to the performance of the Construction Work.

"Construction Work Small Business Goals" has the meaning given to it in Section 6.2.1 of Schedule 15 (*Federal and State Requirements*).

"Consumptive Use" means water that is permanently withdrawn from its source system, as further defined by Law.

"Contract Drawings" means the documents included in Schedule 10B (*Contract Drawings*).

"Contract Price" has the meaning given in Part 1, Article 12.1.

"Contract Year" means a period of twelve months commencing on (and including) July 1 of each Calendar Year, provided that:

- a. the first Contract Year shall be the period commencing on (and including) the Agreement Date and ending on the immediately following June 30; and
- b. the final Contract Year shall be the period commencing on (and including) July 1 immediately preceding the last Calendar Day of the Term and ending on that last Calendar Day of the Term,

where each of June 30 and July 1 shall be determined by reference to the time and date in Denver, Colorado.

"Contractor Bond" means any:

- a. payment and performance surety bond(s) which bonds shall be:
 - i. provided by and maintained with an Eligible Surety;
 - ii. comprised either of:
 - A. a single payment and performance surety bond substantially in the form set out in Part A of Schedule 20 (*Forms of Contractor Bonds*); or
 - B. separate payment and performance surety bonds substantially in the forms set out in, respectively, Parts B and C of Schedule 20 (*Forms of Contractor Bonds*); and
 - iii. in a penal amount of not less than, with respect to any individual bond delivered pursuant to Part 2, Section 9.3.1.a.i (for purposes of which, each bond delivered in accordance with paragraph a.ii.B. of this definition shall constitute a separate individual

bond), 50% of the aggregate value of all the Construction Work and the O&M Work During Construction to be performed during the Construction Period, or, in any case, if greater or with respect to any other part of the Construction Work or O&M Work During Construction, the minimum required by Law, including C.R.S. § 38-26-106; and

- iv. otherwise provided in compliance with Part 2, Section 9.3.1; or
- b. any alternative form of payment and/or performance security provided with the Enterprises' Acceptance pursuant to Part 2, Section 9.3.3.

“Control”

of a Person by another Person means that other Person (whether directly or indirectly):

- a. holds either:
 - i. at least 25% or more of the equity interests in such Person; or
 - ii. a percentage of the equity interests in such Person that is either equal to or greater than the percentage held by any other holder; or
- b. has the right to appoint, approve or remove:
 - i. at least 25% of the board of directors (or equivalent) of such Person; or
 - ii. a percentage of the board of directors (or equivalent) of such Person either equal to or greater than the percentage appointed, approved or removed by any other holder;
- c. exercises control over the direction of the business, management and/or policies of such Person, including through:
 - i. preferred or minority equity holder veto or voting rights (whether such rights are provided by Law or by such Person's organizational documents or related member or shareholder agreements or similar agreements); or
 - ii. any other means,

in the case of paragraphs c.i and c.ii to the extent such rights or other means circumvent, or appear intended to circumvent, any restrictions or obligations that would otherwise arise if this definition of Control applied.

“Control Center”

means the control center for controlling the Cover MEP Systems.

“Controlling Work Item”

means the Activity or work item on the Critical Path (or any Payment Milestone critical path) having the least amount of Float.

“CORA”

means the Colorado Open Records Act.

“CORA Exempt Materials”

means any trade secrets, privileged information and confidential

commercial, financial, geological or geophysical data exempt from public disclosure under C.R.S. §§ 24-72-204(3)(a)(IV) or information that is otherwise exempt from disclosure under CORA.

“Core Proposer Team Member”

means each of the following in its capacity as a “Core Proposer Team Member” as defined in the ITP:

- a. Meridiam I-70 East CO, LLC;
- b. Kiewit Development Company;
- c. Kiewit C70 Investors, LLC
- d. Kiewit Infrastructure Co.;
- e. Parsons Brinckerhoff;
- f. Roy Jorgensen Associates, Inc.
- g. Meridiam Infrastructure North America Fund II; and
- h. Kiewit Infrastructure Group, Inc.

“Corrective Action”

has the meaning given to it in Section 6.5.8 of Schedule 8 (*Project Administration*).

“Corrective Action Plan”

means Developer’s plan for taking Corrective Action in respect of systemic Nonconforming Work.

“Courtesy Patrol Service Plan”

means the plan referred to in Section 9.2.2.c of Schedule 11 (*Operations and Maintenance Requirements*).

“Cover”

means the Elements to be constructed by the Construction Contractor within the limits depicted in the I-70 Cover Plans, which (except to the extent otherwise specified in this Agreement) includes both “Planning Area 1” and “Planning Area 2” as depicted in the I-70 Cover Plans.

“Cover Maintenance Agreement”

means the Intergovernmental Agreement among CDOT, HPTE, BE and the City of Denver in relation to the Project, a draft of which agreement was provided to the Construction Contractor as Reference Document number 29.10.14.10.

“Cover MEP System”

means the mechanical, electrical, and plumbing system and ITS and communications systems identified in Section 12 of Schedule 10 (*Design and Construction Requirements*) required for the Cover and the Lowered Section between Brighton Blvd. and Dahlia St.

“Cover O&M Work”

means all O&M Work with respect to the Cover in relation to:

- a. the Cover MEP System and associated Elements thereof described in Section 12 of Schedule 10 (*Design and Construction Requirements*);
- b. fencing and associated support Elements at the east and west limits of the Cover;
- c. all structural connections or anchors that connect to structures on top of the Cover and are embedded in or connect through the deck slab;
- d. until the end of the Landscape Warranty period (as described in Section 14.11 of Schedule 10 (*Design and Construction Requirements*)), all landscaping, plant, soil and other vegetation and all irrigation systems; and

- e. all Elements at and below (A) the protection course and root barrier protection at landscape areas and (B) the protection course at vehicular and pedestrian traffic areas (including, for certainty, the Elements referred to in paragraphs h.i to h.iv of the definition of Cover Top O&M Work in this Annex A), including:
 - i. structural Elements, such as deck, girders, bearings, abutments, deck joints, retaining walls, columns, piers, pier caps and approach slabs;
 - ii. foundation, backfill, and subsurface Elements;
 - iii. drainage Elements;
 - iv. roadway Elements; and
 - v. all Elements identified as Developer’s responsibility in Appendix E to Section 4 of Schedule 10 (*Design and Construction Requirements*).

“Cover Top Maintainer” means the City of Denver and any entity contracted by the City of Denver from time to time to carry out the Cover Top O&M Work.

“Cover Top O&M Manual” has the meaning given to it Section 3.2.3.e of Schedule 11 (*Operations and Maintenance Requirements*).

“Cover Top O&M Work” means any and all operations, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement work and activities undertaken after the Final Acceptance Date or (in the case of the elements referred to in paragraphs a. and b. of this definition) after the end of the Landscape Warranty period (as described in Section 14.11 of Schedule 10 (*Design and Construction Requirements*)) in relation to all Elements with respect to the Cover above (A) the protection course and root barrier protection at landscape areas and (B) the protection course at vehicular and pedestrian traffic areas, including:

- a. all landscaping, planting, soil, and other vegetation;
- b. all irrigation systems;
- c. all drainage systems;
- d. all park, pedestrian, cyclist, and other aesthetic and urban amenities, features, site furnishings, buildings and structures, such as any shade coverage and any walls;
- e. all lighting, electrical and mechanical components and equipment;
- f. all road, cycling, pedestrian, and park, playground, and field surfaces (including, for example, unit paving, concrete or asphalt paving, curbs, crush stone surfacing, playground surfacing, and synthetic field) and any associated grading and overlay;
- g. all barriers, gates, fences (other than the fencing referred to in paragraph b. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*)), bollards, posts, poles and railings;
- h. all elements of the Project Special Provision Section 519 Garden Roof Assembly (as described in Appendix A of

Section 14 of Schedule 10 (*Design and Construction Requirements*)), excluding:

- i. the monolithic waterproofing membrane;
- ii. any reinforcing and flashing;
- iii. the protection course and root barrier protection at landscape areas;
- iv. the protection course at vehicular and pedestrian traffic areas,

and, for certainty, including all other elements of such “Garden Roof Assembly” including:

- v. insulation (EPS geofoam);
- vi. drainage / water retention components;
- vii. filter fabrics;
- viii. soil;
- ix. garden roof accessory components; and
- x. erosion control materials; and

- i. all other elements described in Section 14 of Schedule 10 (*Design and Construction Requirements*) that do not fall within the scope of the Cover O&M Work,

provided that Cover Top O&M Work shall exclude:

- j. any O&M Work that falls within paragraphs a., b., c. and d. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*); and
- k. any Construction Work and O&M Work During Construction required to be undertaken by the Construction Contractor pursuant to Part 2, Section 9 as a result of any breach of any Warranty in relation to any of the elements of the Cover falling within the scope of this definition.

“Cover Top Warranties” means the Warranty provided by the Construction Contractor hereunder in respect of each Warrantied Element for which the Developer is required to provide a Warranty (as defined in the Project Agreement) for the benefit of City of Denver with respect to that portion of the Cover that is within the scope of the Cover Top O&M Work pursuant to the Project Agreement.

“CP Deduction Month” has the meaning given to it in Section 1(a) of Part 1 of Schedule 6 (*Performance Mechanism*).

“CPI” means the Consumer Price Index All items (BES Series ID CUUR0000SA), as published by the United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-84 = 100, or if such publication ceases to be in existence, a comparable index selected by the Enterprises and approved by Developer, acting reasonably, provided that:

- a. if the CPI is revised so that the base year differs from that set out above, the CPI shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics; and
- b. if the Bureau of Labor Statistics otherwise alters its method

of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.

- “Critical Path” means the longest sequence, in terms of time, of logically connected Activities on the Project Schedule ending with Final Acceptance, and, for certainty, the Project Schedule shall include only a single Critical Path.
- “Critical Path Method” means the scheduling technique showing all Activities required to complete a task, complete with durations and relationships between Activities.
- “Critical Velocity” means the minimum longitudinal air velocity required to prevent backflow of smoke, and which is a function of tunnel geometry and design fire characteristics.
- “Cross Drain” means pipes or culverts that convey water without interruption from one side of a road to the other.
- “CRPM” has the meaning given to it in Section 1.1.1 of Schedule 15 (*Federal and State Requirements*).
- “Cure Period” means, for any CC Noncompliance Event, the “Cure Period” (if any) specified for such CC Noncompliance Event in Table 6A.1 or Table 6A.2, as applicable, which shall commence on and from the Noncompliance Start Time of such CC Noncompliance Event.
- “Default Interest” means interest accruing at the Default Interest Rate on a payment that is due but unpaid.
- “Default Interest Rate” means, for each Calendar Day during which Default Interest accrues pursuant to this Agreement, the rate per annum equal to the 30 Calendar Day British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Enterprises from time to time) at approximately 11:00 a.m., London time for dollar deposits (for delivery on the first Calendar Day on which Default Interest is due) plus 200 basis points, provided that if such rate is not available at such time for any reason, then the Default Interest rate shall be the rate per annum determined by the Enterprises as provided by a similar organization.
- “Defect” means a defect, howsoever caused, affecting the condition, use, functionality or operation of any Element.
- “Defect Remedy Period” means (subject to any extension pursuant to Part 2, Section 12.5.2):
- a. for a Category 1 Defect, the maximum time period for taking and completing the action required by Section 4.2.2 of Schedule 11 (*Operations and Maintenance Requirements*), being the time period set out in the column headed “Cat 1 Immediate Action” in the Performance and Measurement Tables; or
 - b. for a Category 2 Defect, the maximum time period for taking and completing the action required by Section 4.2.3 of Schedule 11 (*Operations and Maintenance Requirements*), being the time period set out in the column headed “Cat 2 Permanent Repair” in the Performance and Measurement Tables,
- in each instance commencing from the time that the Construction Contractor first becomes (or should have become) aware of the existence of the relevant O&M Defect, provided that, for certainty, if any such period is

	specified as “N/A”, the relevant O&M Defect shall be deemed to have no remedy period or, for the purposes of <u>Schedule 6</u> (<i>Performance Mechanism</i>), no Cure Period.
“ <u>Delay Event</u> ”	has the meaning given to it in Part 1, Article 8.8.1.
“ <u>Delay Liquidated Damages</u> ”	means the amounts payable as liquidated and agreed damages pursuant to Part 1, Article 8.2.
“ <u>Delay Liquidated Damages Subcap</u> ”	has the meaning given to it Part 1, <u>Article 10.1</u> .
“ <u>Delay Period</u> ”	has the meaning given to it in Part 2, <u>Section 15.3.1.c.ii</u> .
“ <u>Delay Proceeds</u> ”	has the meaning given to it in Part 1, <u>Article 8.8.3</u> .
“ <u>Delay Relief Events</u> ”	has the meaning given to it in paragraph <u>a</u> . of the definition of Relief Event in this <u>Part A</u> of <u>Annex A</u> (<i>Definitions and Abbreviations</i>).
“ <u>Delayed Completion</u> ”	has the meaning given to it in the Interface Agreement.
“ <u>Deliverable</u> ”	means any written document, drawing, report, plan or other material or information, regardless of form and including any draft, required pursuant to this Agreement to be submitted or resubmitted to the Enterprises or the Department, as applicable, for Approval, Acceptance, any other consent, approval or like assent, or Information, excluding, for certainty, notices and correspondence.
“ <u>Deliverables Tables</u> ”	has the meaning given to it in <u>Section 1(a)</u> of <u>Part 1</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
“ <u>Denver IGA</u> ”	means the Intergovernmental Agreement among CDOT, HPTE, BE and the City of Denver dated as of September 14, 2015, as supplemented by the letters dated February 21, 2017 and April 21, 2017, copies of which were included in the Reference Documents.
“ <u>Denver Planned Projects</u> ”	means the projects listed in <u>Appendix B</u> to <u>Section 9</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
“ <u>Department</u> ”	means: <ul style="list-style-type: none"> a. CDOT acting pursuant to a delegation of authority by the Enterprises pursuant to Section 18.1.2 of the Project Agreement; or b. the Enterprises, but only if and to the extent that: <ul style="list-style-type: none"> i. the context may require; or ii. the Developer otherwise notifies the Construction Contractor.
“ <u>Department Provided Approvals</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Design of Relocation Acceptance Letter</u> ” or “ <u>DRAL</u> ”	means a letter in the form set out in <u>Appendix C</u> to <u>Section 4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
“ <u>Designated Senior Representative</u> ”	means: <ul style="list-style-type: none"> a. in the case of the Construction Contractor, its Construction Manager (or a successor representative as notified by the

	Construction Contractor to the Developer from time to time); and
	b. in the case of the Developer, its Project Manager (or a successor representative as notified by the Developer to the Construction Contractor from time to time).
<u>“Detailed Supervening Event Submission”</u>	has the meaning given to it in Part 2, <u>Section 15.1.2.b.i.</u>
<u>“Developer”</u>	means Kiewit Meridiam Partners LLC, a limited liability company organized under the laws of the State of Delaware.
<u>“Developer Act”</u>	means (a) a failure to comply in any material respect with any of its obligations under this Agreement or the Project Agreement by the Developer (whether individually or in the aggregate, and including, for the avoidance of doubt, such failure in respect of any applicable Excluded Obligation), other than any such failure that arises from an act or omission of the Enterprises, the Construction Contractor, any other Construction Contractor-Related Entity, the O&M Contractor, or any other O&M Contractor-Related Entity, or a Relief Event or Compensation Event; or (b) negligent acts or omissions, fraud or willful misconduct of Developer or any of its subcontractors (other than Construction Contractor, any other Construction Contractor-Related Entity, the O&M Contractor, or any other O&M Contractor-Related Entity), agents, employees, officers and directors.
<u>“Developer Agreements”</u>	has the meaning given to it in <u>Part B</u> of <u>Schedule 2</u> (<i>Representations and Warranties</i>).
<u>“Developer Change”</u>	means a Change initiated by the Developer pursuant to a Developer Change Notice.
<u>“Developer Change Notice”</u>	has the meaning given to it in Part 2, <u>Section 14.1.1.c.</u>
<u>“Developer Default”</u>	has the meaning given to it in Part 2, <u>Section 32.3.1.</u>
<u>“Developer Default Cure Period”</u>	has the meaning given to it in Part 2, <u>Section 32.3.1.</u>
<u>“Developer Directive Letter”</u>	has the meaning given to it in <u>Section 1.5.a</u> of <u>Schedule 24</u> (<i>Change Procedure</i>).
<u>“Developer Insurance Policies”</u>	has the meaning given to it in Part 2, <u>Section 25.1.1.</u>
<u>“Developer-Related Entities”</u>	has the meaning given to it in the Project Agreement.
<u>“Developer Release of Hazardous Substances”</u>	means any Release of Hazardous Substances on, in, under, from or in the vicinity of the Site caused by Developer or any other Developer-Related Entity to the extent such Release: <ul style="list-style-type: none"> a. arises as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of Developer or any other Developer-Related Entity; or b. constitutes the Release of Hazardous Substances arranged to be brought onto the Site by Developer or any other

Developer-Related Entity.

<u>“Developer Retained Expansion”</u>	has the meaning given to it in the Project Agreement.
<u>“Developer’s Representative”</u>	has the meaning given to it in Part 2, <u>Section 18.2.1.a</u> .
<u>“Developer Right”</u>	has the meaning given in Part 1, Article 6.1.
<u>“Direct Agreement (Parent Guarantee – Kiewit Infrastructure Group Inc.)”</u>	means the agreement in the form attached hereto as Attachment F to be entered into between the Developer, the Construction Guarantor and the Collateral Agent.
<u>“Directive Letter”</u>	means either an Enterprise Directive Letter or a Developer Directive Letter.
<u>“Disadvantaged Business Enterprise”</u>	a State-certified “Disadvantaged Business Enterprise” listed on the Colorado Unified Certification Program DBE Directory.
<u>“discretion”</u>	has the meaning given to it in Part 2, <u>Section 2.2.2.b</u> .
<u>“Discriminatory Change in Law”</u>	means a Change in Law, the terms of which only apply to: <ul style="list-style-type: none"> a. the Project, or the Project and Similar Projects; and/or b. the Construction Contractor and not to other Persons (unless such Persons are public-private partnership project design-build contractors engaged in Similar Projects (and in roles similar to the Construction Contractor on such projects)), <p>and in the case of each of paragraphs <u>a.</u> and <u>b.</u> excluding any Change in Law to the extent such is made in response to any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence of any Construction Contractor-Related Entity.</p>
<u>“Dispute”</u>	means any dispute between the Developer and the Construction Contractor arising out of or in connection with this Agreement.
<u>“Dispute Resolution Procedure”</u>	means the procedure for the resolution of Disputes set out in Part 2, <u>Section 38</u> and <u>Schedule 25</u> (<i>Dispute Resolution Procedure</i>).
<u>“Document Control System”</u>	means the system established and maintained by the Construction Contractor pursuant to <u>Section 13.1.1</u> of <u>Schedule 8</u> (<i>Project Administration</i>).
<u>“DPS Warranties”</u>	means the Warranty provided by the Construction Contractor hereunder in respect of each Warrantied Element for which the Developer is required to provide a Warranty (as defined in the Project Agreement) for the benefit of Denver Public Schools pursuant to the Project Agreement.
<u>“Draw Amount”</u>	has the meaning given in Part 1, Article 11.7.
<u>“DRIR”</u>	means the Denver Rock Island Railroad.
<u>“DRIR Crossing”</u>	means the existing and/or proposed crossing by the DRIR Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.6</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
<u>“DRIR RRA”</u>	means the railroad agreement between CDOT and DRIR dated in relation to the Project, a draft of which agreement was provided to the Construction

	Contractor as one of the Reference Documents numbered 29.10.10.03.
“ <u>DRIR Work</u> ”	means all duties and services to be furnished and provided by the DRIR as required by the DRIR RRA.
“ <u>Drop Site</u> ”	has the meaning given to it in <u>Section 1.2 B</u> of <u>Appendix B</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
“ <u>DPS MOA</u> ”	means the Memorandum of Agreement between CDOT and School District No. 1 of the City and County of Denver dated as of October 11, 2016.
“ <u>DRTL</u> ”	has the meaning given to it in <u>Section 7</u> of <u>Schedule 9</u> (<i>Submittals</i>).
“ <u>Durability Plan</u> ”	means the Construction Contractor’s plan for addressing the durability of all Residual Elements prepared and updated in accordance with <u>Section 8</u> of <u>Schedule 8</u> (<i>Project Administration</i>).
“ <u>E-470 Installation Agreement</u> ”	means the installation task order in relation to the Project to be executed between HPTE and the ETC System Integrator pursuant to the E-470 TSA.
“ <u>E-470 TSA</u> ”	means the tolling services agreement between HPTE and the ETC System Integrator dated May 7, 2015.
“ <u>ECMTP</u> ”	has the meaning given to it in <u>Section 6.1.1</u> of <u>Schedule 17</u> (<i>Environmental Requirements</i>).
“ <u>ECWP</u> ”	has the meaning given to it in <u>Section 2.1.1</u> of <u>Schedule 17</u> (<i>Environmental Requirements</i>).
“ <u>Electronic Toll Collection System</u> ”	means the barrier free, non-cash road charging system, including all signage, civil and telecommunications infrastructure and back-office facilities, that allows free-flow movement for I-70 Mainline users to enter and exit the Tolled Express Lanes without having to stop to pay cash tolls.
“ <u>Element</u> ”	means an individual component, system or subsystem of the Project, which shall, when used in relation to the O&M Work During Construction, include at a minimum a breakdown into the items described in the column headed “Element” in the Performance Requirements (as such items are further subdivided into subsections where appropriate).
“ <u>Eligible Financial Institution</u> ”	means a bank or financial institution: <ul style="list-style-type: none"> a. having an office in Denver, Colorado or New York, New York at which a letter of credit issued by it can be presented for payment by hand delivery, electronic means or fax; and b. having a Minimum Issuer Rating from at least two Rating Agencies, <p>where for purposes of this definition “Minimum Issuer Rating” means a long-term unsecured debt rating of at least:</p> <ul style="list-style-type: none"> i. “A-” by Standard & Poor’s Ratings Services; ii. “A-” by Fitch, Inc.; iii. “A3” by Moody’s Investors Service, Inc.; or iv. “A low” by DBRS, Inc., <p>in each case with an outlook of “stable” or better.</p>
“ <u>Eligible Insurer</u> ”	means an insurer that:

- a. is either:
 - i. admitted or authorized in the State; or
 - ii. if not admitted or authorized in the State, based in Bermuda, the United Kingdom or the Republic of Ireland;
- b. except as otherwise Approved by the Developer, has either (i) a policyholder's management and financial size category rating of not less than "A-X" according to A.M. Best's Financial Strength Rating and Financial Size Category or (ii) a rating of not less than "BBB" according to Standard and Poor's Ratings Services;
- c. is not the subject of:
 - i. an Insolvency Event; or
 - ii. a Governmental Authority order or directive limiting its business activities as related to or affecting any Insurance Policies placed or to be placed with such insurer; and
- d. satisfies any conditions imposed by the Developer as a condition to any Approval given pursuant to paragraph b. of this definition.

"Eligible Surety"

means a surety authorized to issue bonds in the State having either:

- a. a Minimum Eligible Surety Rating from at least two Rating Agencies; or
- b. a rating of at least "A-" and "Class VIII" from A.M. Best Company, Inc. (but only if it is at the relevant time a Registered Rating Agency),

where for purposes of this definition "Minimum Eligible Surety Rating" means a long-term unsecured debt rating of at least:

- i. "A" by Standard & Poor's Rating Services;
- ii. "A" by Fitch, Inc.;
- iii. "A2" by Moody's Investors Service, Inc.; or
- iv. "A" by DBRS, Inc.,

in each case with an outlook of "stable" or better.

"Emergency"

means any non-ordinary course event affecting the Project, whether directly or indirectly, that:

- a. is an immediate or imminent threat, or, if not promptly addressed, a potential threat, to the safety of the public;
- b. causes disruption or, if not promptly addressed, has the potential to cause disruption, to the free flow of traffic on or about the Project;
- c. is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, any Improvements or to property adjacent to the Project;
- d. is recognized by the Enterprises or CDOT as an emergency

pursuant to Fiscal Rule 2-2 of the State of Colorado Fiscal Rules; or

- e. is recognized or declared as an emergency by the Governor of the State, FEMA, the U.S. Department of Homeland Security or any other Governmental Authority with legal authority to recognize or declare an emergency.

“Emergency Repair Work” means temporary and/or permanent repair work that results from an Emergency of the type specified in paragraph d. or e. of the definition thereof in this Part A of Annex A (Definitions and Abbreviations).

“Emergency Services” means any Federal, State or local police, fire, emergency or other public safety Governmental Authorities (including the National Guard), and any other security or emergency personnel acting at the direction of any Governmental Authority.

“Emerging Small Businesses” any business certified by CDOT to participate in CDOT’s ESB program that has not otherwise lost such certification due to graduation or revocation.

“Encumbrance” means any mortgage, pledge, hypothecation, deed of trust, mortgage, security interest, lien, financing statement, charge, option, assignment or encumbrance of any kind or any arrangement to provide priority or preference, including any easement, right-of-way, restriction (whether on voting, sale, transfer, disposition, use or otherwise), right, lease and other encumbrance on title to real or personal property (whether or not of record), whether voluntary or imposed by Law, and any agreement to give any of the foregoing.

“Enterprise” and “Enterprises” each has the meaning given to it in the Project Agreement.

“Enterprise Change” means a Change initiated by the Enterprises pursuant to an Enterprise Change Notice.

“Enterprise Change Notice” has the meaning given to it in Part 2, Section 14.1.1.a.

“Enterprise Claim” has the meaning given in Part 1, Article 7.1.

“Enterprise Default” has the meaning given to it in the Project Agreement.

“Enterprise Default Cure Period” has the meaning given to it in the Project Agreement.

“Enterprise Directive Letter” has the meaning given to it in Section 1.4.a of Schedule 24 (Change Procedure).

“Enterprise Release of Hazardous Substances” means any Release of Hazardous Substances on, in, under, from or in the vicinity of the Site caused by the Enterprises, CDOT or any other State Governmental Authority, including any such Release caused by any Person (other than a Developer-Related Entity or a Construction Contractor-Related Entity) in the course of acting on behalf of the Enterprises, CDOT or any other State Governmental Authority, which Release:

- a. occurs:
 - i. with respect to any ROW Parcel, after the Setting Date; and
 - ii. with respect to any Additional ROW Parcel, on or

after its Project License Start Date;

- b. is required to be investigated, removed, treated, stored, transported, managed and/or remediated pursuant to Law, any Governmental Approval or the Construction Contractor's obligations under this Agreement,

excluding any such Release to the extent such results in the presence of Hazardous Substances in groundwater.

"Enterprise Representative"

has the meaning given to it in the Project Agreement.

"Enterprises' CC Direct Agreement"

means an agreement in substantially the form attached as Part B of Schedule 19 (Forms of Direct Agreements) to the Project Agreement by and among the Enterprises, the Developer, the Construction Contractor and the Construction Guarantor.

"Environment"

means air, soils, submerged lands, surface waters (including wetlands), groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, and natural systems, including ecosystems, historic, archeological and paleontological resources.

"Environmental Approval"

means any Governmental Approval or Permit required for the Project or the Work pursuant to Environmental Law (including, for certainty, the FEIS, the ROD and any Reevaluation).

"Environmental Law"

means any Law applicable to the Project, the Construction Work or the O&M Work During Construction requiring consideration of impacts on the Environment or addressing, regulating or imposing liability, actions or standards of conduct that pertains to the Environment, Hazardous Substances, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the Environment, Hazardous Substances, contamination of any type whatsoever, or environmental health and safety matters, set out in any permits, licenses, approvals, plans, rules, regulations, administrative or judicial orders, ordinances or other Governmental Approvals adopted, or other criteria and guidelines promulgated, pursuant to such Law, including in each case those relating to:

- a. the manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, transportation and Release of Hazardous Substances;
- b. protection of wildlife, animal or plant species listed as threatened or endangered under and subject to an applicable threatened or endangered species Law, species, other sensitive species, wetlands, water courses and water bodies, antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites and remains and other similar remains of archaeological, cultural or paleontological interest, natural resources, and of the Environment generally;
- c. the operation and closure of underground storage tanks;
- d. human health and safety; and
- e. notification documentation and record keeping requirements

relating to the foregoing.

- “Environmental Manager” means the “Environmental Manager”, initially as identified in Schedule 27 (Key Personnel), subject to replacement pursuant to Part 2, Section 16.2.
- “Environmental Requirements” means the requirements set out in Schedule 17 (Environmental Requirements), including the obligation to comply with Environmental Law and all Environmental Approvals.
- “Equivalent Claim” has the meaning given in Part 1, Article 6.3.
- “Equivalent Claim Notice” has the meaning given in Part 1, Article 6.2.
- “Equivalent Project Relief” has the meaning given in Part 1, Article 6.1.
- “ETC System Integrator” means the E-470 Public Highway Authority, a political subdivision of the State formed under the Public Highway Authority Law, Part 5 of Article 4 of Title 43, C.R.S.
- “Excess Costs” means costs and expenses of the following activities as incurred by the Construction Contractor as a result of the occurrence of a Non-Appendix B Parcel Unexpected Hazardous Substances Event or an Appendix B Parcel Unexpected Hazardous Substances Event in connection with:
- a. the off-site transportation and disposal of the relevant Unexpected Hazardous Substance(s):
 - i. trucking costs from the Site to the applicable disposal site, as such costs and expenses are calculated in accordance with Sections 2.1, 2.3, 2.5 and 2.6 (as applicable) of Appendix A to Schedule 24 (Change Procedure); and
 - ii. tipping fees at such disposal site, as such costs and expenses are calculated in accordance with Sections 2.5 and 2.6 of Appendix A to Schedule 24 (Change Procedure); and
 - b. the on-site investigation, removal, treatment, management and/or remediation of any:
 - i. non-naturally occurring radioactive waste (excluding such waste resulting from lawful household or medical uses); or
 - ii. lost or abandoned military-grade munitions (excluding firearms and firearms ammunition) that are at such time primed, fused, armed or otherwise prepared for use and which remain unexploded,

following advance notice of such activities to the Developer, the Enterprises and other Governmental Authorities in accordance with Law, and with respect to which the Enterprises have not exercised their rights under Section 23.1.3 of Schedule 17 (*Environmental Requirements*) of the Project Agreement with respect to such materials,
- in all cases excluding:
- c. any internal costs, fees or expenses of any Construction Contractor-Related Entity except to the extent expressly permitted in accordance with Section 2.6 of Appendix A to Schedule 24 (Change Procedure) as and to the extent

provided for in paragraphs a. and b. of this definition; and

- d. any costs or expenses that are expressly provided to be incidental and excluded pursuant to the terms of Schedule 17 (*Environmental Requirements*).

“Excess Groundwater Costs”

means any costs and expenses for the following as incurred by the Construction Contractor:

- a. as a result of the occurrence during the Construction Period of any Unexpected Groundwater Contamination Event of the type referenced in paragraph a. of the definition thereof in this Part A of Annex A (*Definitions and Abbreviations*):
- i. acquisition or rental costs for equipment used in the treatment and/or remediation (including directly related storage) of groundwater, as such costs and expenses are calculated in accordance with Sections 2.3 and 2.6 of Appendix A to Schedule 24 (*Change Procedure*); and
 - ii. parts and materials (including chemicals and other substances necessary for the treatment of any Unexpected Groundwater Contamination) necessary for the operation and use of such equipment, or any previously acquired or rented equipment, as such costs and expenses are calculated in accordance with Sections 2.2, 2.3 and 2.6 of Appendix A to Schedule 24 (*Change Procedure*);
- b. Intentionally Omitted;
- c. Intentionally Omitted;

in all cases:

- d. Intentionally Omitted; and
- e. excluding:
- i. any internal costs, fees or expenses of any Construction Contractor-Related Entity except to the extent expressly permitted in accordance with Section 2.6 of Appendix A to Schedule 24 (*Change Procedure*) either (A) as and to the extent provided for in paragraphs a.i. and a.ii. of this definition; and
 - ii. any costs or expenses that are expressly provided to be incidental and excluded pursuant to the terms of Schedule 17 (*Environmental Requirements*).

“Exclusion”

has the meaning given to it in Construction Contractor Default number (10) in Part 2, Section 32.1.1.

“Excluded Obligations”

means the obligations excluded from the Construction Contractor’s obligations pursuant to Part 1, Article 4.6

“Excused Closure”

means:

- a. any Closure arising as a direct result of:
- i. a Compensation Event;

- ii. a Relief Event;
 - iii. an Emergency;
 - iv. the performance of Snow and Ice Control Services in accordance with the requirements of Section 11 of Schedule 11 (Operations and Maintenance Requirements); or
 - v. Construction Work or O&M Work During Construction required to be performed in connection with the removal of debris or obstructions, patrols or inspections that requires the Closure of a shoulder where such Closure is too brief to require the implementation of a Closure in accordance with the Construction Contractor's most recently Approved Transportation Management Plan;
- b. any Closure under the control of the Emergency Services;
 - c. any Closure that:
 - i. was previously under the control of the Emergency Services; and
 - ii. continues to subsist after the Emergency Services have returned operational control of all parts of the Project affected by such Closure to the Construction Contractor, provided that, if any such Closure continues to subsist for a period in excess of 30 minutes after such control has been returned to the Construction Contractor, any such excess period shall not be an Excused Closure;
 - d. any Closure expressly ordered by, and continuing only for so long as ordered by, the Developer, the Enterprises, CDOT or any Governmental Authority;
 - e. any Closure of a shoulder that is required for the sole purpose of performing the repair of a Category 1 Defect, but only to the extent that any such Closure persists for no longer than the Defect Remedy Period applicable to the relevant Category 1 Defect; or
 - f. any Closure required solely by the ETC System Integrator for the performance of its obligations pursuant to the E-470 TSA or the E-470 Installation Agreement, provided that, for certainty, to the extent that the Construction Contractor performs any Construction Work or O&M Work During Construction on the portion of the Project that is subject to such a Closure during such Closure, such Closure shall not be an Excused Closure within this paragraph f.;

but only to the extent that, in the case of any such Closure:

- g. such Closure does not arise as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any Construction Contractor-Related Entity; and
- h. The Construction Contractor is using its Reasonable Efforts

to:

- i. mitigate the impact of the relevant Closure;
- ii. reopen the affected part(s) of the Project as quickly as possible to traffic; and
- iii. if such Closure arose as the direct result of an Emergency, respond to the Emergency in accordance with the requirements of this Agreement.

<u>“Existing CDOT Right-of-Way”</u>	means that portion of CDOT’s existing I-70 East corridor right-of-way identified in the Right-of-Way Exhibits in the Contract Drawings.
<u>“Exit Zone”</u>	means the length of roadway between the Interior Zone and the exit Portal and which has variable illumination based upon the scene luminance exiting the Portal.
<u>“Expiry Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Extended Event”</u>	has the meaning given to it in the Project Agreement.
<u>“Federal Law”</u>	means all Law of the Federal government of the United States of America.
<u>“FEIS”</u>	has the meaning given to it in the Project Agreement.
<u>“FEMA”</u>	means the Federal Emergency Management Agency.
<u>“FHWA”</u>	has the meaning given to it in the Recitals.
<u>“FHWA 1273”</u>	has the meaning given to it in <u>Section 2.5.1</u> of <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
<u>“Final Acceptance”</u>	means the satisfaction of all Final Acceptance Conditions, as confirmed by the Developer’s providing of a copy of the Final Acceptance Certificate.
<u>“Final Acceptance Certificate”</u>	has the meaning given to it in the Project Agreement.
<u>“Final Acceptance Conditions”</u>	has the meaning given to it in <u>Section 1</u> of <u>Part 6</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
<u>“Final Acceptance Date”</u>	has the meaning given to it in <u>Section 5(a)</u> of <u>Part 6</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
<u>“Final Acceptance Deadline Date”</u>	means the date which is 90 Calendar Days after the Substantial Completion Date, as such deadline may be extended from time to time pursuant to: <ol style="list-style-type: none"> a. Part 2, <u>Section 15.3.1.c.iii.C</u>, as a result of the occurrence of a Supervening Event; or b. a Change documented in a Change Order.
<u>“Final Agreement”</u>	has the meaning given in Part 1, Article 8.6.
<u>“Final Payment Month”</u>	means the final month that commences during the Operating Period.
<u>“Final Project Information Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Final Warning Notice”</u>	has the meaning given to it in Part 2, <u>Section 22.2.2</u> .
<u>“Financial Close”</u>	has the meaning given to it in the Project Agreement.
<u>“Financial Close Date”</u>	means the date on which Financial Close occurs.

<u>“Financial Close Deadline”</u>	has the meaning given to it in the Project Agreement.
<u>“Financial Close Termination Amount”</u>	has the meaning given to it in the Project Agreement.
<u>“Financial Model”</u>	has the meaning given to it in the Project Agreement.
<u>“Financing Agreements”</u>	has the meaning given to it in the Project Agreement.
<u>“Financing Documents”</u>	has the meaning given to it in the Project Agreement.
<u>“First Payment Month”</u>	means the month referred to in paragraph <u>b.</u> of the definition of Payment Month in this <u>Part A</u> of <u>Annex A</u> (<i>Definitions and Abbreviations</i>).
<u>“Float”</u>	<p>means the amount of time that any given Activity or logically connected sequence of Activities shown on the Project Schedule may be delayed before it delays the occurrence of:</p> <ol style="list-style-type: none"> a. the Milestone Completion Date for any Payment Milestone; a. the Substantial Completion Date; and/or b. the Final Acceptance Date, <p>where such Float is identified as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every Activity shown on the Project Schedule .</p>
<u>“Force Majeure Event”</u>	<p>means any:</p> <ol style="list-style-type: none"> a. war, civil war, invasion or armed conflict; b. act of terrorism or sabotage; c. nuclear, chemical or biological contamination or emissions (including as applicable associated radiation), excluding such contamination, the source or cause of which is the result of any actions of, inaction by, or breach of contract or Law by, the Affected Party; d. blockade or embargo; or e. labor dispute, including a strike, lockout or slowdown, generally affecting the road construction industry in the Denver metropolitan area or a significant sector of it, <p>that occurs after the Agreement Date and that materially and adversely affects the performance by either Party or both Parties (each an <u>“Affected Party”</u>) of its or their obligations under this Agreement.</p>
<u>“GAAP”</u>	means Generally Accepted Accounting Principles in the US as in effect from time to time.
<u>“General Purpose Lane”</u>	means a non-tolled travel lane on the I-70 Mainline within the O&M Limits.
<u>“General Requirements”</u>	means the requirements set out in the column headed “General Requirement” in the Performance and Measurement Tables.
<u>“Good Industry Practice”</u>	means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced professional designer, engineer, constructor, maintainer or operator, as applicable, engaged in the same type of activity in North America as that of the Construction Contractor, or any other Person to which

such term relates, seeking to comply with all Law and the same type of obligations and responsibilities in North America as the obligations and responsibilities of the Construction Contractor under this Agreement and/or the obligations and responsibilities of such Person under the same or similar circumstances.

“Governmental Approval” means any approval, authorization, certification, consent, decision, exemption, filing, license, permit, agreement, concession, grant, franchise, registration or ruling issued, granted or required by or with any Governmental Authority (excluding, for certainty, any Public Utility or Railroad) for the performance of any of the Construction Contractor’ obligations under this Agreement.

“Governmental Authority” means any:

- a. United States Federal, State or local government, and any political subdivision of any of them; and
- b. any interstate, governmental, quasi-governmental, judicial, public, regulatory or statutory instrumentality, administrative agency, authority, body or entity of, or formed by, any such government or subdivision thereof,

in each case other than the Enterprises.

“Grace Period” means, subject to Section 1.2(b)(i) of Part 6 of Schedule 6 (*Performance Mechanism*), for any CC Noncompliance Event, the “Grace Period” (if any) specified for such CC Noncompliance Event in Table 6A.1 or Table 6A.2, as applicable, which period shall commence on and from the Noncompliance Start Time of such CC Noncompliance Event and shall end at the same time of day as such Noncompliance Start Time on the day which is the number of days specified as the “Grace Period” for such CC Noncompliance Event after the day on which such Noncompliance Start Time occurs.

“Groundwater Contamination Event Period” means, with respect to any Unexpected Groundwater Contamination Condition that occurs during the Construction Period, the then current three month period ending on March 31, June 30, September 30 or December 31, as applicable.

“Guarantor” means any parent company guarantor of the Construction Contractor’s obligations under this Agreement.

“Hazardous Substances” means any of the following:

- a. any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to Environmental Law;
- b. any substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds for the protection of human health and safety and/or the Environment, as defined by any Environmental Law;
- c. any substance, product, waste or other material of any nature whatsoever which may give rise to liability pursuant to Environmental Law, as defined by any Environmental Law, or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict

	liability or under any reported decisions of a State or Federal court;
	d. petroleum or crude oil excluding <i>de minimis</i> amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles;
	e. lead or lead-containing materials; and
	f. asbestos or asbestos-containing materials.
<u>“High Occupancy Vehicle”</u>	means a vehicle occupied by more than two persons.
<u>“Holiday”</u>	means any Calendar Day that is declared or considered to be a holiday pursuant to C.R.S. §§ 24-11-101(1)-(2).
<u>“HPTE”</u>	has the meaning given in Recital A of Part 1.
<u>“I-70 Cover Plans”</u> or <u>“Cover Plans”</u>	means the plans for the Cover included in <u>Schedule 10B</u> (<i>Contract Drawings</i>).
<u>“I-70 East EIS”</u>	means all versions of the NEPA documentation for the Project, including all draft and supplemental draft environmental impact statements, the FEIS and the ROD.
<u>“I-70 Mainline”</u>	means Interstate 70, including the Tolloed Express Lanes, General Purpose Lanes, auxiliary lanes, buffers, enforcement areas, shoulders, hard capped surface, ramps up to the intersecting cross-roadway (including directional island and free-flow turn lane where present) and associated collector-distributor roads.
<u>“Improvement”</u>	means any building or structure, including any sewer or septic system, storm drain, publicly owned treatment work or waste treatment, storage or disposal system.
<u>“Incident”</u>	means any event that impedes the normal flow of traffic.
<u>“Incident Response Plan”</u>	has the meaning given to it in <u>Section 9.4</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>“Incidental Utility Work”</u>	has the meaning given to it in the applicable URA.
<u>“Increased Oversight Threshold”</u>	means the occurrence of any of the following: <ul style="list-style-type: none"> a. during the Construction Period, the cumulative number of CC Noncompliance Points accrued during: <ul style="list-style-type: none"> i. any rolling 12 month period equals or exceeds 75; or ii. any rolling 36 month period equals or exceeds 150; <p>provided that, for certainty, any CC Noncompliance Point that is being disputed in good faith by Developer shall be disregarded for purposes of determining whether the Increased Oversight Threshold has been met or exceeded until such time as it has been Agreed or Determined that the relevant CC Noncompliance Point was validly assigned.</p>
<u>“Indemnified Parties”</u>	means (a) with respect to the indemnity granted in favor of the Developer under Part 2, <u>Section 24.2</u> , the Developer, each other Developer-Related Entity, each Principal Indemnified Party and each of their respective officers, directors, agents and employees, and (b) with respect to the indemnity granted in favor of the Construction Contractor under Part 2, <u>Section 24.1</u> , the Construction Contractor, each other Construction Contractor-Related

	Entity, and each of their respective officers, directors, agents and employees.
“ <u>Indemnifying Party</u> ”	means the Construction Contractor or the Developer, as applicable.
“ <u>Indenture</u> ”	means that certain Indenture of Trust to be entered into between BE and U.S. Bank National Association, as trustee, with respect to the Bonds.
“ <u>Independent Assurance</u> ”	means the reviews and tests described in <u>Schedule 8</u> (<i>Project Administration</i>).
“ <u>Independent Quality Control</u> ”	means all those planned and systematic actions necessary for the Construction Contractor to certify to the Developer that all Construction Work and the O&M Work During Construction fully complies with the requirements of this Agreement and that all materials incorporated in the Construction Work and the O&M Work During Construction, all equipment used, and all elements of the Construction Work and the O&M Work During Construction will perform satisfactorily for the purpose(s) intended.
“ <u>indexed</u> ”	has the meaning given to it in Part 2, <u>Section 2.3.2</u> .
“ <u>Indirect Loss</u> ” or “ <u>Indirect Losses</u> ”	means punitive, indirect, incidental or consequential damages of any nature (including, for certainty, lost toll revenue), whether arising out of a breach of this Agreement, tort (including negligence) or other legal theory of liability.
“ <u>Information</u> ”	has the meaning given to it in Part 2, <u>Section 2.2.3.c</u> .
“ <u>Initial Warning Notice</u> ”	has the meaning given to it in Part 2, <u>Section 22.2.1</u> .
“ <u>Insolvency Event</u> ”	means, in respect of any Person, <ul style="list-style-type: none"> a. any of: <ul style="list-style-type: none"> i. the commencement of a voluntary case under Federal bankruptcy law; ii. the filing of a petition seeking to take advantage of any other law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition for adjustment of debts; iii. the application for or the consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; iv. the admission in writing of its inability to pay its debts as they become due; v. the making of a general assignment for the benefit of creditors; or vi. the taking of any corporate (or equivalent) action for the purpose of authorizing any of the foregoing; or b. the commencement of a case or other proceeding against such Person in any court of competent jurisdiction seeking: <ul style="list-style-type: none"> i. relief under Federal bankruptcy law or under any other law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts; or ii. the appointment of a trustee, receiver, custodian,

liquidator or the like for such Person or for all or any substantial part of their respective assets, domestic or foreign,

and:

- A. the petition that commenced such case or proceeding is not contested by such Person within the amount of time provided under Law; or
- B. either: (I) such case or proceeding continues without dismissal or stay for a period of 60 Calendar Days; or (II) an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such Federal bankruptcy law) is entered and not appealed to the extent that the order for relief is stayed.

<u>“Insolvent”</u>	means the condition of a Person in respect of whom an Insolvency Event has occurred.
<u>“Inspection”</u>	means the organized examination or formal evaluation of the Construction Work or the O&M Work During Construction, including manufacturing, design, and maintenance practices, processes, and products, document control and shop drawing review, to ensure that the practices, processes, and products comply with the quality requirements contained in this Agreement.
<u>“Inspecting Parties”</u>	has the meaning given to it in Part 2, <u>Section 19.1.3.a</u> and <u>“Inspecting Party”</u> means any one of them.
<u>“Insurance Broker”</u>	means the Construction Contractor’s insurance broker, provided that such broker shall at all times be a reputable international insurance broker of good standing.
<u>“Insurance Policies”</u>	has the meaning given to it in Part 2, <u>Section 25.1.1</u> .
<u>“Insurance Term”</u>	means a provision that must be included in one or more of the Insurance Policies in order for Developer to comply with Part 2, <u>Section 25.1.1</u> .
<u>“Intellectual Property”</u>	means all current and future legal and/or equitable rights and interests in or to know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, business and internet domain names, inventions, solutions embodied in technology and other intellectual activity and applications of or for any of the foregoing subsisting in or relating to the Project or Project design data including algorithms, software, source code and source code documentation used in connection with the Project.
<u>“Intelligent Transportation Systems” or “ITS”</u>	means the information and communication technologies used to inform roadway users, collect data and collect tolls.

<u>“Interface Agreement”</u>	means the interface agreement dated as of the date hereof between the Developer, the Construction Contractor and the O&M Contractor.
<u>“Interim Agreement”</u>	has the meaning given in Part 1, Article 8.6.
<u>“Interior Zone”</u>	means the length of roadway between the Transition Zone and the Exit Zone and which has constant illumination.
<u>“Internal Revenue Code”</u>	means the Internal Revenue Code of 1986, and the Regulations promulgated by the U.S. Department of Treasury.
<u>“ITP”</u>	has the meaning given to it in the Project Agreement.
<u>“Key Milestone”</u>	means each of the dates for issuance of NTP1 and NTP2, the Snow and Ice Control Commencement Date, each of the Milestone Completion Target Dates, the Baseline Substantial Completion Date, the Final Acceptance Date and each of the dates for submission of Deliverables by Developer as specified in the DRTL.
<u>“Key Personnel”</u>	means the individuals identified in <u>Schedule 27 (Key Personnel)</u> to fill the various job positions set out in that Schedule, and any replacement personnel Accepted pursuant to Part 2, <u>Section 16.1</u> .
<u>“Known or Knowable”</u>	<p>means any risk, information, matter or thing that on or prior to the Setting Date:</p> <ol style="list-style-type: none"> a. was identified, described or expressly anticipated in the Project Information or the I-70 East EIS, or in any Department Provided Approval; b. was otherwise disclosed to or known by the Construction Contractor or a Construction Contractor-Related Entity; or c. could reasonably have been known, identified, discovered, observed or anticipated by the Construction Contractor undertaking due diligence pursuant to Good Industry Practice, and taking into account (without limitation): <ol style="list-style-type: none"> i. the provisions of the ITP with respect to the conduct of due diligence; ii. the Enterprises’ approval of and response to Proposers’ diligence-related requests and comments submitted pursuant to the ITP to the extent such diligence-related request or comment was: <ol style="list-style-type: none"> A. submitted by the Preferred Proposer; or B. submitted by other Proposers and made available to the Preferred Proposer prior to the Setting Date; iii. the availability and contents of all Project Information, Department Provided Approvals, the I-70 East EIS and all other available Environmental Approvals, Governmental Approvals, and all other requirements, manuals, guidance, reports and other information referenced by: <ol style="list-style-type: none"> A. any of the Environmental Requirements;

- B. the Phase I environmental site assessments included in the Reference Documents; or
- C. this Agreement; and
- iv. the opportunity to review all Law.

“Laboratory” means the testing laboratory of the Construction Contractor, CDOT or any other certified testing laboratory.

“Latent Defect” means a Defect that could not reasonably have been ascertained by a competent person performing a visual inspection and acting in accordance with Good Industry Practice prior to the second anniversary of the Final Acceptance Date.

“Latent Defect Remedy Period” means:

- a. except as set forth in paragraph b. of this definition, with respect to Latent Defects, the period of time from the Substantial Completion Date until the sixth anniversary of such date;
- b. with respect to Latent Defects discovered in the fifth and sixth years after the Substantial Completion Date, the period of time from the Substantial Completion Date until the eighth anniversary of such date.

“Law” means:

- a. any:
 - i. statute, law (including common law), code, regulation, ordinance or rule;
 - ii. binding judgment, judicial or administrative order or decree (other than one rendered pursuant to the Dispute Resolution Procedure);
 - iii. written directive, guideline, policy requirement, methodology or other governmental restriction or requirement (including those resulting from an initiative or referendum process, but excluding those by the Enterprises within the scope of their administration of the Project Agreement); and
 - iv. similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Authority,

in each case that is applicable to or has an impact on the Project or the Work (where such applicability or impact shall be determined by reference to the context in which the term Law is used), whether taking effect before or after the Agreement Date, including Environmental Laws, but excluding Governmental Approvals and Permits; and
- b. any Public Safety Order.

“Lender” means any Person that provides or holds and is owed repayment of Project Debt, together with their respective successors, assigns, participating parties, trustees and agents, including any Collateral Agent.

<u>“Lenders’ CC Direct Agreement”</u>	means the agreement in the form attached hereto as Attachment B to be entered into between the Developer, the Construction Contractor and the Collateral Agent.
<u>“Lenders’ Liabilities”</u>	has the meaning given to it in the Project Agreement.
<u>“Lenders’ Technical Adviser”</u>	means Turner Townsend cm2r Inc. and any replacement technical adviser appointed by the Lenders pursuant to the Financing Documents.
<u>“Letter of Credit”</u>	means any letter of credit to be provided pursuant to Part 1, Article 11 and any letter of credit substituted therefor.
<u>“Level of Service”</u>	means, in relation to the O&M Work During Construction, the level of service as described in CDOT’s Maintenance Level of Service Manual.
<u>“Limited O&M Work”</u>	<p>means any and all operations, management, administration, maintenance and Routine Maintenance activities, in each case required to be carried out by the Construction Contractor to:</p> <ol style="list-style-type: none"> a. comply with all the requirements set out in <u>Schedule 11 (Operations and Maintenance Requirements)</u> (including, for certainty, the requirements set out in <u>Appendix A-1</u> thereto) associated with: <ol style="list-style-type: none"> i. Snow and Ice Control Services; ii. performance of the courtesy patrol service pursuant to <u>Section 10</u> of, and <u>Appendix B</u> to, <u>Schedule 11 (Operations and Maintenance Requirements)</u>; iii. sweeping and cleaning (including complying with <u>Section 1.1</u> and <u>Section 17</u> of each of <u>Appendix A-1</u> and <u>Appendix A-2</u> of <u>Schedule 11 (Operations and Maintenance Requirements)</u>); iv. Incident response; v. its obligations with respect to ITS and ETC facilities as set out in <u>Sections 2.2.6.b</u> and <u>3.2.8.d.</u> of <u>Schedule 11 (Operations and Maintenance Requirements)</u>; and vi. its obligations with respect to lighting as set out in <u>Sections 2.2.8</u> and <u>3.2.11.b.</u> of <u>Schedule 11 (Operations and Maintenance Requirements)</u>, other than graffiti removal on lighting; b. comply with any other provisions of this Agreement applicable to the performance of all activities that fall within paragraph <u>a.</u> of this definition; and c. without prejudice to any of its other notification or reporting obligations under this Agreement (including under <u>Schedule 6 (Performance Mechanism)</u> or <u>Schedule 11 (Operations and Maintenance Requirements)</u>), provide the Developer with notification of O&M Defects (assuming for the purposes of this paragraph <u>c.</u> that the definition of O&M Defects in this <u>Part A</u> of <u>Annex A (Definitions and Abbreviations)</u> applies to all Elements within or forming part of the Limited O&M Work Segments, regardless of whether the Construction Contractor is required to perform Limited O&M Work thereon or not) within the Limited O&M Work

Segments as observed by the Construction Contractor while performing any activity that falls within paragraph a. or b. of this definition,

during the Construction Period.

“Limited O&M Work Segments”

means:

- a. the segment of the I-70 Mainline from the I-25/I-70 interchange to I-70 Brighton Boulevard interchange (including its associated infrastructure (including all roadway lanes, ramps, shoulders, and structures));
- b. the segment of the I-70 Mainline from I-70 Chambers Road interchange to I-70 Tower Road interchange (including its associated infrastructure (including all roadway lanes, ramps, shoulders, and structures)); and
- c. the structure, with number E-17-AED, on the I-70 westbound entrance ramp from Central Park Boulevard,

in the case of each of paragraphs a. to c. of this definition, to the extent within the O&M Limits.

“Local Agency”

means any local Governmental Authority other than the State or an agency thereof.

“Local Agency Roadway”

means roadways (whether owned by a Local Agency or CDOT) excluding CDOT Roadways and the I-70 Mainline.

“Local Hiring Goal”

has the meaning given to it in Section 6.3.1.b of Schedule 15 (*Federal and State Requirements*).

“Loss” or “Losses”

means any loss, damage, cost, expense, charge, fee, injury, liability, obligation, judgment, penalty or fine, in each case including attorneys’, accountants’ and expert witnesses’ fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of this Agreement), excluding Indirect Losses.

“Lowered Section”

means the segment of the I-70 Mainline between Brighton Boulevard and Dahlia Street where the proposed vertical profile is modified below existing ground.

“Maintenance Management Information System”

means the system required to be established and maintained by the Construction Contractor in accordance with Section 7 of Schedule 11 (*Operations and Maintenance Requirements*).

“Maintenance Management Plan” or “MMP”

means the plan referred to in Section 5 of Schedule 11 (*Operations and Maintenance Requirements*) that sets out how the Construction Contractor will comply with its maintenance obligations under this Agreement (as updated in accordance with Schedule 11 (*Operations and Maintenance Requirements*)).

“Maintenance Rectification Costs”

has the meaning given to it in the Project Agreement.

“Maintenance Yard”

means the maintenance yard located within the southeast quadrant of the interchange at Havana Street and within the Existing CDOT Right-of-Way.

“Managed Lanes”

has the same meaning as Tolled Express Lanes.

“Material Litigation”

means any lawsuit filed in a court of competent jurisdiction that:

- a. seeks to overturn, set aside, enjoin, or otherwise inhibit the implementation of any Department Provided Approval based on alleged non-compliance with Law, including NEPA; or
- b. could result in a Termination by Court Ruling of the Project Agreement.

“Materials Management Plan” means the “MMP” prepared by the Construction Contractor in accordance with Section 23.8 of Schedule 17 (*Environmental Requirements*).

“Measurement Criteria” means, in respect of an Element, the measurement criteria applicable to such Element specified in the “Measurement Criteria” column in the Performance and Measurement Tables (as updated in accordance with Schedule 11 (*Operations and Maintenance Requirements*)).

“Microwave Vehicle Radar Detection” means a side fire radar used to collect point data of volume, occupancy, speed and classification on each lane of travel.

“Mile High Courtesy Patrol” is the courtesy patrol program operated by CDOT.

“Milestone 1” means the Construction Work between Sand Creek Bridge and Chambers Road (Station 2192+00 to 2448+00) comprising the addition of one Tolloed Express Lane in each direction within the limits.

“Milestone 2” means the Construction Work between Dahlia Street and Sand Creek Bridge (Station 2091+00 to 2192+00) comprising the addition of one Tolloed Express Lane in each direction within the limits.

“Milestone 3” means the Construction Work between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising westbound I-70 and 46th Avenue/Stapleton Drive (north of I-70), and the UPRR Crossing.

“Milestone 4” means the Construction Work between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising eastbound I-70 and 46th Avenue/Stapleton Drive (south of I-70).

“Milestone Completion” means the satisfaction of all Milestone Completion Conditions, as confirmed by the Enterprises’ issuance of the Milestone Completion Certificate.

“Milestone Completion Certificate” has the meaning given to it in Section 5(a) of Part 4 of Schedule 3 (*Commencement and Completion Mechanics*).

“Milestone Completion Conditions” has the meaning given to it in Section 1 of Part 4 of Schedule 3 (*Commencement and Completion Mechanics*).

“Milestone Completion Date” has the meaning given to it in Section 5(a) of Part 4 of Schedule 3 (*Commencement and Completion Mechanics*).

“Milestone Completion Punch List” has the meaning given to it in Section 2(a) of Part 7 of Schedule 3 (*Commencement and Completion Mechanics*).

“Milestone Completion Punch List Items” has the meaning given to it in Section 2(a) of Part 7 of Schedule 3 (*Commencement and Completion Mechanics*).

“Milestone Completion Target Date” “Milestone Completion Target Date” means each of:

- a. for Milestone 1, December 9, 2019;
- b. for Milestone 2, November 10, 2020;
- c. for Milestone 3, October 17, 2020; and
- d. for Milestone 4, September 26, 2021.”

“ <u>Milestone Delay Period</u> ”	has the meaning given to it in Part 2, <u>Section 15.3.1.c.ii</u> .
“ <u>Milestone Payment</u> ”	has the meaning given to it in the Project Agreement.
“ <u>month</u> ”	means a month as determined by reference to the time and date in Denver, Colorado.
“ <u>Monthly Construction Closure Deduction</u> ”	means, for any month, an amount equal to the sum of the Construction Closure Deductions that accrued during such month, calculated in accordance with <u>Section 3</u> of <u>Part 1</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>).
“ <u>Monthly Deductions Report</u> ”	means a report submitted by the Construction Contractor to the Developer pursuant to <u>Section 2.1</u> of <u>Part 1</u> of <u>Schedule 4</u> (<i>Payments</i>), <u>Section 3.1</u> of <u>Part 2</u> of <u>Schedule 4</u> (<i>Payments</i>) or <u>Section 4(b)(ii)</u> of <u>Schedule 5</u> (<i>Milestone Payments</i>).
“ <u>Monthly Noncompliance Deduction</u> ”	means, for any month, an amount equal to the sum of the deductions that accrued during such month in respect of CC Noncompliance Events, calculated in accordance with, as applicable, <u>Section 2</u> of <u>Part 1</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>).
“ <u>Monthly O&M Report</u> ”	has the meaning given to it in <u>Section 13.1</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
“ <u>Monthly Performance Deduction</u> ”	means, for any month, an amount equal to the aggregate of the Monthly Noncompliance Deduction for such month.
“ <u>Monthly Progress Schedule</u> ”	means the monthly updated program schedule submitted pursuant to <u>Section 3.3.5</u> of <u>Schedule 8</u> (<i>Project Administration</i>).
“ <u>MOT Task Force</u> ”	means a team established by the Construction Contractor pursuant to <u>Section 2.2.6</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) to assume proper coordination with Governmental Authorities affected by the Construction Work or the O&M Work During Construction, in relation to maintenance of traffic.
“ <u>MOT Variance</u> ”	means a variance to the requirements applicable to Closures, detours and any other restrictions set out in <u>Section 2</u> (<i>Maintenance of Traffic</i>) of <u>Schedule 10</u> to the Project Agreement, as Approved by the Developer, Approved by the Enterprises or approved by the relevant Local Agency, as applicable, in accordance with <u>Section 2.3</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
“ <u>NEPA</u> ”	has the meaning given to it in the Project Agreement.
“ <u>New Environmental Approvals</u> ”	means any of the following: <ul style="list-style-type: none"> a. a new Environmental Approval; and b. a modification, renewal or extension of an existing Environmental Approval.
“ <u>No Conflict Form</u> ”	means a form set out in <u>Appendix A</u> to <u>Section 4</u> of <u>Schedule 10</u> to the

Project Agreement.

“No-deductible Event”

means any Compensation Event described in paragraphs a., b.i., b.ii., b.iii., d., e., i.i., i. or o. of the definition thereof in this Part A of Annex A (*Definitions and Abbreviations*).

“Noncompliance and Closure Database”

means the database described in Section 2 of Part 6 of Schedule 6 (*Performance Mechanism*).

“Noncompliance Cure Period”

means:

- a. for any CC Noncompliance Event for which the Cure Period is specified in days, each continuous period of “x” days commencing from and including:
 - i. if such CC Noncompliance Event does not have a Grace Period, the Noncompliance Start Time of such CC Noncompliance Event; or
 - ii. if such CC Noncompliance Event has a Grace Period, the expiry of such Grace Period,

in the case of i. and ii., to and excluding the Noncompliance Rectification Time of such CC Noncompliance Event, where “x” equals the number of days specified as the Cure Period for such CC Noncompliance Event; and
- b. for any CC Noncompliance Event for which the Cure Period is specified in hours or months, each continuous period of “x” hours or months, respectively, commencing from and including the Noncompliance Start Time of such CC Noncompliance Event to and excluding the Noncompliance Rectification Time of such CC Noncompliance Event, where “x” equals the number of hours or months, as applicable, specified as the Cure Period for such CC Noncompliance Event,

provided that, for certainty, the Noncompliance Cure Period during which the Noncompliance Rectification Time occurs in respect of the relevant CC Noncompliance Event will have a duration of less than “x” days, hours or months, as applicable, and any reference in Schedule 6 (*Performance Mechanism*) to a “partial” Noncompliance Cure Period shall be deemed to refer to such Noncompliance Cure Period for the relevant CC Noncompliance Event.

“Noncompliance Default Event”

means the occurrence of any of the following:

- a. during the Construction Period, the cumulative number of CC Noncompliance Points accrued during:
 - i. any rolling 12 month period equals or exceeds 110; or
 - ii. any rolling 36 month period equals or exceeds 220; or

provided that, for certainty, any CC Noncompliance Point that is being disputed in good faith by the Construction Contractor shall be disregarded for purposes of determining whether the Noncompliance Default Event has occurred until such time as it has been Agreed or Determined that the relevant CC Noncompliance Point was validly assigned.

<u>“Noncompliance Rectification Time”</u>	means, in respect of any CC Noncompliance Event which has a Cure Period, the date and time that the CC Noncompliance Event is fully cured.
<u>“Noncompliance Start Time”</u>	means, for any CC Noncompliance Event, whether or not such CC Noncompliance Event has a Cure Period, the date and time that the CC Noncompliance Event occurs, provided that, for certainty, for any CC Noncompliance Event that is a failure to remedy a Category 1 Defect or a Category 2 Defect within the Defect Remedy Period, the Noncompliance Start Time shall be the date and time that the applicable Defect Remedy Period expires.
<u>“Nonconforming Work”</u>	means Construction Work or O&M Work During Construction performed by the Construction Contractor that does not meet the requirements of this Agreement.
<u>“Nonconforming Work Change”</u>	has the meaning given to it in <u>Section 2.1.b.ii</u> of <u>Schedule 24</u> (<i>Change Procedure</i>).
<u>“Nonconforming Work Remedy”</u>	means action taken by the Construction Contractor to ensure that any Nonconforming Work meets the requirements of this Agreement.
<u>“Non-Appendix B Parcel Unexpected Hazardous Substances Event”</u>	the encountering or discovery of collectively all Unexpected Hazardous Substances on, in or under: <ul style="list-style-type: none"> a. an individual ROW Parcel that is not an Appendix B Parcel; or b. a Permit Area (excluding any Construction Contractor-risk Permit Area).
<u>“Non-Permitted Closures”</u>	means, during the Construction Period, any Non-Permitted Construction Closure.
<u>“Non-Permitted Construction Closure”</u>	means any Closure that occurs during the Construction Period: <ul style="list-style-type: none"> a. that: <ul style="list-style-type: none"> i. results in any breach of, or is not permitted by, any of <u>Sections 2.5.3, 2.6, 2.7, 2.9, 2.11.5, 2.11.6, 2.11.7.a, 2.11.9, 2.11.10, 2.11.11, 2.11.12 or 2.11.19</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>), unless such Closure has been Approved by the Developer or approved by the relevant Local Agency, as applicable, as a MOT Variance; and ii. is not an Excused Closure; or b. is deemed to be a Non-Permitted Construction Closure pursuant to <u>Section 2.11.14.c</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>), <p>provided that, if any Closure that occurs during the Construction Period is not a Non-Permitted Construction Closure when it starts, but during such Closure circumstances commence to apply that would have resulted in such Closure being a Non-Permitted Construction Closure if such circumstances had applied to such Closure when it started, then the portion of such Closure that continues while such circumstances apply shall be deemed to be a Non-Permitted Construction Closure (and such deemed Non-Permitted Construction Closure shall be deemed to start when such circumstances commence to apply and to end when they cease to apply).</p>

“ <u>notice</u> ” (or “ <u>Notice</u> ”)	has the meaning given to it in Part 2, <u>Section 49.1.1</u> .
“ <u>Notice of Possession</u> ”	has the meaning given to it in the Project Agreement.
“ <u>NTP1</u> ”	has the meaning given to it in <u>Section 4</u> of <u>Part 1</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
“ <u>NTP1 Conditions</u> ”	has the meaning given to it in <u>Section 1</u> of <u>Part 1</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
“ <u>NTP1 Work</u> ”	means: <ul style="list-style-type: none"> a. the design Work; b. preparatory testing and Right-of-Way investigation Work that is authorized by CDOT right of entry permits obtained by the Construction Contractor pursuant to <u>Section 1.2</u> of <u>Schedule 18</u> (<i>Right-of-Way</i>) prior to the issuance of NTP1; and c. preparatory CC Work necessary to develop the Deliverables required to be submitted by the Construction Contractor to satisfy the NTP1 Conditions.
“ <u>NTP2</u> ”	means the notice that constitutes “NTP2” in accordance with <u>Sections 4(a)</u> and <u>5</u> of <u>Part 2</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
“ <u>NTP2 Conditions</u> ”	has the meaning given to it in <u>Section 1</u> of <u>Part 2</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
“ <u>NTP3</u> ”	has the meaning given to it in <u>Section 3</u> of <u>Part 3</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
“ <u>NTP3 Conditions</u> ”	has the meaning given to it in <u>Section 1</u> of <u>Part 3</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
“ <u>Offsite Outfall System</u> ”	means the drainage system to be constructed pursuant to <u>Section 8.4.9.a</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) conveying flows generated from outside the Site and capturing the flow preventing it from draining into the Lowered Section, that will be located to the south of I-70 Mainline and consists of ponds and large Storm Drains, routed through Globeville Park and with a discharge into the South Platte River.
“ <u>Onsite Outfall System</u> ”	means the drainage system to be constructed pursuant to <u>Section 8.4.9.b</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>) conveying flows generated from the onsite roadway area located within the Lowered Section to the north, with a discharge into the South Platte River.
“ <u>O&M Contract</u> ”	means the operation and maintenance contract dated as of the date hereof between the Developer and the O&M Contractor for the operation and maintenance of the Elements, as such contract is amended, supplemented or replaced from time to time in accordance with its terms.
“ <u>O&M Contractor</u> ”	means Roy Jorgensen Associates, Inc., and any assignee or replacement permitted under the O&M Contract.
“ <u>O&M Contractor-Related Entity</u> ”	has the meaning given in the O&M Contract.
“ <u>O&M Defect</u> ”	means: <ul style="list-style-type: none"> a. any Defect in an Element or any part of an Element;

- b. any failure of an Element or any part of an Element to comply with the applicable General Requirement or any other requirement set out in this Agreement, in any such case as a result of the Construction Contractor’s failure to perform any of its obligations under Schedule 11 (Operations and Maintenance Requirements); and
- c. any failure of an Element or any part of an Element to meet or exceed the Target for the applicable Measurement Criteria, in any such case as a result of the Construction Contractor’s failure to perform any of its obligations under Schedule 11 (Operations and Maintenance Requirements).

“O&M Limits” means:

- a. prior to (and including) the Substantial Completion Date, the O&M Limits during Construction; and
- b. after the Substantial Completion Date, the O&M Limits After Construction.

“O&M Limits After Construction” means the limits specified in the drawings referred to in Section 3.1 of Schedule 11 (Operations and Maintenance Requirements), as Accepted by the Developer (as updated in accordance with Schedule 11 (Operations and Maintenance Requirements)).

“O&M Limits During Construction” means the limits specified in the drawings referred to in Section 2.1 of Schedule 11 (Operations and Maintenance Requirements), as Accepted by the Developer (as updated in accordance with Schedule 11 (Operations and Maintenance Requirements)).

“O&M Limits Reference Drawings” means the drawings provided as Reference Documents and listed in document number 29.11.01 of Schedule 29 (Reference Documents) to the Project Agreement.

“O&M Period During Construction” means the period commencing on the date of issuance of NTP2 and ending on (and including) the Substantial Completion Date (or, if earlier, the CC Termination Date).

“O&M Quality Management Plan” means the plan described in Section 5.4 of Schedule 11 (Operations and Maintenance Requirements) (as updated in accordance with Schedule 11 (Operations and Maintenance Requirements)).

“O&M Safety Plan” means the plan described in Section 5.3 of Schedule 11 (Operations and Maintenance Requirements), (as updated in accordance with Schedule 11 (Operations and Maintenance Requirements)).

“O&M Segment” means any one of the following segments of the Project within the Site along I-70 Mainline including I-70 Mainline and associated ramps, cross streets, CDOT Roadways and Local Agency Roadways:

O&M Segment	Start	End
1	274.000 (I-25 Interchange)	276.572 (Colorado Blvd)
2	276.572 (Colorado Blvd.)	278.548 (Quebec St.)
3	278.548 (Quebec St.)	282.563 (I-225)
4	282.563 (I-225)	285.727 (Tower Road)

“O&M Standards” means:

- a. any standards and specifications expressly referenced in

this Agreement (including in Section 1.1.5 of Schedule 11 (*Operations and Maintenance Requirements*)) as applicable to the O&M Work During Construction (excluding, for certainty, any Laws, Governmental Approvals or Permits); and

- b. any standards and specifications that apply to the O&M Work During Construction (excluding, for certainty, any Laws, Governmental Approvals or Permits), including as a result of the Construction Contractor's methods of performing the O&M Work During Construction,

in each case in the form published or otherwise in effect as of the Final Project Information Date (subject to change, addition or replacement pursuant to Part 2, Section 8.6).

<u>"O&M Work"</u>	has the meaning given to it in the Project Agreement.
<u>"O&M Work After Construction"</u>	has the meaning given to it in the Project Agreement.
<u>"O&M Work During Construction"</u>	means any and all O&M Work required to be performed by the Construction Contractor during the O&M Period During Construction pursuant to <u>Section 2</u> and other provisions of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>"O&M Work During Construction Subcontract"</u>	means the contract between the Construction Contractor and the O&M Work During Construction Subcontractor for the O&M Work During Construction, as such contract is amended, supplemented or replaced from time to time in accordance with its terms.
<u>"O&M Work During Construction Subcontractor"</u>	means Roy Jorgensen Associates, Inc., in its capacity as a subcontractor to the Construction Contractor for the performance of the O&M Work During Construction, and not in its capacity as the O&M Contractor.
<u>"OP Deduction Month"</u>	has the meaning given to it in <u>Section 3.2</u> of <u>Part 2</u> of <u>Schedule 4</u> (<i>Payments</i>).
<u>"Operations Goal Deduction"</u>	means the amount calculated in accordance with <u>Section 1(d)</u> of <u>Part 2</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>"Operating Period"</u>	means the period that begins on the Calendar Day after the Substantial Completion Date and ends on the earlier of the Expiry Date and the Project Agreement Termination Date (as defined in the Project Agreement).
<u>"Operations Management Plan (OMP)"</u>	means the plan referred to in <u>Section 9</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>) that sets out how the Construction Contractor will comply with its operations obligations under this Agreement (as updated in accordance with <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>)).
<u>"Organizational Conflict of Interest"</u>	means an organizational conflict of interest as described in 2 C.C.R. 601-15 Sec. 7 or as defined under 23 CFR § 636.116, where for purposes of 23 CFR § 636.116: <ul style="list-style-type: none"> a. the "person" referred to in that definition was a Core Proposer Team Member or a contractor, subcontractor, advisor, consultant or subconsultant to the Preferred Proposer or any Core Proposer Team Member; and b. the "owner" referred to in that definition is each Enterprise

and CDOT.

<u>“Other Construction Work”</u>	has the meaning given to it <u>Section 2.a</u> of <u>Part II</u> of <u>Appendix A</u> to <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
<u>“Other Department Project”</u>	means any Related Transportation Facility that is: <ol style="list-style-type: none"> a. constructed and operated and/or maintained by or on behalf of the Enterprises and/or CDOT (other than by the Developer to the extent such project is not a Developer Retained Expansion) during the Term; and b. not otherwise incorporated in the Project under the terms of this Agreement.
<u>“Other Department Project Procurement Material”</u>	means any design brief, specification, information memorandum, request for qualification, request for proposal, contract or other documentation issued or otherwise made available by the Enterprises and/or CDOT in connection with the tender or procurement of any Other Department Project.
<u>“PA Change Order”</u>	has the meaning given to it in <u>Section 1.2.e</u> of <u>Schedule 24</u> (<i>Change Procedure</i>).
<u>“PA Longstop Date”</u>	means the date that occurs 585 Calendar Days after the Baseline Substantial Completion Date (for certainty, as the Baseline Substantial Completion Date may be extended from time to time), as such PA Longstop Date may be extended from time to time pursuant to: <ol style="list-style-type: none"> a. <u>Section 15.3.1.c.iii</u> of the Project Agreement, as a result of the occurrence of a Supervening Event; or b. a Change documented in a Change Order.
<u>“PA Noncompliance Event”</u>	means any “Noncompliance Event” as defined in the Project Agreement.
<u>“PA Noncompliance Points”</u>	means any “Noncompliance Points” as defined in the Project Agreement.
<u>“Part 1”</u>	has the meaning given in Part 1, Article 2.1.1.
<u>“Part 2”</u>	has the meaning given in Part 1, Article 2.1.2.
<u>“Parties”</u>	means, collectively, the Developer and the Construction Contractor, and “Party” means either the Developer or the Construction Contractor.
<u>“Pay-if-Paid Provisions”</u>	has the meaning given in Part 1 Article 12.11.
<u>“Payment Milestone”</u>	means any of Milestone 1, Milestone 2, Milestone 3 or Milestone 4.
<u>“Performance and Measurement Tables”</u>	means the performance and measurement tables set out in <u>Appendix A-1</u> to <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>) for, the O&M Period During Construction (as the same may be updated from time to time in accordance with <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>)).
<u>“Performance Payment”</u>	has the meaning given to it in the Project Agreement.
<u>“Performance Requirements”</u>	means the requirements set out in the column headed “Performance Requirements” in the Performance and Measurement Tables.
<u>“Permission to Enter Property Form”</u>	means CDOT Form 730 “Permission to Enter Property”.

<u>“Permit Area”</u>	means any area adjacent to any ROW Parcel or any Additional ROW Parcel for which access and/or use is required to be procured by Developer pursuant to a Permit in order to perform the Work.
<u>“Permits”</u>	means any permit, license, temporary crossing agreement or right-of-entry agreement issued, granted or entered into by or with any Governmental Authority, Utility Owner or Railroad in connection with the performance of any of the Construction Contractor’s obligations under this Agreement.
<u>“Persistent Construction Contractor Breach”</u>	has the meaning given to it in Part 2, <u>Section 22.2.2.e.</u>
<u>“Person”</u>	means any of a natural person, a corporation, a limited liability company, a trust, a partnership, a limited liability partnership, a joint stock company, a consortium, a joint venture, an unincorporated association or any other entity recognized as having legal personality under the laws of the State, in each case as the context may require.
<u>“Physical Damage Proceeds”</u>	has the meaning given to it in Part 2, <u>Section 25.5.1.a.</u>
<u>“Physical Damage Proceeds Reserve”</u>	has the meaning given to it in Part 2, <u>Section 25.5.2.a.</u>
<u>“Point of Slope Selection”</u>	means the location at which the roadside slope adjacent to the pavement ends, and the cut, or fill slope begins.
<u>“Portal”</u>	means the face of the Cover where the Threshold Zone begins.
<u>“Possession”</u>	means, in relation to any ROW Parcel or any Additional ROW Parcel, the right to access and use such ROW Parcel or Additional ROW Parcel in accordance with the terms of this Agreement, subject to: <ul style="list-style-type: none"> a. rights, including statutory or public franchise rights, of Governmental Authorities, Utility Owners, Railroads and third parties, including: <ul style="list-style-type: none"> i. as contemplated by the Third Party Agreements; and ii. as such access and use may be permitted and regulated by CDOT including through the issuance of Access Permits; b. rights, including rights of access, granted to the Enterprises and CDOT and each of their employees, agents, consultants and subcontractors and to other Persons under this Agreement; c. restrictions on access and/or use applicable to any such ROW Parcel or any such Additional ROW Parcel set out in: <ul style="list-style-type: none"> i. easement deeds, right of entry permits and/or any Governmental Approval or Permit; ii. any title commitments or American Land Title Association maps related to the Right-of-Way as set out in the Reference Documents; or iii. the Beneficial Reuse and Materials Management Plan or the Materials Management Plan, and in either case later recorded;

- d. any other easements, zoning restrictions, regulations, rights of way and similar restrictions on real property imposed by Law, any Governmental Approval or Permit;
- e. any other restrictions or qualifications set out in Schedule 18 (Right-of-Way), including the establishment of hold off zones pursuant to Section 5.1 thereof; or
- f. any other express restrictions or qualifications set out in this Agreement, including in Part 2, Section 9.1.b.

<u>“Possession Date”</u>	has the meaning given to it in the definition of Notice of Possession in this Part A of <u>Annex A (Definitions and Abbreviations)</u> .
<u>“Precipitation Event”</u>	means any type of event or occurrence causing slippery road conditions including snow, drifting snow, freezing rain, sleet, ice and frost.
<u>“Preferred Alternative”</u>	means the alternative identified as the “Preferred Alternative” pursuant to NEPA in the FEIS related to the Project.
<u>“Preferred Proposer”</u>	has the meaning given to it in the Project Agreement.
<u>“Preliminary Supervening Event Submission”</u>	has the meaning given to it in Part 2, <u>Section 15.1.2.b.i.</u>
<u>“Prime Rate”</u>	means the prime rate as published in <u>The Wall Street Journal</u> (Western Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in <u>The Wall Street Journal</u> (Western Edition) or the method of computation thereof is substantially modified.
<u>“Principal Indemnified Parties”</u>	means each Enterprise, CDOT and the State.
<u>“Private Utility”</u>	means a Utility that is owned by a Private Utility Owner.
<u>“Private Utility Owner”</u>	means each of: <ul style="list-style-type: none"> a. AT&T Corp.; b. Comcast Holdings Corporation; c. Level 3 Communications, Inc.; d. MCI Communications Services, Inc. d/b/a Verizon Business Services; e. NuStar Logistics, L.P.; f. Phillips 66 Company; g. Public Service Company of Colorado; h. Qwest Corporation d/b/a CenturyLink QC; i. Sprint; and j. Zayo Group, LLC, or any Affiliate of the same with which the CDOT enters into a URA.
<u>“Process Control”</u>	means the activities performed by or on behalf of the Construction Contractor to ensure and document that a product meets the requirements of this Agreement, which activities may include checking, materials handling and construction procedures, calibrations and maintenance of equipment, shop drawing review, document control, production process control, and any

sampling, testing, and inspection done for such purposes.

"Programmatic Agreement"

means the Programmatic Agreement Among Federal Highway Administration, Colorado State Historic Preservation Officer, and Colorado Department of Transportation Regarding Implementation of The Interstate 70 East Corridor Project - Interstate 25 to Tower Road.

"Progress Report"

means the Construction Contractor's progress submittal described in Section 4 of Schedule 8 (Project Administration).

"Progress Schedule"

means the Project Schedule provided with the Progress Report as set out in Section 3.3.5 of Schedule 8 (Project Administration).

"Prohibited Act"

means:

- a. an act committed in contravention of Part 2, Section 8.3.2;
- b. offering, giving or agreeing to give to any Governmental Authority (including either Enterprise or CDOT) or any public official, civil servant, officer, director, agent or employee of any such Governmental Authority, any bribe, gift or consideration of any kind as an inducement, commission or reward:
 - i. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or the Project Agreement or any other related contract with either Enterprise or the Federal government or the State, or any other Governmental Authority (including CDOT);
 - ii. for showing or not showing favor or disfavor to any Person in relation to this Agreement or the Project Agreement or any other related contract with either Enterprise or the Federal government or the State, or any other Governmental Authority (including CDOT); or
- c. defrauding or attempting to defraud or conspiring to defraud either Enterprise or the Federal government or the State, or any division, subdivision or agency of either of them (including CDOT),

in each case regardless of whether or not it is a criminal offence pursuant to Law.

"Project"

has the meaning given in Recital A of Part 1.

"Project Agreement"

has the meaning given in Recital A of Part 1.

"Project Agreement Amendment"

means an amendment to the Project Agreement to become effective on the Financial Close Date, which shall reflect any adjustments or amendments that have been accepted or agreed, as applicable, by the Enterprises and Developer pursuant to Annex A to Schedule 1 (Financial Close) to the Project Agreement, including amendments to the definitions of "Baseline Substantial Completion Target Date" and "Milestone Completion Target Date" in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement in each case to reflect, on a day for day basis, any delay in achieving Financial Close relative to November 30, 2017 (the date assumed in the ITP).

<u>“Project Agreement Claim”</u>	has the meaning given to the term “Claim” in the Project Agreement.
<u>“Project Agreement Developer Default”</u>	has the meaning given to the term “Developer Default” in the Project Agreement.
<u>“Project Agreement Dispute”</u>	means a dispute between the Enterprises and the Developer, arising out of the Project Agreement.
<u>“Project Agreement Dispute Resolution Procedure”</u>	means the procedures for resolving Disputes set forth in <u>Schedule 25 (Dispute Resolution Procedure)</u> to the Project Agreement.
<u>“Project Agreement Requested Dispute”</u>	means a Dispute resolved according to the Requested Dispute Procedures set forth in <u>Section 4 of Schedule 25 (Dispute Resolution Procedure)</u> .
<u>“Project Agreement Termination Date”</u>	has the meaning given to the term “Termination Date” in the Project Agreement.
<u>“Project Costs”</u>	means, all costs and expenses paid or incurred or to be paid or incurred in connection with or incidental to the design, construction, rehabilitation, equipping, operations, maintenance, commissioning and financing of the Project, including, without limitation, legal, administrative, engineering, planning, design, insurance, due diligence development and financing costs, amounts payable under all construction, engineering, technical and other contracts entered into by the Developer in connection with performing its obligations under the Project Agreement and in accordance with the Financing Documents, amounts payable to the Enterprises pursuant to the Project Agreement, all financing costs, including debt service payments, costs of issuance, fees, interest during construction, initial working capital costs, funding of reserves including the reserves contemplated by the Financing Documents, all development costs incurred prior to the Financial Close, payments under this Agreement or in respect of the O&M Work After Construction, all administrative costs, including budgeted overhead and operating expenses, any taxes, assessments or governmental charges payable by the Developer in connection with the Project.
<u>“Project Debt”</u>	has the meaning given to it in the Project Agreement.
<u>“Project Directory”</u>	means the directory described in <u>Section 12 of Schedule 8 (Project Administration)</u> .
<u>“Project Information”</u>	has the meaning given to it in Part 2, <u>Section 3.1.a</u> .
<u>“Project Intellectual Property”</u>	means Intellectual Property created, used, applied or reduced to practice by the Construction Contractor or any other Construction Contractor-Related Entity in connection with the Project or the Construction Work or the O&M Work During Construction, but excluding that which is: <ul style="list-style-type: none"> a. owned by the Enterprises, CDOT, the Developer or otherwise made available to the Construction Contractor by the Developer pursuant to this Agreement and as a result of its performance of the Construction Work and the O&M Work During Construction; or b. owned by any Person other than the Developer, Enterprises, CDOT or a Construction Contractor-Related Party.
<u>“Project License”</u>	has the meaning given to it in Part 2, <u>Section 7.2.1.a</u> .

<u>“Project License End Date”</u>	means, for each ROW Parcel and each Additional ROW Parcel, the earliest of: <ul style="list-style-type: none"> a. the date on which the Project License is revoked pursuant to Part 2, <u>Section 7.2.1.c</u>; b. the Substantial Completion Date with respect to any ROW Parcels and any Additional ROW Parcels (or any portion of any thereof) that are outside the O&M Limits After Construction; and c. with respect to any such ROW Parcel and any Additional ROW Parcel that is provided in the form of a Temporary ROW Easement, the date specified in or required by the terms of such easement.
<u>“Project License Start Date”</u>	has the meaning given to it in the Project Agreement.
<u>“Project Records”</u>	has the meaning given to it in Part 2, <u>Section 19.1.1</u> .
<u>“Project Schedule”</u>	means, initially, the Baseline Schedule and, once Approved pursuant to <u>Section 3.3 of Schedule 8 (Project Administration)</u> , the then current Revised Baseline Schedule .
<u>“Project Schedule Deadlines”</u>	means, collectively, the Milestone Completion Target Dates and the Baseline Substantial Completion Date, and <u>“Project Schedule Deadline”</u> means any of them, individually.
<u>“Project Special Provisions”</u>	means the Project Special Provisions set out in <u>Appendix A</u> to any Section of <u>Schedule 10 (Design and Construction Requirements)</u> .
<u>“Project Standards”</u>	means: <ul style="list-style-type: none"> a. the Construction Standards; and b. the O&M Standards.
<u>“Project Third Parties”</u>	means each counterparty (excluding the Developer, the Enterprises, CDOT and the Construction Contractor) to a Third Party Agreement.
<u>“Property Management”</u>	has the meaning given to it in <u>Section 2.1.1 of Schedule 18 (Right-of-Way)</u> .
<u>“Proposal”</u>	means the Preferred Proposer’s Proposal, as defined in, and submitted by it in response to, the ITP.
<u>“Proposal Schedule”</u>	means the draft Baseline Schedule submitted by the Preferred Proposer with Developer’s Proposal pursuant to Section 2.3.3. of Part F of the ITP.
<u>“Proposed Payment Schedule”</u>	means the curve described in Part 1, Article 12.4.2 and Attachment E, as applicable, of this Agreement, which constitutes a cap on the aggregate amount of payments of the Contract Price that may be made to the Construction Contractor hereunder at any specified time.
<u>“Proposer”</u> and <u>“Proposers”</u>	each has the meaning given to it in the Project Agreement.
<u>“Proprietary Intellectual Property”</u>	means Project Intellectual Property that is patented or copyrighted by any Construction Contractor-Related Entity (other than the Construction Contractor), or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential, proprietary information by the relevant Construction Contractor-Related Entity, excluding any item of Project Intellectual Property that is produced for multiple purposes and is not unique

- to the technology that is being applied to or for the Project.
- “Protection in Place” subject to Section 4.1.4 of Schedule 10 (*Design and Construction Requirements*), has the meaning given to it in the applicable URA.
- “Public ROW Records” means any record affecting a ROW Parcel that is maintained by:
- a. the Colorado Department of Public Health and Environment, the Colorado Department of Labor and Employment, Division of Oil and Public Safety, or the EPA; or
 - b. the:
 - i. County Assessor’s office;
 - ii. County Treasurer’s office; or
 - iii. office of the Clerk and Recorder,
 with respect to paragraph b, for the county in which the ROW Parcel is located, to the extent that such records were referenced in any title commitment in the possession of or made available to the Preferred Proposer and/or the Construction Contractor-Related Entities on or prior to the Setting Date.
- “Public Safety Order” means a rule, order or directive from the U.S. Department of Homeland Security, the State Department of Public Safety (including the Division of Homeland Security and Emergency Management) or by any Emergency Service regarding specific security threats to the Project or the region within the State in which the Project is located or which the Project serves, to the extent such rule, order or directive:
- a. requires specific changes in the Construction Contractor’s normal design, construction, operation or maintenance procedures in order to comply therewith; and
 - b. must be complied with by the Construction Contractor (in connection with performance of the Construction Work or the O&M Work During Construction) as a matter of Law.
- “Public Utility” means a Utility that is owned by a Publicly Owned Utility.
- “Publicly Owned Utility” means each of:
- a. Aurora Water;
 - b. the City and County of Denver, acting through its Board of Water Commissioners;
 - c. the City and County of Denver Wastewater Management Division; and
 - d. the Metropolitan Wastewater Reclamation District.
- “Punch List” means each Milestone Completion Punch List and the Substantial Completion Punch List.
- “Punch List Item” means any minor Defect or Nonconforming Work which individually, and in aggregate with all other such Punch List Items, will not have any material or adverse effect on the normal, uninterrupted and safe use and operation of the affected Element of the Project for its intended purpose.

<u>“Qualifying Change in Law”</u>	has the meaning given to it in the Project Agreement.
<u>“Quality Assurance Oversight”</u>	means the act of testing or inspecting of the Construction Work and the O&M Work During Construction performed by qualified testing or inspecting personnel employed by the Department or its designated agent to independently establish conformity to the Project Agreement.
<u>“Quality Management Plan”</u>	means, from time to time, the then current plan that satisfies the requirements of <u>Section 6</u> of <u>Schedule 8</u> (<i>Project Administration</i>) and has been submitted by the Construction Contractor and Approved by the Developer pursuant to <u>Schedule 8</u> (<i>Project Administration</i>).
<u>“Quality Records Database”</u>	means the secure web-based application for recording results of the Department verification reviews and responses to nonconformance notices, as described in <u>Schedule 8</u> (<i>Project Administration</i>).
<u>“Railroad”</u>	means either the tracks, bridges and systems used for rail traffic in the vicinity of I-70 Mainline, or the UPRR, BNSF or DRIR, as the context may require.
<u>“Railroad Forces”</u>	means Railroad engineering and construction personnel, or Railroad designated contractors employed or contracted directly by the respective Railroad.
<u>“Rating Agency”</u>	means each of: <ul style="list-style-type: none"> a. Fitch, Inc.; b. Moody’s Investors Service, Inc.; c. Standard & Poor’s Ratings Services; and d. DBRS, Inc., provided in each case that such entity is at the relevant time a Registered Rating Agency.
<u>“Reasonable Efforts”</u>	means all those steps in the power of the relevant Party that are capable of producing the desired result, being steps which a prudent, determined and reasonable person desiring to achieve that result would take, provided that, subject to its other express obligations under this Agreement: <ul style="list-style-type: none"> a. where the relevant Party is either the Developer or the Construction Contractor, the relevant Party shall not be required to expend funds except for those: <ul style="list-style-type: none"> i. reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses); or ii. that the other Party agrees to reimburse in advance; and b. where the relevant Party is the Developer, the relevant Party shall not be required to: <ul style="list-style-type: none"> i. take any action to the extent funds are unavailable to undertake such action; ii. take any action that is contrary to this Agreement, Law, or any Governmental Approval, as determined

by the Developer in its discretion;

- iii. Intentionally Omitted;
- iv. Intentionally Omitted;
- v. take a position that would not be usual and customary for similarly situated developers of public-private partnership projects to take in addressing similar circumstances affecting other projects (except for usual and customary arrangements that are incompatible with the Project's contracting methodology); or
- vi. refrain from concurring with a position taken by any Governmental Authority or the Enterprises if the Developer believe that position to be correct.

<u>"Recognized Hazardous Materials"</u>	has the meaning given to it in <u>Section 23.1.1</u> of <u>Schedule 17</u> (<i>Environmental Requirements</i>).
<u>"Reevaluation"</u>	means any NEPA evaluation required or prepared pursuant to 23 CFR § 771.129.
<u>"Reference Design"</u>	means the preliminary technical blueprint and description of essential design elements for the Project set out in the Reference Documents.
<u>"Reference Document"</u>	means each of the materials, documents and data listed in <u>Schedule 29</u> (<i>Reference Documents</i>) to the Project Agreement and made available prior to the Final Project Information Date pursuant to Part 2, <u>Section 3.1.a</u> .
<u>"Refinancing"</u>	has the meaning given to it in the Project Agreement
<u>"Registered Rating Agency"</u>	means a nationally recognized statistical rating organization registered with the Office of Credit Rating of the U.S. Securities and Exchange Commission.
<u>"Reinstatement Plan"</u>	has the meaning given to it in Part 2, <u>Section 25.5.1.b.i</u> .
<u>"Reinstatement Work"</u>	has the meaning given to it in Part 2, <u>Section 25.5.1.a</u> .
<u>"Related Transportation Facility"</u>	means any existing and future bridge, highway, street and road or other transportation facility of any mode, including: <ul style="list-style-type: none"> a. directly related component facilities; and b. upgrades and expansions thereof, <p>that, in any such case, are or will be connecting with, or crossing under or over, the Project, but which is not (at the relevant time) part of the Project, including:</p> <ul style="list-style-type: none"> c. Denver Planned Projects; and d. all CCD Identified Future Improvements.
<u>"Release"</u>	means any emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Substances from any source into or upon the Environment or any Improvement, including any of the foregoing, or any other action, that exacerbates an existing Release or condition of Hazardous Substances contamination.
<u>"Release for Construction Documents"</u>	means the drawings (including plans, elevations, sections, details and diagrams), specifications, shop drawings, drawings, samples, reports and

	calculations approved by the Developer for construction as required by <u>Schedule 8 (Project Administration)</u> .
“ <u>Relevant Contract Year</u> ”	has the meaning given to it in Part 2, <u>Section 2.3</u> .
“ <u>Relevant Event</u> ”	means any Delay Relief Event or Compensation Event.
“ <u>Relevant Insurance Markets</u> ”	the insurance markets which collectively insure the majority of transportation related infrastructure projects in the United States from time to time, which as of the Agreement Date are New York, Bermuda and London.
“ <u>Relevant Milestone Payment Request Due Date</u> ”	has the meaning given to it in <u>Section 2(a)</u> of <u>Schedule 5 (Milestone Payments)</u> .
“ <u>Relevant Obligation</u> ”	has the meaning given to it in Part 2, <u>Section 24.2.g.i</u> .
“ <u>Relief Event</u> ”	means: <ul style="list-style-type: none"> a. any of the following (“<u>Delay Relief Events</u>”): <ul style="list-style-type: none"> i. any Unexcused Railroad Delay; ii. any Unexpected Governmental Approval Delay; and iii. any breach by the City of Denver of the Denver IGA that results in: <ul style="list-style-type: none"> A. the duration of any street occupancy permit issued by the City of Denver not being for a duration equal to the Reasonable Construction Time Period (as defined in Section 4.A.(iii) of the Denver IGA) plus 10% of that time period; or B. the City of Denver unreasonably withholding or delaying any permit that it is required to issue in connection with the Construction Work pursuant to Section 4.A.(iv) of the Denver IGA, <p style="margin-left: 40px;">provided that the Construction Contractor has complied with the City of Denver permit process set out in Reference Document number 29.8.01;</p> b. any Force Majeure Event; c. any: <ul style="list-style-type: none"> i. fire or explosion; ii. geomagnetic storm; or iii. earthquake; d. riot or illegal civil commotion; e. any Change in Law (excluding (i) any Discriminatory Change in Law and (ii) any Qualifying Change in Law); f. any Third Party Release of Hazardous Substances that occurs during the Construction Period; g. any accidental loss or damage to the Right-of-Way, any Additional Right-of-Way or any Permit Areas (excluding Construction Contractor-risk Permit Areas) in respect of

which the Construction Contractor holds Permits;

- h. any failure by the City of Denver:
 - i. to provide to the Developer within 15 Working Days any comments in connection with the Construction Work that it is required to provide in relation to any submittal within 10 “business days” pursuant to the Preamble in Exhibit K of the Denver IGA; or
 - ii. in the event that any 10 “business day” period referred to in the Preamble in Exhibit K of the Denver IGA is adjusted as contemplated in such Preamble, to provide to Developer within five Working Days of the expiry of such adjusted period comments in connection with the Construction Work that is the subject of the relevant submittal;
- i. any incident of physical damage to an Element of the Project or delay of or disruption to the Work caused by a failure by the Cover Top Maintainer to perform the City of Denver’s obligations in accordance with the applicable terms of the Cover Maintenance Agreement during the Operating Period;
- j. the Construction Contractor’s obligation to comply with Part 2, Section 12.2.b with respect to any Related Transportation Facility that is not Known or Knowable (other than with respect to any required capital expenditure, to which paragraph n. of the definition of Compensation Event in this Part A of Annex A (*Definitions and Abbreviations*) shall apply);
- k. any weather event manifesting severe and historically unusual wind and/or liquid precipitation conditions directly affecting any part of the Site that is recognized as a “severe local storm”, or “flood” event by the National Oceanic and Atmospheric Administration’s National Weather Service in a published notice, alert or warning (a “Severe Weather Event”);
- l. any delay of or disruption to the Construction Work or the O&M Work During Construction caused by the operation or maintenance of the Limited O&M Work Segments, but only to the extent such operation or maintenance is not the responsibility of the Construction Contractor (or another Construction Contractor-Related Entity) pursuant to this Agreement or otherwise; or
- m. any unusual and unreasonable delay by the Colorado Department of Public Health and Environment in issuing, agreeing to modify, renewing or extending any Remediation Activities Discharging to Surface Waters Permit, Stationary Source Air Quality Permit or Subterranean Dewatering or Well Development Permit,

in each case unless and to the extent such event arises as a result of any breach of Law, Governmental Approval, Permit or this Agreement, or fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by

	or of any Construction Contractor-Related Entity.
“ <u>Renewal Work</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Representatives</u> ”	has the meaning given to it in Part 2, <u>Section 18.2.1.a</u> .
“ <u>Requested Dispute Procedures</u> ”	has the meaning set forth in <u>Section 4</u> of <u>Schedule 25</u> (<i>Dispute Resolution Procedure</i>).
“ <u>Requested Relocation</u> ”	subject to <u>Section 4.1.4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>), means any Utility Relocation of a Private Utility that the relevant Private Utility Owner requests be performed by Developer pursuant to the terms of any URA.
“ <u>Required Action</u> ”	has the meaning given to it in Part 2, <u>Section 23.4.3</u> .
“ <u>Required Environmental Approvals</u> ”	has the meaning given to it in <u>Section 8</u> of <u>Schedule 17</u> (<i>Environmental Requirements</i>).
“ <u>Required Guarantor</u> ”	means the Construction Guarantor to the extent the Construction Contractor’s obligations to carry out the Construction Work and the O&M Work During Construction are not completed at the relevant time provided that the Construction Guarantor shall cease to be a Required Guarantor at such time that the Developer and, pursuant to the Project Agreement, the Enterprises Accept written evidence submitted by the Construction Contractor that the Construction Contractor (taking into account any other guaranties) possesses the financial and technical capability to perform or cause the performance of all remaining Construction Work and the O&M Work During Construction under this Agreement in full compliance with the terms hereof in the absence of the support of the Construction Guarantor.
“ <u>Residual Life</u> ”	means, for an Element, the period remaining until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.
“ <u>Restricted Change</u> ”	means any Enterprise Change (or aspect thereof) proposed in an Enterprise Change Notice or an Enterprise Directive Letter or any Developer Change (or aspect thereof) proposed in a Developer Change Notice or a Developer Directive Letter that would, if implemented: <ul style="list-style-type: none"> a. require the Construction Work or the O&M Work During Construction (as changed by the proposed Enterprise Change or Developer Change) to be performed in a way that: <ul style="list-style-type: none"> i. violates Law; ii. is inconsistent with Good Industry Practice; or iii. gives rise to a material risk to the health or safety of any person; or b. cause the revocation of any existing Governmental Approval, Permit or third party consent that is necessary for the performance of the existing Construction Work or the O&M Work During Construction under circumstances such that it would be impossible or highly unlikely that the Construction Contractor would be able to obtain a new or amended equivalent Governmental Approval, Permit or third party consent relating to the Construction Work or the O&M Work During Construction (as changed by the proposed Enterprise Change or Developer Change, as applicable);

- c. materially and adversely affect the Construction Contractor's ability to carry out the Construction Work or the O&M Work During Construction; and/or
 - d. materially and adversely change the nature of the Project (including its risk profile).
- "Reviewable Deliverable" means any Deliverable that is a Deliverable for Approval, a Deliverable for Acceptance or a Deliverable for Information.
- "Revised Baseline Schedule " means the then current revision to the Baseline Schedule (including to any prior Revised Baseline Schedule), which has been submitted by the Construction Contractor and Approved by the Developer pursuant to Section 3.3.4.b of Schedule 8 (Project Administration) to this Agreement and by the Enterprises pursuant to Section 3.3.4.b of Schedule 8 (Project Administration) to the Project Agreement.
- "RFC Documents" means Release for Construction Documents.
- "RFP" has the meaning given to it in the Project Agreement.
- "Right-of-Way" means, collectively, all of the land, improvements and fixtures that are located within all ROW Parcels, but in each case with effect only from the Project License Start Date and only until the Project License End Date, in each case, for the relevant ROW Parcel.
- "Right-of-Way Betterment" means appreciation in the value of a property due to beneficial public works executed in its near vicinity.
- "Right-of-Way Relocation" means displacing a current resident or occupant to a new location.
- "ROD" has the meaning given to it in the Project Agreement.
- "ROD Construction Limits" has the meaning given to it in the Project Agreement.
- "Routine Maintenance" means maintenance activities that are scheduled in advance and occur on a regular basis, such as weekly, monthly, quarterly, semi-annually or annually, which are normally included as an annually recurring cost in maintenance and repair budgets for transportation facilities (and associated equipment) of similar natures and in similar environmental conditions as the Project.
- "Routine O&M Work ESB Goal" has the meaning given to it in Section 6.2.2.b of Schedule 15 (Federal and State Requirements).
- "Routine O&M Work" means all O&M Work, excluding Renewal Work.
- "ROW Parcel" means each parcel of land that either:
- a. is referred to in the "Parcel #" column in the ROW Schedule , each as identified in the Right-of-Way Exhibits in the Contract Drawings; or
 - b. comprises part of the Existing CDOT Right-of-Way,
- but, with respect to any partial acquisition identified in the ROW Schedule , only including any part thereof that the Construction Contractor elects to have the Department acquire and deliver pursuant to Section 1.3 of Schedule 18 (Right-of-Way).
- "ROW Schedule " means the table set out in Appendix A to Schedule 18 (Right-of-Way).
- "RRA" has the meaning given to it in the Project Agreement.

<u>“Safety Compliance”</u>	means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and/or changes in configuration or procedures in relation to the Project to correct a specific safety condition or risk in relation to the Project that the Developer, the Enterprises, CDOT or another Governmental Authority that has relevant jurisdiction have reasonably determined to exist.
<u>“Safety Compliance Order”</u>	means a written order or directive from the Enterprises to Developer, and provided by Developer to the Construction Contractor, to implement Safety Compliance, provided that such order or directive shall not be used to effect a change to the Technical Requirements or the Project Standards or safety-related portions of the Construction Work or the O&M Work During Construction affected by a Change in Law.
<u>“Schedule Delay Period”</u>	has the meaning given to it in Part 2, <u>Section 15.3.1.c.i.</u>
<u>“Schedule of Values”</u>	has the meaning given in Part 1, Article 12.2.
<u>“SDBPP”</u>	has the meaning given to it in <u>Section 5.1</u> of <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
<u>“Security Documents”</u>	has the meaning given to it in the Project Agreement.
<u>“Service Line”</u>	means: <ul style="list-style-type: none"> a. a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system; or b. a Utility line on public or private property that services structures located on such property.
<u>“Setting Date”</u>	means April 25, 2017.
<u>“Severe Weather Event”</u>	has the meaning given to it in paragraph <u>k.</u> of the definition of Relief Event in this <u>Part A</u> of <u>Annex A</u> (<i>Definitions and Abbreviations</i>).
<u>“Similar Project”</u>	means any highway facility within the State or elsewhere in the United States, including a construction or reconstruction project involving such a facility, that is more similar than not to the Project based on any one or more of the following elements: size, value, scope, technical complexity, geography, usage and risk profile.
<u>“Site”</u>	means, at any time: <ul style="list-style-type: none"> a. the Right-of-Way; b. any Additional Right-of-Way; c. any Permit Areas in respect of which the Construction Contractor holds Permits at that time; and d. any Temporary Properties in respect of which the Construction Contractor owns or holds Temporary Property Rights at that time.
<u>“Small Business and Workforce Goals”</u>	has the meaning given to it in <u>Section 6.1</u> of <u>Schedule 15</u> (<i>Federal and State Requirements</i>).
<u>“Snow and Ice Control Commencement Date”</u>	has the meaning given to it in <u>Section 3</u> of <u>Part 3</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).

<u>“Snow and Ice Control Equipment”</u>	has the meaning given to it in <u>Section 11.6</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>“Snow and Ice Control Plan”</u>	means the plan described in <u>Section 9.3</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>“Snow and Ice Control Services”</u>	means the snow and ice control services as described in <u>Section 11</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>“Snow Route”</u>	means the documented configuration and path(s) traversed by a snowplow or Spreader documented in Developer’s Snow and Ice Control Plan.
<u>“Special Events”</u>	means events expected to produce higher than average traffic on the I-70 East Corridor.
<u>“Special Permit”</u>	means a Permit issued by CDOT to permit a Person with a right under Law to have access to the Right-of-Way and any Additional Right-of-Way for a purpose which does not include carrying out any excavation in order to exercise that right.
<u>“Special Provisions”</u>	means Part 2, <u>Sections 36, 46.1</u> and <u>53</u> .
<u>“Specialist Inspections”</u>	means inspections of specified Elements or components for which testing, special tools or equipment are necessary, including inspections required to be undertaken in accordance with <u>Section 8.4</u> of <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>).
<u>“Specified Additional Insured”</u>	means: <ul style="list-style-type: none"> a. each Indemnified Party; b. any Railroad, including its officers, directors and employees, to the extent required to be treated as an additional insured under any RRA; c. any Utility Owner, including its officers, directors and employees, to the extent required to be treated as an additional insured under any URA, and Sprint; d. each Lender; and e. any other Person as and when agreed by the Parties or otherwise reasonably required by the Developer.
<u>“Spreader”</u>	means a vehicle capable of spreading salt, de-icers and anti-icers.
<u>“Sprint”</u>	has the meaning given to it in <u>Section 4.1.3</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
<u>“Sprint Reimbursement Agreement”</u>	has the meaning given to it in <u>Section 4.1.3</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
<u>“Sprint Work Order”</u>	has the meaning given to it in <u>Section 4.1.3</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
<u>“Standard Special Provisions”</u>	means the Standard Special Provisions listed in <u>Section 4</u> of <u>Appendix A</u> to <u>Schedule 10A</u> (<i>Applicable Standards and Specifications</i>).
<u>“Standard Specifications”</u>	means the CDOT Standard Specifications.
<u>“State”</u>	means the State of Colorado.
<u>“State Sales Tax”</u>	has the meaning given to it in Part 2, <u>Section 30.1.3.b</u> .

<u>“Storm Drain”</u>	means a network of pipes that connects inlets, manholes, and other drainage features to an outfall.
<u>“Subcontract”</u>	means any contract (at any tier) entered into by the Construction Contractor or a Subcontractor including a Supplier with one or more third parties directly in connection with the carrying out of the Construction Work, the O&M Work During Construction or any of the Construction Contractor’s other obligations under this Agreement.
<u>“Subcontractor”</u>	means any party, other than the Construction Contractor, to a Subcontract.
<u>“Subcontractor Breakage Costs”</u>	<p>means Losses that have been or will be reasonably and properly incurred by the Construction Contractor under a Subcontract as a direct result of the termination of this Agreement (and which Losses shall not include lost profit or lost opportunity, but may, for certainty, include payment to a Subcontractor for work performed prior to the CC Termination Date, but not yet paid for by the Construction Contractor), but only to the extent that:</p> <ol style="list-style-type: none"> a. the Losses are incurred in connection with the Project and in respect of the Construction Work or the O&M Work During Construction required to be performed by the Construction Contractor, including: <ol style="list-style-type: none"> i. any materials or goods ordered or Subcontracts placed that cannot be cancelled without such Losses being incurred; ii. any expenditure incurred in anticipation of the performance or the completion of Work in the future; and iii. the cost of demobilization including the cost of any relocation of equipment used in connection with the Project; b. the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm’s length basis, and that otherwise comply with this Agreement; and c. the Construction Contractor and the relevant Subcontractor have each used their Reasonable Efforts to mitigate such Losses.
<u>“Substantial Completion”</u>	means the satisfaction of all Substantial Completion Conditions, as confirmed by the Developer’s providing of a copy of the Substantial Completion Certificate.
<u>“Substantial Completion Certificate”</u>	has the meaning given to it in the Project Agreement.
<u>“Substantial Completion Conditions”</u>	has the meaning given to it in <u>Section 1</u> of <u>Part 5</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
<u>“Substantial Completion Date”</u>	has the meaning given to it in <u>Section 5(a)</u> of <u>Part 5</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
<u>“Substantial Completion Deduction Amount”</u>	means the amount calculated in accordance with <u>Section 1</u> of <u>Part 1</u> of <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Substantial Completion</u>	means the Milestone Payment payable in respect of the achievement of

<u>Milestone Payment</u>	Substantial Completion.
<u>“Substantial Completion Payment”</u>	has the meaning given to it in <u>Section 3(b)</u> of <u>Schedule 5</u> (<i>Milestone Payments</i>).
<u>“Substantial Completion Punch List”</u>	has the meaning given to it in <u>Section 2(b)</u> of <u>Part 7</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
<u>“Substantial Completion Punch List Items”</u>	has the meaning given to it in <u>Section 2(b)</u> of <u>Part 7</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>).
<u>“Supervening Event”</u>	means any: <ul style="list-style-type: none"> a. Relief Event; b. Compensation Event; or c. Appendix B Parcel Unexpected Hazardous Substances Event to the extent that it does not constitute a Compensation Event.
<u>“Supervening Event Notice”</u>	has the meaning given to it in Part 2, <u>Section 15.1.2</u> .
<u>“Supervening Event Submission”</u>	means any Preliminary Supervening Event Submission or any Detailed Supervening Event Submission.
<u>“Supplied Survey Data”</u>	means the survey data for the Construction Work identified in the Reference Documents.
<u>“Supplier”</u>	means a Subcontractor that primarily provides goods and/or materials, but not services, under the terms of its Subcontract.
<u>“Table 6A.1”</u>	means Table 6A.1 set out in <u>Appendix A</u> to <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Table 6A.2”</u>	means Table 6A.2 set out in <u>Appendix A</u> to <u>Schedule 6</u> (<i>Performance Mechanism</i>).
<u>“Target”</u>	means, in respect of an Element, the condition of such Element specified in the “Target” column in the Performance and Measurement Tables (as updated in accordance with <u>Schedule 11</u> (<i>Operations and Maintenance Requirements</i>)).
<u>“Tax”</u>	means any Federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, duty, fee or charge imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, the Milestone Payments, Performance Payments, other compensation or act, business, status or transaction of any Construction Contractor-Related Entity, including any interest, penalty or addition thereto, in all cases whether disputed or undisputed.
<u>“Technical Deliverable”</u>	means any Deliverable that the Construction Contractor is required to submit pursuant to <u>Schedules 8</u> (<i>Project Administration</i>), <u>10</u> (<i>Design and Construction Requirements</i>), <u>11</u> (<i>Operations and Maintenance</i>

Requirements), 14 (*Strategic Communications*), 17 (*Environmental Requirements*) and 18 (*Right-of-Way*).

“Technical Proposal Deadline”

means June 1, 2017.

“Technical Requirements”

means the obligations of, and any requirements to be satisfied by, the Construction Contractor under any of Schedules 8 (*Project Administration*), 9 (*Submittals*), 10 (*Design and Construction Requirements*), 11 (*Operations and Maintenance*), 17 (*Environmental Requirements*) and 18 (*Right-of-Way*) and Table 6A.1 and Table 6A.2.

“Temporary Easement”

means any temporary easement in an area that is outside the Right-of-Way or any Additional Right-of-Way, but which is required for performing the Construction Work within the Right-of-Way or any Additional Right-of-Way.

“Temporary Property”

means:

- a. Temporary Easements; and
- b. other areas not within the Right-of-Way or any Additional Right-of-Way in which the Construction Contractor is performing Construction Work or O&M Work During Construction for a temporary period, such as temporary Construction Work sites, lay down areas, staging areas, storage areas, stockpiling areas, earthwork material borrow sites, equipment parking areas and similar areas.

“Temporary Property Rights”

means, in respect of any Temporary Property, any right or interest in, or in respect of, such Temporary Property.

“Temporary ROW Easement”

means any temporary easement in an area that is part of the Right-of-Way or any Additional Right-of-Way.

“Term”

has the meaning given to it in the Project Agreement.

“Termination Amount”

means, with respect to any early termination of this Agreement, the amount of compensation, if any, owing from the Developer to the Construction Contractor or from the Construction Contractor to the Developer, as applicable, as determined pursuant to this Agreement.

“Termination Deduction Amount”

means, without double-counting, any:

- a. accrued Monthly Construction Closure Deductions, Construction Goal Deductions, Monthly Noncompliance Deductions and Operations Goal Deductions that, as of the CC Termination Date, have not been taken into account in the calculation of any payment actually made to the Construction Contractor by the Developer prior to the CC Termination Date; and
- b. any other amount that the Developer is entitled to set-off against any Termination Amount payable to the Construction Contractor pursuant to Section 5(a) of Part 3 of Schedule 4 (*Payments*).

“Termination Insurance Proceeds”

means all proceeds from insurance payable to the Construction Contractor under any Available Insurance coverage, or that should otherwise be collectible by the Construction Contractor from that portion of the Available Insurance that is required to be maintained by the Construction Contractor pursuant to Part 2, Section 25 and Schedule 13 (*Required Insurances*), in

	any such case on or after the CC Termination Date.
“ <u>Termination Notice</u> ”	means a notice of termination issued pursuant to Part 2, <u>Section 33.1</u> .
“ <u>Test</u> ” or “ <u>Testing</u> ”	means the procedure and method of acquiring and recording physical data and comparing it to set standards and submitting a statement to such conditions or operations as will lead to its Acceptance or rejection (deficiency, defective condition, nonconformance) of the item.
“ <u>Third Party Agreements</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Third Party Intellectual Property</u> ”	means any Intellectual Property used or applied by the Construction Contractor or any Construction Contractor-Related Entity in connection with the Project, the Construction Work or the O&M Work During Construction which is owned by any Person other than the Developer, the Enterprises, CDOT or a Construction Contractor-Related Entity.
“ <u>Third Party Release of Hazardous Substances</u> ”	means any Release of Hazardous Substances on, in, under, from or in the vicinity of the Site caused by any Person that is not a Construction Contractor-Related Entity, a Developer-Related Entity, either Enterprise or CDOT, which Release: <ul style="list-style-type: none"> a. occurs: <ul style="list-style-type: none"> i. with respect to any ROW Parcel, after the Setting Date; and ii. with respect to any Additional ROW Parcel, on or after its Project License Start Date; and b. is required to be investigated, removed, treated, stored, transported, managed and/or remediated pursuant to Law, any Governmental Approval or the Construction Contractor’s obligations under this Agreement, <p>excluding any such Release to the extent such results in the presence of Hazardous Substances in groundwater.</p>
“ <u>Threshold Zone</u> ”	means the length of roadway between the Portal and the Transition Zone.
“ <u>TIFIA</u> ”	has the meaning given to it in the Project Agreement.
“ <u>TIFIA Effective Date</u> ”	means the date of the TIFIA Loan Agreement.
“ <u>TIFIA Loan</u> ”	has the meaning given to it in the Project Agreement.
“ <u>TIFIA Loan Agreement</u> ”	means the agreement between the US DOT and the Developer pursuant to which the US DOT will make the TIFIA Loan available to the Developer.
“ <u>Tolled Express Lane</u> ”	means the lanes on the I-70 Mainline where operational strategies are proactively implemented and managed in response to changing conditions.
“ <u>Tow Plow</u> ”	means a snow plow blade mounted on a ballasted trailer that is towed behind a conventional plow or combination plow/spreader truck, where controls in the towing vehicle deploy the tow plow into an adjacent lane, permitting two lanes to be plowed by a single tow vehicle.
“ <u>Transferrable Assets</u> ”	means all Assets, including all transferrable warranties with respect to such Assets, except: <ul style="list-style-type: none"> a. any Asset that falls within paragraphs <u>c.</u>, <u>d.</u>, <u>e.</u> or <u>f.</u> of the definition of Assets in this <u>Part A of Annex A (Definitions and Abbreviations)</u> that:

- i. is not affixed to any Element, the Right-of-Way or any Additional Right-of-Way; and
- ii. to the extent customarily located or used on any part of the Site in connection with the Project:
 - A. is not owned by the Construction Contractor;
 - B. was not purchased by another Construction Contractor-Related Entity primarily or exclusively funds received, directly or indirectly, from the Developer; and
- b. any Temporary Properties, and any buildings located on such properties.

“Transition Zone” means the length of roadway between the Threshold Zone and the Interior Zone and which has variable illumination depending upon the illumination in the Threshold Zone to allow adaption to the Interior Zone illumination, and the length of which is determined by the posted vehicle speed

“Transportation Commission” has the meaning given to it in the Project Agreement.

“Transportation Demand Model” means a program that encompasses tools to help with traffic congestion mitigation by offering alternatives to the single occupant vehicle.

“Transportation Management Plan” means, from time to time, the then current plan that satisfies the requirements of Section 2.2.3 of Schedule 10 (*Design and Construction Requirements*) and has been submitted by the Construction Contractor and Approved by the Developer pursuant to Schedule 10 (*Design and Construction Requirements*).

“Travel Time Indicators” means the system of antennas and readers that detect toll tag transponders in vehicles.

“Ultimate” has the same meaning as given to the Preferred Alternative.

“Unexcused Railroad Delay” means:

- a. any breach of a RRA by a Railroad; or
- b. to the extent not otherwise constituting such a breach:
 - i. any unexcused delay (as determined by reference to the relevant RRA) by a Railroad in performing any work required to be performed by it, or in reviewing or approving any Deliverable for Third Party Review (as such term is defined in Schedule 9 (*Submittals*)) required to be reviewed or approved by it, under the relevant RRA; or
 - ii. any unreasonable withholding by any Railroad with relevant jurisdiction under the terms of a RRA or otherwise of the issuance or renewal of any Permit necessary for the performance of the Construction Work or the O&M Work During Construction.

“Unexcused Utility Owner Delay” means:

- a. any breach of a URA or Utility Work Order by a Utility Owner; or

- b. to the extent not otherwise constituting such a breach:
 - i. any unexcused delay (as determined by reference to the relevant URA and/or relevant Utility Work Order) by a Utility Owner in performing any work required to be performed by it, or in reviewing or approving any Deliverable for Third Party Review (as such term is defined in Schedule 9 (Submittals)) required to be reviewed or approved by it, under the relevant URA and/or Utility Work Order;
 - ii. any unreasonable withholding by any Utility Owner with relevant jurisdiction under the terms of a URA or otherwise of the issuance or renewal of any Permit necessary for the performance of the Construction Work or the O&M Work During Construction,

provided that, for certainty, references in this definition to:

- c. any “URA” shall include any Sprint Reimbursement Agreement; and
- d. a “Utility Work Order” shall include any Sprint Work Order; and
- e. any breach of a Utility Work Order” in paragraph b. of this definition shall, as it applies to a Sprint Work Order, mean any failure by Sprint to comply with the terms specified in such Sprint Work Order that apply to Sprint notwithstanding it is not a party to such Sprint Work Order.

“Unexpected Endangered Species”

means any animal or plant species listed as threatened or endangered under and subject to an applicable threatened or endangered species Law found at the Right-of-Way, or at any Permit Areas (excluding Construction Contractor-risk Permit Areas) in respect of which the Construction Contractor holds a Permit, the temporary, continual or habitual presence of which on the Right-of-Way or any such Permit Area was not Known or Knowable at the Setting Date.

“Unexpected Geological Conditions”

means any subsurface or latent geological conditions encountered at the exact bore hole locations identified in:

- a. the boring logs set out in Appendices B and D1 of the Final Preliminary Subsurface Investigation Report I-70 East Corridor Project Partial Cover Lowered Alternative with Managed Lanes Options Brighton Boulevard to Chambers Road Denver, Colorado CDOT Project No: FBR 0709-234 (19631) prepared by Yeh and Associate, Inc. dated September 21, 2015; and
- b. the boring logs set out in Appendix C of the Preliminary Subsurface Investigation Report for Partial Cover Lowered (PCL) Alternative I-70 East Corridor EIS CDOT Region 6 prepared by Yeh and Associates, Inc. dated October 31, 2012; and
- c. the boring logs set out in Appendix B of the Addendum Final Preliminary Subsurface Investigation Report I-70 East Corridor Project Partial Cover Lowered Alternative with Managed Lanes Options Brighton Boulevard to Chambers

Road Denver, Colorado CDOT Project No: FBR 0709-234 (19631) prepared by Yeh and Associate, Inc. dated June 9, 2016,

in each case that differ materially from those conditions indicated in such boring logs for such bore hole locations, which conditions were not Known or Knowable at the Setting Date.

“Unexpected Governmental Approval Delay”

means, in the event that :

- a. the Enterprises have complied with their obligations under Section 8.4.4.a of the Project Agreement and the Developer has complied with its obligations under Part 2, Section 8.4.4.a of this Agreement; and
- b. in order so to comply:
 - i. the Enterprises were, pursuant to paragraph a. or paragraph b. of the definition of Reasonable Efforts in Part A of Annex A (*Definitions and Abbreviations*)) to the Project Agreement, not required to take (and did not take) an action necessary to effect issuance, modification, renewal or extension of any Governmental Approval or Permit pursuant to Sections 8.4.4.a.i and/or 8.4.4.a.ii of the Project Agreement; and
 - ii. the Developer was, pursuant to paragraph a. or paragraph b. of the definition of Reasonable Efforts in this Part A of Annex A (*Definitions and Abbreviations*)), not required to take (and did not take) an action necessary to effect issuance, modification, renewal or extension of any Governmental Approval or Permit pursuant to Part 2, Sections 8.4.4.a.i and/or 8.4.4.a.ii,

any resulting unusual and unreasonable delay by a Governmental Authority in issuing, agreeing to modify, renewing or extending any Governmental Approval or Permit that would have been avoided if the Enterprises or the Developer had taken the relevant action referred to in paragraph b. of this definition.

“Unexpected Groundwater Contamination Condition”

means, in respect of groundwater present in or under any part of the Right-of-Way and any Permit Areas in respect of which the Construction Contractor holds a Permit (other than any Construction Contractor-risk Permit Area) which groundwater is ultimately subject to discharge through any single discharge point pursuant to an applicable Governmental Approval, any Hazardous Substance contamination in such groundwater at concentration levels that are required to be investigated, removed, treated, stored, transported, managed or remediated pursuant to Law or the Construction Contractor’s obligations under this Agreement, as and to the extent such contamination and concentration levels are established at such single discharge point pursuant to Section 23.4.4 of Schedule 17 (*Environmental Requirements*), excluding any such contamination:

- a. by a substance identified in the “Chemical Name” column in Appendix C (*Groundwater Benchmark Concentrations*) of Schedule 17 (*Environmental Requirements*) at concentration levels at or below the applicable value set out

in the “Value” column in that Appendix C; or

- b. to the extent such contamination constitutes a Construction Contractor Release of Hazardous Substances.

“Unexpected Groundwater Contamination Event”

means:

- a. in respect of any single Groundwater Contamination Event Period, the encountering, discovery and/or continued existence (as applicable) of, collectively, all Unexpected Groundwater Contamination Conditions during such period which conditions require temporary treatment or remediation during the Construction Period as part of the performance of the Construction Work; and
- b. during both the Construction Period and the Operating Period, the encountering or discovery of, collectively, all Unexpected Groundwater Contamination Conditions which conditions require permanent and ongoing treatment or remediation pursuant to Law or the Developer’s obligations under the Project Agreement during the Operating Period and to enable Developer (or the O&M Contractor, as the case may be) to perform O&M Work After Construction.

“Unexpected Hazardous Substances”

means any Hazardous Substances (including soil or surface water contaminated with Hazardous Substances) present on, in or under any part of the Right-of-Way, or any Permit Areas in respect of which the Construction Contractor holds a Permit, at concentration levels or in quantities that are required to be investigated, removed, treated, stored, transported, managed or remediated pursuant to Law or the Construction Contractor’s obligations under this Agreement, excluding any such Hazardous Substances:

- a. present in any groundwater;
- b. present in any soil that (for certainty, absent any treatment) meets criteria for reuse, disposal or release on-Site:
 - i. under Law;
 - ii. pursuant to any Permit or Governmental Approval; or
 - iii. in accordance with the Materials Management Plan and the Beneficial Reuse and Materials Management Plan,
 including, for certainty, any such Hazardous Substances that meet such criteria but which cannot be, or are not, reused, disposed of or released on-Site due to:
 - iv. there being no available on-Site location to so reuse, dispose of or release such materials; or
 - v. any action or decision by or of any Construction Contractor-Related Entity;
- c. present on, in or under any Construction Contractor-risk Permit Area;
- d. present in any “Near Surface Soil” (as defined in the Beneficial Reuse and Materials Management Plan) west of

Colorado Boulevard;

- e. required to be investigated, removed, treated, stored, transported, managed and/or remediated by the Enterprises, the Developer or the Construction Contractor in complying with their Property Management obligations pursuant to Section 2.2 of Schedule 18 (Right-of-Way) to the Project Agreement;
- f. present on or in:
 - i. any building, bridge or structure, including any subsurface structure or facility connected to any such building, bridge or structure; or
 - ii. any underground storage tank registered with the Colorado Department of Labor and Employment, Division of Oil and Public Safety; or
- g. to the extent such constitutes a:
 - i. Construction Contractor Release of Hazardous Substances;
 - ii. Developer Release of Hazardous Substances;
 - iii. Enterprise Release of Hazardous Substances; or
 - iv. Third Party Release of Hazardous Substances.

“Unexpected Historically Significant Remains”

means any antiquities (including structures), fossils, coins, articles of value, cultural artifacts, human burial sites and remains and other similar remains of archaeological, historical, cultural or paleontological interest on or under any part of the Right-of-Way, or of any Permit Areas (excluding Construction Contractor-risk Permit Areas) in respect of which the Construction Contractor holds a Permit, which were not Known or Knowable at the Setting Date.

“Unexpected Utility Condition”

means any Utility present on the Right-of-Way, or on any Permit Areas (excluding Construction Contractor-risk Permit Areas) in respect of which the Construction Contractor holds a Permit, that was not identified or was incorrectly shown, identified or described in the Utility Data, in each case excluding:

- a. any Utility to the extent it was Known or Knowable, which for such purposes shall be deemed to include any Utility that:
 - i. is located at or less than 10 feet distant from the horizontal centerline indicated therefor in the Utility Data (without regard to vertical location); and/or
 - ii. has an actual nominal diameter (excluding casings and any other appurtenances) within 12 inches of the size indicated in the Utility Data;
- b. any Utility installed on any part of the Right-of-Way after the Project License Start Date, or on any Permit Area after the Construction Contractor secured a Permit providing access and/or use to or of such area; and
- c. any Service Line.

“Unexpected Utility

means the encountering or discovery of any Unexpected Utility Condition.

Condition Event

<u>“Uniform Act”</u>	means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646.
<u>“unreasonably withheld”</u>	has the meaning given to it in Part 2, <u>Section 2.2.2.a</u> .
<u>“UPRR”</u>	means Union Pacific Railroad Company.
<u>“UPRR Crossing”</u>	means the existing and/or proposed crossing by the UPRR Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.2</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
<u>“UPRR Pepsi Lead Crossing”</u>	means the existing and/or proposed crossing of Brighton Boulevard by the UPRR Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.3</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
<u>“UPRR RRA”</u>	means the railroad agreement with respect to the UPRR Crossing, the UPRR Pepsi Lead Crossing and the UPRR York Street Crossing among CDOT, the City of Denver and UPRR in relation to the Project, a draft of which agreement was provided to the Preferred Proposer as one of the Reference Documents numbered 29.10.10.03.
<u>“UPRR Work”</u>	means all duties and services to be furnished and provided by the UPRR as required by the UPRR RRA, as applicable.
<u>“UPRR York Street Crossing”</u>	means the existing and/or proposed crossing of York Street by the UPRR Railroad through the I-70 East corridor on the Right-of-Way as described in <u>Section 10.1.4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>).
<u>“URA”</u>	has the meaning given to it in the Project Agreement.
<u>“US DOT”</u>	means the United States Department of Transportation.
<u>“Useful Life”</u>	means, for an Element, the period following its first construction or installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.
<u>“User”</u>	means any person that is on or about the Project or any portion thereof, or is otherwise making use of the Project for any purpose.
<u>“Utility”</u>	means a privately, publicly or cooperatively owned line, facility and/or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, or any other similar commodity including: <ul style="list-style-type: none"> a. the necessary appurtenances to any such line, facility and/or system; and b. any Service Line connecting directly to any such line, facility and/or system, regardless of the ownership of such Service Line, <p>provided that, for certainty, stormwater facilities, irrigation ditches, Intelligent Transportation Systems, Variable Message Signs, video and video detection systems, traffic signals and street lighting shall not constitute “Utilities”.</p>
<u>“Utility Betterment”</u>	subject to <u>Section 4.1.4</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>), has the meaning given to “Betterment” in the applicable URA.

<u>“Utility Data”</u>	means the Utility Drawings, the Utility Matrix, pothole log, manhole tabulation and other Utility information provided in the Reference Documents.
<u>“Utility Drawings”</u>	means the Utility plan design sheets provided in the Reference Documents, as updated from time to time by the Construction Contractor pursuant to <u>Section 4 of Schedule 10 (Design and Construction Requirements)</u> .
<u>“Utility Matrix”</u>	means the Construction Work “Utility Matrix” provided in the Reference Documents, as updated from time to time by the Construction Contractor pursuant to <u>Section 4.3.2.c of Schedule 10 (Design and Construction Requirements)</u> .
<u>“Utility No-Conflict Close Out Form”</u>	means the form provided in <u>Appendix A of Section 4 to Schedule 10 (Design and Construction Requirements)</u> .
<u>“Utility Owner”</u>	means the owner of a Utility.
<u>“Utility Permit”</u>	means a Permit issued by CDOT to permit a Utility Owner with a right under Law to have access to the Right-of-Way and any Additional Right-of-Way in order to exercise that right.
<u>“Utility Relocation”</u>	subject to <u>Section 4.1.4 of Schedule 10 (Design and Construction Requirements)</u> , has the meaning given to “Relocation” in the applicable URA.
<u>“Utility Relocation Standards”</u>	subject to <u>Section 4.1.4 of Schedule 10 (Design and Construction Requirements)</u> , has the meaning given to “Relocation Standards” in the applicable URA.
<u>“Utility Work”</u>	means any portion of the Construction Work relating to Utility Relocations, Utility Betterments or Requested Relocations, including but not limited to the Activities listed in <u>Section 4.2.9 of Schedule 10 (Design and Construction Requirements)</u> .
<u>“Utility Work Order”</u>	subject to <u>Section 4.1.4 of Schedule 10 (Design and Construction Requirements)</u> , has the meaning given to “Work Order” in the applicable URA and shall be substantially in the form provided in <u>Appendix B of Section 4 to Schedule 10 (Design and Construction Requirements)</u> .
<u>“Variable Message Sign”</u>	means the large dynamic display used for user alerts and notifications.
<u>“Variable Toll Message Sign”</u>	means the static sign with electronic Variable Message Sign inserts that is utilized to display the specific tolls for each segment of the corridor.
<u>“Warrantied Elements”</u>	means the Elements of the Construction Work to be maintained by the applicable Warranty Beneficiaries on and from the Final Acceptance Date (or, in the case of the elements referred to in paragraphs <u>a.</u> and <u>b.</u> of the definition of Cover Top O&M Work in this <u>Part A of Annex A (Definitions and Abbreviations)</u> , from the end of the Landscape Warranty period (as described in <u>Section 14.11 of Schedule 10 (Design and Construction Requirements)</u>) in the areas depicted: <ul style="list-style-type: none"> a. with respect to the City of Denver as a Warranty Beneficiary, as “Local Agency Operations & Maintenance Work” in Reference Document 29.11.01 and as “Planning Area 2” in the I-70 Cover Plans; b. with respect to Denver Public Schools as a “Warranty Beneficiary, as “Planning Area 1” in the I-70 Cover Plans;

and

- c. with respect to CDOT as a Warranty Beneficiary, as “Department Operations & Maintenance Work” in Reference Document 29.11.01.

“ <u>Warranties</u> ”	has the meaning given to it in Part 2, <u>Section 9.4.1</u> .
“ <u>Warranty Beneficiaries</u> ”	has the meaning given to it in Part 2, <u>Section 9.4.2.a</u> .
“ <u>Warranty Defects List</u> ”	has the meaning given to it in Part 2, <u>Section 9.4.5</u> .
“ <u>Warranty Period</u> ”	means: <ol style="list-style-type: none"> a. other than with respect to the Additional Warranties, the DPS Warranties and the Cover Top Warranties, the period of time from the Substantial Completion Date until the second anniversary thereof; b. with respect to the DPS Warranties and the Cover Top Warranties, the period of time from the Final Acceptance Date until the second anniversary thereof; and c. with respect to the Additional Warranties, until the expiry date of the applicable warranty period specified in <u>Schedule 10 (Design and Construction Requirements)</u> <p>in each case, as such period of time may be extended pursuant to Part 1, <u>Article 9.3</u>.</p>
“ <u>Warranty Work</u> ”	means any repair, correction, replacement and/or rectification of any Nonconforming Work, any Defects or any Latent Defects (including, any re-designing, reconstruction, re-erecting and other re-performance of any Construction Work resulting from the breach of the Construction Contractor’s warranties in Part 1, Article 9 or Part 2, Section 9.4), in each case, to the extent required to conform the Construction Work to the requirements of this Agreement, the Governmental Approvals and the Construction Standards.
“ <u>Weekend</u> ”	means the 48 hour period commencing on a Saturday at 12.00am and ending on the next Sunday at 11.59pm.
“ <u>WDP</u> ”	has the meaning given to it in <u>Section 5.1</u> of <u>Schedule 15 (Federal and State Requirements)</u> .
“ <u>Work</u> ”	has the meaning given to it in the Project Agreement.
“ <u>Work Breakdown Structure</u> ”	means the organized hierarchical division of Activities which shall be the basis for organizing all Work, as described in this Agreement. Requirements for the Work Breakdown Structure are set out in <u>Schedule 8 (Project Administration)</u> .
“ <u>Work Product</u> ”	means any document, drawing, report, plan, application, data, work product or other material or information, regardless of form, and including any draft specifically developed by the Construction Contractor under the terms of this Agreement on or after the Agreement Date (and excluding, for certainty, any Proprietary Intellectual Property and any Third Party Intellectual Property incorporated therein).
“ <u>Workforce Development Goals</u> ”	has the meaning given to it in <u>Section 6.3</u> of <u>Schedule 15 (Federal and State Requirements)</u> .
“ <u>Working Day</u> ”	means any Calendar Day that is not a Saturday, a Sunday or Holiday.

Part B: Abbreviations

Except as otherwise specified herein or as the context may otherwise require, the following abbreviations set out below are provided as references for purposes of the Technical Requirements, Table 6A.1 and Table 6A.2 only:

<u>“ABC”</u>	means aggregate base course.
<u>“AC”</u>	means alternating current.
<u>“ACL”</u>	means access control list.
<u>“ADA”</u>	means Americans with Disabilities Act.
<u>“AID”</u>	means automatic incident detection.
<u>“AHJ”</u>	means Authority Having Jurisdiction.
<u>“ALPR”</u>	means Automatic License Plate Recognition.
<u>“AMCA”</u>	means Air Movement and Control Association.
<u>“ANSI”</u>	means American National Standards Institute.
<u>“APCD”</u>	means Air Pollution Control Division.
<u>“APEN”</u>	means Air Pollution Emission Notice.
<u>“AREMA”</u>	means American Railway Engineering and Maintenance-of-Way Association.
<u>“ATM”</u>	means Active Traffic Management.
<u>“ATR”</u>	means Automatic Traffic Recorders.
<u>“AVI”</u>	means Automatic Vehicle Identification.
<u>“AVL”</u>	means Automated Vehicle Locator.
<u>“BACR”</u>	means Baseline Asset Condition Report.
<u>“BMP”</u>	means Best Management Practices.
<u>“BRMMP”</u>	means Beneficial Reuse and Materials Management Plan.
<u>“CCD”</u>	means City and County of Denver.
<u>“CCMS”</u>	means Command, Control, and Monitoring System.
<u>“CCP”</u>	means Crisis Communications Plan.
<u>“CCTV”</u>	means Closed Circuit Television.
<u>“CDPHE”</u>	means Colorado Department of Public Health and Environment.
<u>“CDPS”</u>	means Colorado Discharge Permit System.
<u>“CDPS-SCP”</u>	means Colorado Discharge Permit System-Stormwater Construction Permit.
<u>“CFD”</u>	means Computational Fluid Dynamics Model.
<u>“CLOMR”</u>	means Conditional Letter of Map Revision.
<u>“CMS”</u>	means cable management system.
<u>“COTS”</u>	means conventional, off-the-shelf.
<u>“CPCM”</u>	means Construction Process Control Manager.
<u>“CPM”</u>	means Critical Path Method.
<u>“CPW”</u>	means Colorado Parks and Wildlife.
<u>“CRAL”</u>	means Construction of Relocation Acceptance Letter.
<u>“CSL”</u>	means cross sonic log.
<u>“CSP”</u>	means Colorado State Patrol.
<u>“CTMC”</u>	means Colorado Transportation Management Center.
<u>“CTMS”</u>	means Colorado Transportation Management Software.
<u>“CUHP/EPA-SWMM”</u>	means Colorado Urban Hydrograph Procedure/Environmental Protection Agency Storm Water Management Model.
<u>“CWCP”</u>	means Construction Work Communications Plan.
<u>“CWDM”</u>	means coarse wavelength division multiplexing.
<u>“CVS”</u>	means Cover Ventilation System.
<u>“DBE”</u>	means Disadvantaged Business Enterprise.
<u>“DCS”</u>	means Document Control System.
<u>“DPCM”</u>	means Design Process Control Manager.
<u>“DRAL”</u>	means Design of Relocation Acceptance Letter.
<u>“DRIRR”</u>	means Denver Rock Island Railroad.
<u>“DTD”</u>	means Division of Transportation Development.
<u>“DWDM”</u>	means dense wavelength division multiplexing.
<u>“ECS”</u>	means Erosion Control Supervisor.

<u>“ECWP”</u>	means Environmental Compliance Work Plan.
<u>“EDB”</u>	means extended detention basins.
<u>“EDP”</u>	means electrical distribution panels.
<u>“EIS”</u>	means Environmental Impact Statement.
<u>“EM”</u>	means Environmental Manager.
<u>“EPA”</u>	means Environmental Protection Agency.
<u>“ERP”</u>	means Emergency Response Plan.
<u>“ESAL”</u>	means 18-kip Equivalent Single Axle Loads.
<u>“ESB”</u>	means Emerging Small Business.
<u>“ETC”</u>	means Electronic Toll Collection.
<u>“FCM”</u>	means fracture critical member.
<u>“FDAS”</u>	means Fire Detection and Alarm System.
<u>“FDS”</u>	means Functional Design Specification.
<u>“FEE”</u>	means Fee interest or ownership of the fee simple estate in real property.
<u>“FFFS”</u>	means Fixed Firefighting System.
<u>“FMV”</u>	means Fair Market Value.
<u>“GUI”</u>	means graphical user interface.
<u>“GPS”</u>	means Global Positioning System.
<u>“HBP”</u>	means hot bituminous pavement.
<u>“HDPE”</u>	means high-density polyethylene.
<u>“HGL”</u>	means hydraulic grade line.
<u>“HLMR”</u>	means high load multi-rotational.
<u>“HMA”</u>	means hot mix asphalt.
<u>“HOV”</u>	means high occupancy vehicle.
<u>“HVAC”</u>	means heating, ventilation, and air conditioning.
<u>“IA”</u>	means Independent Assurance.
<u>“IAR”</u>	means Interstate Access Request.
<u>“IBC”</u>	means International Building Code.
<u>“IDQM”</u>	means Independent Design Quality Manager.
<u>“IESNA”</u>	means Illumination Engineering Society North America.
<u>“IGMP”</u>	means Internet Group Management Protocol.
<u>“IMP”</u>	means Incident Management Plan.
<u>“IQC”</u>	means Independent Quality Control, which for certainty is the same as “ICQC” as defined in the CDOT Field Materials Manual.
<u>“IQCF”</u>	means the Independent Quality Control firm or function group, as described in Section 6.2.5.b of Schedule 8 (<i>Project Administration</i>) to the Project Agreement.
<u>“IQCM”</u>	means Independent Quality Control Manager.
<u>“INWMP”</u>	means Integrated Noxious Weed Management Plan.
<u>“IP”</u>	means Internet Protocol.
<u>“IRI”</u>	means International Roughness Index.
<u>“ISO”</u>	means International Organization for Standardization.
<u>“ITS”</u>	means Intelligent Transportation Systems.
<u>“IVR”</u>	means Interactive Voice Response.
<u>“LCD”</u>	means Liquid Crystal Display.
<u>“LED”</u>	means light emitting diode.
<u>“LEP”</u>	means Limited English Proficient.
<u>“LFD”</u>	means load factor design.
<u>“LFR”</u>	means a load factor rating.
<u>“LOMR”</u>	means Letter of Map Revision.
<u>“LP”</u>	means Lighting Protection.
<u>“LRFD”</u>	means load resistance factor design.
<u>“LRFR”</u>	means aggregate base course.
<u>“LSOH”</u>	means low smoke, zero halogen.
<u>“LUS”</u>	means Lane Use Signal.
<u>“M-E”</u>	means mechanistic-empirical.
<u>“MBTA”</u>	means Migratory Bird Treaty Act.

<u>“MEP”</u>	means mechanical, electrical, and plumbing.
<u>“MHCP”</u>	means Mile High Courtesy Patrol.
<u>“MHT”</u>	means Methods of Handling Traffic.
<u>“MMP”</u>	means Materials Management Plan (in the context of Construction Work, and otherwise as the context may provide).
<u>“MMP”</u>	means Maintenance Management Plan (in the context of O&M Work).
<u>“MMIS”</u>	means Maintenance Management Information System.
<u>“MOCP”</u>	means Maintenance and Operations Communications Plan.
<u>“MOT”</u>	means maintenance of traffic.
<u>“MVRD”</u>	means Microwave Vehicle Radar Detection.
<u>“MS4”</u>	means Municipal Separate Storm Sewer System.
<u>“MSE”</u>	means mechanically stabilized earth.
<u>“MTIP”</u>	means Materials Testing and Inspection Plan.
<u>“MW”</u>	means megawatts.
<u>“NCN”</u>	means Nonconformance Notice.
<u>“NCHRP”</u>	means National Cooperative Highway Research Program.
<u>“NCR”</u>	means Nonconformance Report.
<u>“NDRD”</u>	means New Development Redevelopment.
<u>“NEC”</u>	means National Electric Code.
<u>“NEPA”</u>	means the National Environmental Policy Act.
<u>“NFPA”</u>	means National Fire Protection Association.
<u>“NIOSH”</u>	means National Institute for Occupational Safety and Health.
<u>“NIST”</u>	means National Institute of Standards and Technology.
<u>“NSBA”</u>	means National Steel Bridge Alliance.
<u>“NTCIP”</u>	means National Transportation Communications for ITS Protocol.
<u>“NTP”</u>	means Notice to Proceed.
<u>“O&M”</u>	means Operations and Maintenance.
<u>“OCR”</u>	means Optical Character Recognition.
<u>“OJT”</u>	means On the Job Training.
<u>“OMP”</u>	means Operations Management Plan.
<u>“OMQMP”</u>	means O&M Quality Management Plan.
<u>“OTIS”</u>	means Online Transportation Information System.
<u>“PA”</u>	means Public Address.
<u>“PC”</u>	means Process Control.
<u>“PCCP”</u>	means Portland cement concrete pavement.
<u>“PCM”</u>	means Project Communications Manager.
<u>“PDA”</u>	means Pile Driving Analyzer.
<u>“PE”</u>	means Permanent Easement.
<u>“PIARC”</u>	means Permanent International Association of Road Congresses.
<u>“PIP”</u>	means Public Information Plan.
<u>“PLC”</u>	means programmable logic controller.
<u>“PoE”</u>	means Power over Ethernet.
<u>“PMP”</u>	means Project Management Plan.
<u>“PNS”</u>	means Pacific Northwest Snow Fighters.
<u>“POSS”</u>	means Point of Slope Selection.
<u>“PQM”</u>	means Project Quality Manager.
<u>“PSQF”</u>	means Permanent Stormwater Quality Facilities.
<u>“PTFE”</u>	means polytetrafluoroethylene.
<u>“PTI”</u>	means Post-Tensioning Institute.
<u>“PUC”</u>	means Public Utility Commission.
<u>“PVC”</u>	means polyvinyl chloride.
<u>“QC”</u>	means Quality Control.
<u>“QMP”</u>	means Quality Management Plan.
<u>“QMS”</u>	means Quality Management System.
<u>“QRD”</u>	means Quality Records Database.
<u>“RAP”</u>	means Recycled Asphalt Pavement.

<u>“REC”</u>	means Recognized Environmental Condition.
<u>“RFC”</u>	means Release for Construction.
<u>“RFP”</u>	means Request for Proposals.
<u>“RHM”</u>	means Recognized Hazardous Material.
<u>“ROD”</u>	means Record of Decision.
<u>“ROW”</u>	means Right-of-Way.
<u>“RPM”</u>	means Reflective Pavement Markers.
<u>“RTD”</u>	means Regional Transportation District.
<u>“RTK”</u>	means Real Time Kinematic.
<u>“RTM”</u>	means Requirements Traceability Matrix.
<u>“RWIS”</u>	means Road Weather Information System.
<u>“SAP”</u>	means Sampling Analysis Plan.
<u>“SB”</u>	means Colorado Senate Bill.
<u>“SCADA”</u>	means Supervisory Control and Data Acquisition.
<u>“SCP”</u>	means Stormwater Construction Permit.
<u>“SFP”</u>	means small form-factor pluggable.
<u>“SMA”</u>	means stone matrix asphalt.
<u>“SMFO”</u>	means Single-Mode Fiber Optic.
<u>“SMP”</u>	means Safety Management Plan.
<u>“SMVMS”</u>	means Side Mounted Variable Message Signs.
<u>“SOLIT”</u>	means Safety of Life in Tunnels.
<u>“SOV”</u>	means single occupancy vehicle.
<u>“SPCC”</u>	means Spill Prevention Control and Countermeasures.
<u>“TCP”</u>	means Temporary Traffic Control Plan.
<u>“TDC”</u>	means Traffic Data Collection Unit.
<u>“TDM”</u>	means Travel Demand Management.
<u>“TE”</u>	means Temporary ROW Easement.
<u>“TMOSS”</u>	means Terrain Modeling Survey System.
<u>“TMP”</u>	means Transportation Management Plan.
<u>“TOP”</u>	means Transportation Operations Plan.
<u>“TSS”</u>	means total suspended solids.
<u>“TTI”</u>	means Travel Time Indicators.
<u>“UBC”</u>	means Uniform Building Code.
<u>“UDFCD”</u>	means Urban Drainage and Flood Control District.
<u>“UE”</u>	means Utility easements.
<u>“UNCC”</u>	means Utility Notification Center of Colorado.
<u>“UPRR”</u>	means Union Pacific Railroad.
<u>“UPS”</u>	means Uninterruptible Power Supply.
<u>“URA”</u>	means Utility Relocation Agreement.
<u>“USFWS”</u>	means U.S. Fish and Wildlife Service.
<u>“VA”</u>	means Voice Alarm.
<u>“VCS”</u>	means ventilation control system.
<u>“VFD”</u>	means Vacuum Fluorescent Display.
<u>“VMS”</u>	means Variable Message Sign.
<u>“VTMS”</u>	means Variable Toll Message Sign.
<u>“WBS”</u>	means a Work Breakdown Structure.
<u>“WDP”</u>	means Workforce Development Plan.
<u>“WQCV”</u>	means Water Quality Capture Volume.

Schedule 1
Intentionally Omitted

Schedule 2
Representations and Warranties

Part A: Representations and Warranties of Construction Contractor

- (a) **Organization; Power and Authority.** The Construction Contractor:
- (i) is a corporation, duly incorporated, validly existing and in good standing in accordance with the laws of the State of Delaware;
 - (ii) is authorized to transact business in, and is registered with the Secretary of State in, the State; and
 - (iii) has the corporate power and authority to:
 - (A) transact the business that it transacts and proposes to transact pursuant to the this Agreement; and
 - (B) execute, deliver and perform this Agreement, each other CC Project Document, and each other Subcontract to which the Construction Contractor is a party (collectively, the "Construction Contractor Agreements").
- (b) **Authorization and Due Execution.**
- (i) Each Person executing any Construction Contractor Agreement on behalf of the Construction Contractor has been (or, at the time of execution, will have been) duly authorized to execute and deliver such document on behalf of the Construction Contractor.
 - (ii) The execution, delivery and performance of each Construction Contractor Agreement by the Construction Contractor has otherwise been duly authorized by all necessary corporate action of the Construction Contractor.
 - (iii) Each Construction Contractor Agreement has been (or, at the time of execution and delivery, will have been) duly and validly executed and delivered by the Construction Contractor.
- (c) **Enforceability.** Each Construction Contractor Agreement constitutes (or, at the time of execution and delivery, will constitute) a legal, valid and binding obligation of the Construction Contractor, enforceable against the Construction Contractor and, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.
- (d) **No Conflicts.** The execution, delivery and performance by the Construction Contractor of any Construction Contractor Agreement does not and will not contravene any:
- (i) Law applicable to the Construction Contractor that is in effect on the date of execution and delivery of each Construction Contractor Agreement;
 - (ii) organizational, corporate or other governing documents of the Construction Contractor; or
 - (iii) agreement, instrument, Governmental Approval, judgment or decree to which the Construction Contractor is a party or is bound.
- (e) **Consents and Approvals.**
- (i) Prior to the Agreement Date, the Construction Contractor familiarized itself with the requirements of any and all Laws, including Laws applicable to the use of Federal funds, and the conditions of any Governmental Approvals or Permits necessary to perform its obligations under this Agreement at the time and in the manner required.
 - (ii) As of the date on which this representation and warranty is given or repeated, the Construction Contractor has acquired any and all Governmental Approvals and Permits:

Central 70 Project: Design and Construction Contract
Schedule 2 (Representations and Warranties)

- (A) that the Construction Contractor is required to obtain pursuant to this Agreement;
and
- (B) that are necessary to perform those of its obligations under this Agreement that fall due for performance on or immediately following such date such that the Construction Contractor is not and will not be in breach of Part 2, Section 8.4.2.a. of this Agreement,

and, as of such date, all such Governmental Approvals and Permits are in full force and effect.
- (iii) The Construction Contractor has no reason to believe that any Governmental Approval or Permit that the Construction Contractor is required to obtain pursuant to this Agreement will not be granted in due course and thereafter remain in effect so as to enable the Construction Work and the O&M Work During Construction to proceed in accordance with this Agreement.
- (f) **Construction Contractor Default.** No Construction Contractor Default has occurred and is continuing, and no fact or event exists that with the passage of time or giving of notice would constitute a Construction Contractor Default.
- (g) **Applicable Law.** The Construction Contractor is not in breach of any Law that would have a material adverse effect on the Construction Work or the O&M Work During Construction or the performance of any of its obligations under the Construction Contractor Agreements.
- (h) **Due Diligence; Reasonable Investigation.**
 - (i) The statements set out in Part 2, Sections 3.1.a, 3.1.b and 3.2.1 of this Agreement are true and accurate.
 - (ii) On the basis of:
 - (A) the due diligence conducted by the Construction Contractor and the other Construction Contractor-Related Entities as referred to in Part 2, Sections 3.1.b and 3.2.1 of this Agreement; and
 - (B) subsequent such diligence of the Project, the Project Information and the Site as has been conducted by the Construction Contractor,

and taking into account the terms of the Construction Contract and the Construction Contractor's rights thereunder, the Construction Contractor:
 - (C) is familiar with and accepts the physical requirements of the Construction Work and the O&M Work During Construction;
 - (D) has evaluated all the constraints affecting design and construction of the Project and has reasonable grounds for believing and believes that the Project can be designed and built within such constraints; and
 - (E) has obtained for itself all necessary information regarding the risks, contingencies and other circumstances which may influence or affect its ability to perform its obligations under this Agreement and any other factors which would affect its decision to enter into this Agreement or the terms on which it would do so.
- (i) **Intentionally Omitted.**
- (j) **Legal Proceedings.** There is no:
 - (i) criminal, civil, enforcement or other action, suit, proceeding, investigation or litigation pending or served on or against the Construction Contractor that:
 - (A) challenges the Construction Contractor's authority to execute, deliver or perform any Construction Contractor Agreement;

Central 70 Project: Design and Construction Contract
Schedule 2 (Representations and Warranties)

- (B) challenges the validity or enforceability of any Construction Contractor Agreement;
 - (C) challenges the authority of any Construction Contractor representative executing any Construction Contractor Agreement; or
 - (D) could reasonably be expected to have a material and adverse effect on the ability of the Construction Contractor to perform its obligations under any Construction Contractor Agreement; and
- (ii) un-served or threatened action, suit, proceeding, investigation or litigation against the Construction Contractor with respect to any of the matters referred to in paragraphs (j)(i)(A) to (D) of this Part A of which the Construction Contractor is aware and has not previously disclosed in writing to the Developer.
- (k) **Prohibited Acts.** The Construction Contractor has not, and, to the best of Construction Contractor's knowledge and belief (the Construction Contractor having made reasonable enquiries with a view to obtaining such knowledge and belief) no Construction Contractor-Related Entity has, committed any Prohibited Act.
- (l) **Organizational Conflicts of Interest.** As of the Financial Proposal Deadline, the Construction Contractor disclosed to the Developer in writing all Organizational Conflicts of Interest of which the Construction Contractor was aware and, since such date, the Construction Contractor has not obtained knowledge (the Construction Contractor having made reasonable inquiries with a view to obtaining such knowledge) of any additional Organizational Conflict of Interest, and there have been no Organizational Changes or Key Personnel Changes (as such terms are defined in the ITP) to or by the Construction Contractor or its Subcontractors identified in the Developer's Proposal which require approval by the Enterprises pursuant to the terms of the ITP and have not been so approved.
- (m) **Debarment.** None of the Construction Contractor, any of its principals or any of its Subcontractors are presently disqualified, suspended or debarred from bidding, proposing or contracting with any state-level, interstate or Federal Governmental Authority. For purposes of this representation and warranty, the term "principal" means an officer, director, equity member or other direct or indirect owner, partner, Key Personnel, employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Construction Contractor.
- (n) **Intentionally Omitted.**
- (o) **Construction Contractor.** As of the effective date of this Agreement:
 - (i) the Construction Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer;
 - (ii) the Construction Contractor has:
 - (A) obtained or will obtain and will maintain all necessary or required registrations, permits, licenses and approvals required under applicable law; and
 - (B) the expertise, qualifications, experience, competence, skills and know-how to perform, in accordance with the Project Agreement and this Agreement, the CC Work;
 - (iii) Intentionally Omitted; and
 - (iv) no default under this Agreement has occurred and is continuing, and no fact or event exists that with the passage of time or giving of notice would constitute such a default.

Part B: Representations and Warranties of the Developer

- (a) **Power and Authority.** The Developer:
- (i) is a limited liability company, duly organized, validly existing and in good standing in accordance with the laws of the State of Delaware;
 - (ii) is authorized to transact business in, and is registered with the Secretary of State in, the State; and
 - (iii) has the limited liability company power and authority to:
 - (A) transact the business that it transacts and proposes to transact pursuant to the this Agreement; and
 - (B) execute, deliver and perform this Agreement, the Interface Agreement, the Enterprises' CC Direct Agreement, and the Lenders' CC Direct Agreement (collectively, the "Developer Agreements").
- (b) **Authorization and Due Execution.**
- (i) Each person executing any Developer Agreement on behalf of the Developer has been (or, at the time of execution, will have been) duly authorized to execute and deliver such Developer Agreement on behalf of the Developer.
 - (ii) The execution, delivery and performance of each Developer Agreement has otherwise been duly authorized by the Developer.
 - (iii) Each Developer Agreement has been (or will be) duly and validly executed and delivered by the Developer.
- (c) **Enforceability.** Each Developer Agreement constitutes (or, at the time of execution and delivery, will constitute) a legal, valid and binding obligation of the Developer enforceable against it in accordance with its terms as such terms separately apply to the Developer, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of the rights of creditors generally, by general principles of equity, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of the powers delegated to it by the Constitution of the United States.
- (d) **No Conflicts.** The execution and delivery by the Developer of the Developer Agreements has not resulted in, and the performance thereof by the Developer will not result in:
- (i) a breach of, default under or a violation of any agreement, instrument, judgment or decree to which the Developer is a party or is bound; or
 - (ii) a violation of any Law applicable to the Developer that is in effect on the date of execution and delivery of each Developer Agreement.
- (e) **Consents and Approvals.** As of the date on which this representation and warranty is given or repeated, no consent of any party and no Governmental Approval which has not already been obtained is required, as of such date, to have been obtained in connection with the execution, delivery and performance of any Developer Agreement by the Developer.
- (f) **Developer Default.** No Developer Default has occurred and is continuing, and no fact or event exists that with the passage of time or giving of notice would constitute a Developer Default.
- (g) **Applicable Laws.** The Developer is not in breach of any Law that would have a material adverse effect on the performance of any of its obligations under any Developer Agreement.
- (h) **Legal Proceedings.** There is no action, suit, proceeding, investigation or litigation is pending or overtly threatened in writing:
- (i) that challenges:

Central 70 Project: Design and Construction Contract
Schedule 2 (Representations and Warranties)

- (A) the Developer's authority to execute, deliver or perform;
 - (B) the legality, validity or enforceability of, as against the Developer; or
 - (C) the authority of any representative of the Developer executing,
- in each case, any of the Developer Agreements; or
- (ii) that could reasonably be expected to have a material and adverse effect on the ability of the Developer to perform its obligations under this Agreement.
- (i) **Intentionally Omitted.**

Part C: Intentionally Omitted.

Schedule 3
Commencement and Completion Mechanics

Part 1: Commencement of NTP1 Work

1. In this Agreement, "NTP1 Conditions" means the following conditions, each of which shall be construed as a separate and independent condition:
 - (a) The Construction Contractor shall have submitted each Deliverable which is identified as being required to be submitted prior to the issuance of NTP1 in either (x) the "Schedule" column in any of the Deliverables tables in Schedule 8 (Project Administration), Schedule 10 (Design and Construction Requirements), Schedule 11 (Operations and Maintenance Requirements), Schedule 14 (Strategic Communications), Schedule 15 (Federal and State Requirements) (other than the first two Deliverables listed in the Deliverables Table in Schedule 14 and the first Deliverable listed in the Deliverables Table in Schedule 15), Schedule 17 (Environmental Requirements) and Schedule 18 (Right-of-Way) (collectively, the "Deliverables Tables") or (y) any other part of this Agreement (excluding such Schedules), and:
 - (i) if Acceptance, Approval or other consent, approval or like assent of any such Deliverable is required as indicated in the Deliverables Tables or otherwise by the express terms of this Agreement, the Construction Contractor shall have received such Acceptance, Approval or other consent, approval or like assent as applicable, of each such Deliverable; and
 - (ii) if any such Deliverable is required to be submitted for Information as indicated in the Deliverables Tables or otherwise by the express terms of this Agreement, the initial review period as determined pursuant to Section 6(a) of Schedule 9 (Submittals) shall have expired with respect to each such Deliverable;
 - (b) the Construction Contractor shall have mobilized its quality management staff as anticipated by the Approved Stage 1 Quality Management Plan;
 - (c) no Construction Contractor Default shall have occurred and be continuing; and
 - (d) the Construction Contractor shall have satisfied any other requirements and conditions that are required by the terms of this Agreement to have been satisfied by the Construction Contractor prior to the issuance of NTP1 or the commencement of any NTP1 Work.
2. Pursuant to Part 2, Section 9.1.a of this Agreement, the Construction Contractor shall not be entitled to commence any NTP1 Work (other than those preparatory activities referenced in paragraphs b. and c. of the definition of NTP1 Work in Part A of Annex A (*Definitions and Abbreviations*)) of this Agreement until the Developer has provided the Construction Contractor with a copy of NTP1.
3. The Construction Contractor shall notify the Developer promptly after it considers that all NTP1 Conditions have been satisfied.
4. The Developer shall promptly after receipt of a notice from the Construction Contractor pursuant to Section 3 of this Part 1, and in any event within five Working Days after such receipt, either:
 - (a) if it considers that all NTP1 Conditions have been satisfied, notify the Enterprises that it considers all NTP1 conditions have been satisfied; or
 - (b) if it does not consider that all NTP1 Conditions have been satisfied, notify the Construction Contractor to such effect, specifying which NTP1 Conditions have not been satisfied and why it considers that such NTP1 Conditions have not been satisfied, in which case the Construction Contractor shall address the issues identified by the Developer and the procedures set forth in Sections 3 and 4 of this Part 1 shall be repeated until the Developer issues a notice to the Enterprises pursuant to Section 4(a) of this Part 1.

Central 70 Project: Design and Construction Contract
Schedule 3 (Commencement and Completion Mechanics)

5.
 - (a) If the Enterprises issue a notice to Developer pursuant to Section 4(a) of Part 1 of Schedule 3 (*Commencement and Completion Mechanics*) of the Project Agreement, then the Developer shall promptly provide a copy of such notice to the Construction Contractor, which notice shall constitute NTP1.
 - (b) If the Enterprises issue a notice to Developer pursuant to Section 4(b) of Part 1 of Schedule 3 (*Commencement and Completion Mechanics*) of the Project Agreement, then the Developer shall promptly provide a copy of such notice to the Construction Contractor. The Construction Contractor shall address such any such deficiencies identified by the Enterprises, and the procedures set forth in Sections 3 and 4 of this Part 1 shall be repeated until the Developer issues a notice to the Enterprises pursuant to Section 4(a) of this Part 1.

Part 2: Commencement of Construction Work and O&M During Construction Work

1. In this Agreement, “NTP2 Conditions” means the following conditions, each of which shall be construed as a separate and independent condition:
 - (a) NTP1 shall have been issued;
 - (b) the FHWA shall have approved the initial financial plan submitted by the Developer pursuant to Section 8.3.3.a.i.B.I. of the Project Agreement;
 - (c) all Governmental Approvals and Permits applicable to the commencement of Construction Work and O&M Work During Construction shall have been obtained, any conditions thereto that are required to be satisfied in advance of such commencement shall have been satisfied, and the Construction Contractor shall have otherwise complied with its obligations in relation to such Governmental Approvals and Permits pursuant to this Agreement, including under Part 2, Section 8.4.2 of this Agreement and under Section 5 of Schedule 8 (Project Administration);
 - (d) the Construction Contractor shall have delivered to the Developer:
 - (i) copies of all Governmental Approvals and Permits referred to in Section 1(c) of this Part 2; and
 - (ii) evidence that any conditions thereto that are required to be satisfied in advance of commencement of the Construction Work and O&M During Construction have been satisfied;
 - (e) the Construction Contractor shall have demonstrated the functionality and use of its Maintenance Management Information System to the satisfaction of the Developer (acting in their discretion) and such Maintenance Management Information System shall be fully operational and substantially populated, as determined by reference to Section 7 of Schedule 11 (Operations and Maintenance Requirements);
 - (f) the Construction Contractor shall have submitted to the Developer, and received Acceptance of, a written protocol pursuant to Part 2, Section 19.1.3.d of this Agreement;
 - (g) the Construction Contractor shall have submitted each Deliverable which is identified as being required to be submitted either (1) prior to the issuance of NTP2 or (2) a specified number of days after the issuance of NTP1, either (x) in the “Schedule” column in any of the Deliverables Tables (other than the third Deliverable listed in the Deliverables Table in Schedule 14 (Strategic Communications)) or (y) any other part of this Agreement (excluding the Schedules referred to in Section 1(a) of Part 1 of this Schedule 3), and:
 - (i) if Acceptance, Approval or other consent, approval or like assent of any such Deliverable is required as indicated in the Deliverables Tables or otherwise by the express terms of this Agreement, the Construction Contractor shall have received such Acceptance, Approval or other consent, approval or like assent as applicable, of each such Deliverable; and
 - (ii) if any such Deliverable is required to be submitted for Information as indicated in the Deliverables Tables or otherwise by the express terms of this Agreement, the initial review period as determined pursuant to Section 6(a) of Schedule 9 (Submittals) shall have expired with respect to each such Deliverable;
 - (h) the Construction Contractor shall have delivered to the Developer the Contractor Bonds as required pursuant to Part 2, Section 9.3.1.a.i of this Agreement;
 - (i) no Construction Contractor Default shall have occurred and be continuing; and
 - (j) the Construction Contractor shall have satisfied any other requirements and conditions that are required by the terms of this Agreement to have been satisfied prior to the issuance of NTP2 and the commencement of the Construction Work and O&M Work During Construction (other than Snow and Ice Control Services).

Central 70 Project: Design and Construction Contract
Schedule 3 (Commencement and Completion Mechanics)

2. Pursuant to Part 2, Section 9.1.2.b of this Agreement, the Construction Contractor shall not be entitled to:
 - (a) commence any Construction Work or O&M Work During Construction until the Developer has provided the Construction Contractor with a copy of NTP2; or
 - (b) commence any specific aspect of the Construction Work or O&M Work During Construction pursuant to this Agreement until any applicable condition to such commencement specified in this Agreement (including in Schedule 8 (Project Administration), Schedule 10 (Design and Construction Requirements) and Schedule 11 (Operations and Maintenance Requirements)) has been satisfied.
3. The Construction Contractor shall notify the Developer promptly after it considers that all NTP2 Conditions have been satisfied.
4. The Developer shall promptly after receipt of a notice from the Construction Contractor pursuant to Section 3 of this Part 2 and, in any event, within five Working Days after such receipt either:
 - (a) if it considers that all NTP2 Conditions have been satisfied, notify the Enterprises that it considers all NTP2 conditions have been satisfied; or
 - (b) if it does not consider that all NTP2 Conditions have been satisfied, notify the Construction Contractor to such effect, specifying which NTP2 Conditions have not been satisfied and why it considers that such NTP2 Conditions have not been satisfied, in which case the procedures set forth in Sections 3 and 4 of this Part 2 shall be repeated until the Developer issues a notice to the Enterprises pursuant to Section 4(a) of this Part 2.
5. If the Enterprises issue a notice to Developer pursuant to Section 4(a) of Part 2 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, then the Developer shall promptly provide a copy of such notice to the Construction Contractor and:
 - (a) if the Financial Close Date has occurred prior to or on the same date as the date of issuance by the Enterprises of such notice, such notice shall constitute NTP2; and
 - (b) if the Enterprises issues such notice prior to Financial Close Date, such notice shall not constitute NTP2, it being acknowledged and agreed that the Developer shall provide a copy of such further notice as is provided to the Developer by the Enterprises pursuant to Section 5(b) of Part 2 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, and such further notice shall constitute NTP2.
6. If the Enterprises issue a notice to Developer pursuant to Section 4(b) of Part 2 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, then the Developer shall promptly provide a copy of such notice to the Construction Contractor. The Construction Contractor shall address such any such deficiencies identified by the Enterprises in accordance with Part 2, Section 9.1.2.b.

Part 3: Commencement of Snow and Ice Control Services

1. In this Agreement, "NTP3 Conditions" means the following conditions:
 - (a) NTP1 and NTP2 shall have been issued; and
 - (b) Financial Close shall have occurred.
2. Subject to the obligations of the Construction Contractor to perform Snow and Ice Control Services pursuant to Section 2.2.2.b of Schedule 11 (*Operations and Maintenance Requirements*) (which obligations shall arise whether or not either (1) NTP3 has been issued or (2) the Snow and Ice Control Commencement Date has occurred), pursuant to Part 2, Section 9.1.a.iii of this Agreement, the Construction Contractor shall not be entitled to:
 - (a) commence Snow and Ice Control Services pursuant to this Agreement until:
 - (i) the Developer has provided the Construction Contractor with a copy of NTP3 in accordance with this Part 3; and
 - (ii) the Snow and Ice Control Commencement Date has occurred; and
 - (b) commence any specific aspect of Snow and Ice Control Services pursuant to this Agreement until any applicable condition to such commencement specified in this Agreement (including in Schedule 8 (*Project Administration*), Schedule 10 (*Design and Construction Requirements*) and Schedule 11 (*Operations and Maintenance Requirements*)) has been satisfied.
3. The Construction Contractor acknowledges and accepts that after satisfaction of the NTP3 Conditions, the Enterprises shall at any time thereafter issue a notice ("NTP3") to the Developer authorizing and requiring commencement of Snow and Ice Control Services pursuant to Section 2.2.1 of Schedule 11 (*Operations and Maintenance Requirements*) on the date specified in such notice (the "Snow and Ice Control Commencement Date"), which date shall be no earlier than the later of: (a) July 1, 2018; and (b) 30 Calendar Days after the date of such notice. The Developer will provide a copy of NTP3 to the Construction Contractor promptly upon receipt of NTP3 from the Enterprises.

Part 4: Milestone Completion

1. In this Agreement, "Milestone Completion Conditions" means, in respect of any Payment Milestone, the following conditions, each of which shall be construed as a separate and independent condition:
 - (a) the Developer and pursuant to the Project Agreement, the Enterprises, shall have Approved a Milestone Completion Punch List in respect of the relevant Payment Milestone;
 - (b) the Construction Contractor shall:
 - (i) have completed any Milestone Completion Punch List Items that are required in such Milestone Completion Punch List to be completed as Milestone Completion Conditions in respect of the relevant Payment Milestone; and
 - (ii) otherwise be in compliance with Section 4 of Part 7 of this Schedule 3 with respect to such Milestone Completion Punch List;
 - (c) subject only to any incomplete Milestone Completion Punch List Items in respect of the relevant Payment Milestone which are permitted to be completed after the relevant Milestone Completion Date, the Construction Contractor shall have completed the Construction Work related to the relevant Payment Milestone in accordance with this Agreement including:
 - (i) the repair, replacement or correction and full remediation of all Defects and the remediation of all Nonconforming Work pursuant to Section 6.5 of Schedule 8 (*Project Administration*); and
 - (ii) any such Construction Work related to Local Agency Roadways, including such that:
 - (iii) in the case of all Payment Milestones, the infrastructure constituting the relevant Payment Milestone is in a condition that can be operated for safe vehicular travel in all lanes and at all points of entry and exit; and
 - (iv) in the case of Payment Milestone 3 and Payment Milestone 4, the traffic shall have been properly transferred on to the infrastructure constituting such Payment Milestone pursuant to Schedule 10 (*Design and Construction Requirements*);
 - (d) the Construction Contractor shall have provided the Developer with a written certificate, in form and substance reasonably acceptable to the Developer, that limited Closures on the infrastructure constituting such Payment Milestone are required or expected for the remainder of the Construction Period;
 - (e) the Construction Contractor shall have conducted, and provided the Developer and the Enterprises with an opportunity to witness, all tests and inspections necessary to provide measurement records for each Element of the relevant Payment Milestone in accordance with the Performance and Measurement Table set out in Appendix A-1 to Schedule 11 (*Operations and Maintenance Requirements*) and the Construction Contractor's Approved Quality Management Plan;
 - (f) any systems and equipment in relation to the relevant Payment Milestone which the Construction Contractor is required to install pursuant to this Agreement:
 - (i) shall have been installed;
 - (ii) shall comply, in all respects, with applicable Law; and
 - (iii) excluding ETC or ITS Elements, shall:
 - (A) be fully operational and functional; and
 - (B) have passed any tests and inspections required under this Agreement,

Central 70 Project: Design and Construction Contract
Schedule 3 (Commencement and Completion Mechanics)

in each case subject only to completion of any incomplete Milestone Completion Punch List Items in respect of the relevant Payment Milestone which are permitted to be completed after the relevant Milestone Completion Date;

- (g) the Construction Contractor shall have submitted certificates in respect of the relevant Payment Milestone in the form and content as required by Section 6.4.3.b.i of Schedule 8 (*Project Administration*);
 - (h) the Construction Contractor shall have provided the Developer with lien waivers as required pursuant to Section 4(c) of Schedule 5 (*Milestone Payments*) of the Project Agreement;
 - (i) no Construction Contractor Default shall have occurred and be continuing (except with respect to any Construction Contractor Default number (2) or (5) in Part 2, Section 32.1.1 of this Agreement that shall be cured upon achievement of Milestone Completion of the relevant Payment Milestone (in the case of Construction Contractor Default number (5), simultaneously with achievement of Substantial Completion) and in respect of which the Enterprises have not issued a Termination Notice pursuant to Part 2, Section 33.1.3.a of this Agreement); and
 - (j) The Construction Contractor shall have satisfied any other requirements and conditions that are required by the terms of this Agreement to have been satisfied prior to completion of such Payment Milestone.
2. The Construction Contractor shall provide the Developer with prior notice in respect of the date the Construction Contractor determines that it will satisfy each of the Milestone Completion Conditions in respect of a Payment Milestone and the Parties shall undertake such actions as follows:
- (a) The Construction Contractor acknowledges and agrees that pursuant to Part 4 of Schedule 3 (*Commencement and Completion Mechanics*) of the Project Agreement, the Developer is required to provide certain notices to the Enterprises in advance of achievement of Milestone Completion in respect of a Payment Milestone and that the Construction Contractor shall provide notices to the Developer hereunder and at such time in advance of the obligations of the Developer pursuant to Part 4 of Schedule 3 (*Commencement and Completion Mechanics*) of the Project Agreement, in each case, in a manner sufficient to permit the Developer and the Construction Contractor to meet and discuss such notices and for the Developer to satisfy its obligations pursuant to Part 4 of Schedule 3 (*Commencement and Completion Mechanics*) of the Project Agreement.
 - (b) Upon issuance by the Construction Contractor of the notices required to be issued by the Developer pursuant to Part 4 of Schedule 3 (*Commencement and Completion Mechanics*) of the Project Agreement, the Construction Contractor and the Developer shall meet, confer and exchange information on a regular cooperative basis, and the Developer shall conduct an inspection of the relevant Construction Work comprising the relevant Payment Milestone, and its components, and such other investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the Milestone Completion Conditions have been satisfied in respect of such Payment Milestone. The Construction Contractor acknowledges and agrees to the rights of the Enterprises pursuant to Part 4 of Schedule 3 (*Commencement and Completion Mechanics*) of the Project Agreement, and agrees to cooperate and assist the Developer in order to comply with its obligations under Part 4 of Schedule 3 (*Commencement and Completion Mechanics*) of the Project Agreement.
 - (c) After the Construction Contractor has issued the notices required pursuant to Section 2(a) of Part 4 of this Schedule 3 and after completion of the investigations and inspections set forth in Section 2(b) of Part 4 of this Schedule 3, the Construction Contractor shall provide the Developer a final notice when the Construction Contractor determines it has satisfied the Milestone Completion Conditions in respect of such Payment Milestone. The notice from the Construction Contractor shall include a written

Central 70 Project: Design and Construction Contract
Schedule 3 (Commencement and Completion Mechanics)

certification, in form reasonably acceptable to the Developer and in form and substance in accordance with the notice the Developer is required to issue pursuant to Part 4 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, that the Construction Contractor has satisfied all the Milestone Completion Conditions in respect of such Payment Milestone.

3. Upon receipt of the notice and certification given by the Construction Contractor to the Developer pursuant to Section 2(c) of Part 4 of this Schedule 3, the Developer shall provide such notice and certification to the Enterprises and, upon receipt of a response from the Enterprises pursuant to Part 4 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, either (i) provide the Construction Contractor with a copy of the Certificate of Milestone Completion in respect of such Payment Milestone setting forth the date of such Milestone Completion issued by the Enterprises pursuant to the Project Agreement, (ii) provide notice to the Construction Contractor setting forth in writing the reasons why Milestone Completion in respect of such Payment Milestone has not been achieved, including any condition identified by the Enterprises in any notice delivered to the Developer pursuant to Part 4 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement. If the Developer provides notice under Section 3(ii) of Part 4 of this Schedule 3, and the Construction Contractor does not Dispute the Developer's assessment, then the processes set forth in Sections 2 and 3 of Part 4 of this Schedule 3 shall be repeated until the Developer issues the Certificate of Milestone Completion in respect of such Payment Milestone. If pursuant to Part 4 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, the Enterprises provide notice to the Developer setting forth why the Milestone Completion Conditions in respect of such Payment Milestone have not been satisfied pursuant to the Project Agreement and the Construction Contractor does Dispute such assessment, the Construction Contractor may submit an Equivalent Claim Notice.

Part 5: Substantial Completion

1. In this Agreement, "Substantial Completion Conditions" means the following, each of which shall be construed as a separate and independent condition:
 - (a) the Milestone Completion Date shall have occurred in respect of each of the Payment Milestones and all Milestone Completion Conditions in respect of all Payment Milestones shall remain satisfied;
 - (b) the Developer shall have Approved the Construction Contractor's completion of all work with respect to all Milestone Completion Punch List Items on the basis that the relevant Construction Work completed as a result of the completion of such Punch List Items is in full compliance with the applicable requirements of this Agreement;
 - (c) the Construction Contractor shall have completed the Construction Work for the Project in accordance with this Agreement, including:
 - (i) the repair, replacement or correction and full remediation of all Defects; and
 - (ii) the remediation of all Nonconforming Work pursuant to Section 6.5 of Schedule 8 (*Project Administration*),

including such that the Project is in a condition that can be open to traffic in the final configuration (subject only to completion of (A) any incomplete Substantial Completion Punch List Items which are permitted to be completed after the Substantial Completion Date and (B) any Construction Work the completion of which constitutes a Final Acceptance Condition);
 - (d) the Construction Contractor shall have provided the Developer with a written certificate, in form and substance reasonably acceptable to the Developer, that no Closures are required or expected during the Operating Period other than (i) Excused Closures and (ii) Permitted Operating Period Closures;
 - (e) the Construction Contractor shall have complied with Sections 3.5.6, 3.5.7, 3.5.8 and 3.5.9 of Schedule 10 (*Design and Construction Requirements*), and each time period referenced therein shall have expired;
 - (f) the Construction Contractor shall have conducted, and provided the Developer an opportunity to witness, all tests and inspections necessary to provide measurement records for each Element of the entire Project in accordance with the Performance and Measurement Tables and Developer's Approved Quality Management Plan;
 - (g) The Construction Contractor shall have delivered to the Developer (for delivery to the Enterprises) the Contractor Bonds required to be delivered by the Developer to the Enterprises pursuant to Section 9.3.1.a.ii of the Project Agreement;
 - (h) The Developer and, pursuant to Section 1(g) of Part 4 of Schedule 3 to the Project Agreement, the Enterprises shall have Approved any updates:
 - (i) that have been submitted pursuant to Section 4.2.6 of Schedule 11 (*Operations and Maintenance Requirements*); and
 - (ii) to the Performance and Measurement Table set out in Appendix A-2 to Schedule 11 (*Operations and Maintenance Requirements*);
 - (i) any systems and equipment which the Construction Contractor is required to install pursuant to this Agreement:
 - (i) shall have been installed;
 - (ii) shall comply, in all respects, with applicable Law;
 - (iii) shall be fully operational and functional; and
 - (iv) shall have passed any tests and inspections required under this Agreement,

Central 70 Project: Design and Construction Contract
Schedule 3 (Commencement and Completion Mechanics)

in each case subject only to completion of:

- (v) any incomplete Substantial Completion Punch List Items which are permitted to be completed after the Substantial Completion Date; and
- (vi) any Construction Work the completion of which constitutes a Final Acceptance Condition;
- (j) the Construction Contractor shall have delivered to the Developer all reports, data and documentation relating to such tests and inspections as are referred to in Section 1(f) of Part 4 and in Section 1(i) of this Part 5;
- (k) the Developer shall have Approved a Substantial Completion Punch List;
- (l) the Construction Contractor shall:
 - (i) have completed any Substantial Completion Punch List Items that are required in such Substantial Completion Punch List to be completed as Substantial Completion Conditions; and
 - (ii) otherwise be in compliance with Section 4 of Part 7 of this Schedule 3 with respect to such Substantial Completion Punch List;
- (m) if any Governmental Authority, Railroad or Utility Owner with jurisdiction over any portion of the Project requires any form of certification of design, engineering or construction with respect to such portion, including any certifications or approvals required under any Permit or Governmental Approval, the Construction Contractor shall have caused such certificates or approvals to be executed and delivered and shall have concurrently provided copies of such certificates or approvals to the Developer;
- (n) the Construction Contractor shall have submitted each Deliverable which is identified as being required to be submitted prior to issuance of Substantial Completion either (x) in the "Schedule" column in any of the Deliverables Tables or (y) any other part of this Agreement (excluding the Schedules referred to in Section 1(a) of Part 1 of this Schedule 3), and:
 - (i) if Acceptance, Approval or other consent, approval or like assent of any such Deliverable is required as indicated in the Deliverables Tables or otherwise by the express terms of this Agreement, the Construction Contractor shall have received such Acceptance, Approval or other consent, approval or like assent as applicable, of each such Deliverable; and
 - (ii) if any such Deliverable is required to be submitted for Information as indicated in the Deliverables Tables, the initial review period as determined pursuant to Section 6(a) of Schedule 9 (*Submittals*) shall have expired with respect to each such Deliverable;
- (o) the Construction Contractor shall have submitted certificates in respect of Substantial Completion in the form and content as required by Section 6.4.3.b.i of Schedule 8 (*Project Administration*);
- (p) with respect to all Insurance Policies that are required by Section 25 and Schedule 13 (*Required Insurances*) to be in effect on and from the Substantial Completion Date:
 - (i) such policies shall have been obtained from Eligible Insurers on terms that comply with Section 25 and Schedule 13 (*Required Insurances*) and shall be in full force and effect; and
 - (ii) the Developer shall have received binding verifications of coverage from the relevant insurers (or the Construction Contractor's insurance brokers) of such Insurance Policies, in compliance with Part 2, Section 25.3.1 of this Agreement as Accepted by the Developer;

Central 70 Project: Design and Construction Contract
Schedule 3 (Commencement and Completion Mechanics)

- (q) the Construction Contractor shall have provided the Developer with lien waivers as required pursuant to Section 4(c) of Schedule 5 (Milestone Payments) of the Project Agreement;
 - (r) no Construction Contractor Default shall have occurred and be continuing (except with respect to any Construction Contractor Default number (2) or (5) in Part 2, Section 32.1.1 of this Agreement that shall be cured upon achievement of Substantial Completion) and in respect of which the Developer has not issued a Termination Notice pursuant to Part 2, Section 33.1.3.a of this Agreement); and
 - (s) the Construction Contractor shall have satisfied any other requirements and conditions that are required by the terms of this Agreement to have been satisfied prior to Substantial Completion.
2. The Construction Contractor shall provide the Developer with prior notice in respect of the date the Construction Contractor determines that it will satisfy each of the Substantial Completion Conditions and the Parties shall undertake such actions as follows:
- (a) The Construction Contractor acknowledges and agrees that pursuant to Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, the Developer is required to provide certain notices to the Enterprises in advance of achievement of Substantial Completion and that the Construction Contractor shall provide notices to the Developer hereunder and at such time in advance of the obligations of the Developer pursuant to Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, in each case, in a manner sufficient to permit the Developer and the Construction Contractor to meet and discuss such notices and for the Developer to satisfy its obligations pursuant to Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement.
 - (b) Upon issuance by the Construction Contractor of the notices required to be issued by the Developer pursuant to Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, the Construction Contractor and the Developer shall meet, confer and exchange information on a regular cooperative basis, and the Developer shall conduct an inspection of the entire Project and its components (including all Milestone completion Punch List items), and such other investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the Substantial Completion Conditions have been satisfied. The Construction Contractor acknowledges and agrees to the rights of the Enterprises pursuant to Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, and agrees to cooperate and assist the Developer in order to comply with its obligations under Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement.
 - (c) After the Construction Contractor has issued the notices required pursuant to Section 2(a) of Part 5 of this Schedule 3 and after completion of the investigations and inspections set forth in Section 2(b) of Part 5 of this Schedule 3, the Construction Contractor shall provide the Developer a final notice when the Construction Contractor determines it has satisfied the Substantial Completion Conditions. The notice from the Construction Contractor shall include a written certification, in form reasonably acceptable to the Developer and in form and substance in accordance with the notice the Developer is required to issue pursuant to Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, that the Construction Contractor has satisfied all the Substantial Completion Conditions.
3. Upon receipt of the notice and certification given by the Construction Contractor to the Developer pursuant to Section 2(c) of Part 5 of this Schedule 3, the Developer shall provide such notice and certification to the Enterprises and, upon receipt of a response from the Enterprises pursuant to Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, either (i) provide a copy of the Substantial Completion Certificate issued by the Enterprises pursuant to the Project Agreement setting forth the date of Substantial Completion, (ii) provide

Central 70 Project: Design and Construction Contract
Schedule 3 (Commencement and Completion Mechanics)

notice to the Construction Contractor setting forth in writing the reasons why Substantial Completion has not been achieved, including any condition identified by the Enterprises in any notice delivered to the Developer pursuant to Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement. If the Developer provides notice under Section 3(ii) of Part 5 of this Schedule 3, and the Construction Contractor does not Dispute the Developer's assessment, then the processes set forth in Sections 2 and 3 of Part 5 of this Schedule 3 shall be repeated until the Developer provides a copy of the Substantial Completion Certificate. If pursuant to Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, the Enterprises provide notice to the Developer setting forth why the Substantial Completion Conditions have not been satisfied pursuant to the Project Agreement and the Construction Contractor does Dispute such assessment, the Construction Contractor may request that the Developer initiate a dispute in accordance with the Dispute Resolution Procedure.

Part 6: Final Acceptance

1. In this Agreement, “Final Acceptance Conditions” means the following, each of which shall be construed as a separate and independent condition:
 - (a) the Substantial Completion Date shall have occurred and all Substantial Completion Conditions shall remain satisfied;
 - (b) the Developer shall have Approved the Construction Contractor’s completion of all work with respect to all Substantial Completion Punch List Items on the basis that the relevant Construction Work completed as a result of the completion of such Punch List Items is in full compliance with the applicable requirements of this Agreement;
 - (c) all previously identified Defects shall have been repaired, replaced or otherwise corrected and fully remedied as required by this Agreement and all Nonconforming Work shall have been remedied pursuant to Section 6.5 of Schedule 8 (Project Administration);
 - (d) the Construction Contractor shall have provided the Developer with a written certificate, in form and substance reasonably acceptable to the Developer, that no Closures are required or expected during the Operating Period other than (i) Excused Closures and (ii) Permitted Operating Period Closures;
 - (e) the Developer shall have received and Accepted a complete set of As-Built survey sheets for the Project in the form and content as required by Schedule 10 (Design and Construction Requirements);
 - (f) the Developer shall have received and Accepted a complete set of the As-Built drawings in the form and content required by Schedule 8 (Project Administration) and Schedule 10 (Design and Construction Requirements);
 - (g) the Final Acceptance Condition specified in Section 14.9 of Schedule 10 (Design and Construction Requirements) shall have been, and shall remain, satisfied;
 - (h) the Construction Contractor shall have submitted certificates in respect of Final Acceptance in the form and content as required by Section 6.4.3.b.i of Schedule 8 (Project Administration);
 - (i) the Construction Contractor shall have submitted each Deliverable which is identified as being required to be submitted prior to issuance of Final Acceptance in either (x) the “Schedule” column in any of the Deliverables Tables or (y) any other part of this Agreement (excluding the Schedules referred to in Section 1(a) of Part 1 of this Schedule 3) and:
 - (i) if Acceptance, Approval or other consent, approval or like assent of any such Deliverable is required as indicated in the Deliverables Tables or otherwise by the express terms of this Agreement, the Construction Contractor shall have received such Acceptance, Approval or other consent, approval or like assent as applicable, of each such Deliverable; and
 - (ii) if any such Deliverable is required to be submitted for Information as indicated in the Deliverables Tables, the initial review period as determined pursuant to Section 6(a) of Schedule 9 (Submittals) shall have expired with respect to each such Deliverable;
 - (j) no Construction Contractor Default shall have occurred and be continuing (except with respect to any Construction Contractor Default number (2) in Part 2, Section 32.1.1 of this Agreement that shall be cured upon achievement of Final Acceptance) and in respect of which the Enterprises have not issued a Termination Notice pursuant to Part 2, Section 33.1.3.a of this Agreement); and
 - (k) the Construction Contractor shall have satisfied any other requirements and conditions that are required by the terms of this Agreement to have been satisfied prior to Final Acceptance.

Central 70 Project: Design and Construction Contract
Schedule 3 (Commencement and Completion Mechanics)

2. The Construction Contractor shall provide the Developer with prior notice in respect of the date the Construction Contractor determines that it will satisfy all of the Final Acceptance Conditions and the Parties shall undertake such actions as follows:
 - (a) The Construction Contractor acknowledges and agrees that pursuant to Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, the Developer is required to provide certain notices to the Enterprises in advance of achievement of Final Acceptance and that the Construction Contractor shall provide notices to the Developer hereunder and at such time in advance of the obligations of the Developer pursuant to Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, in each case, in a manner sufficient to permit the Developer and the Construction Contractor to meet and discuss such notices and for the Developer to satisfy its obligations pursuant to Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement.
 - (b) Upon issuance by the Construction Contractor of the notices required to be issued by the Developer pursuant to Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, the Construction Contractor and the Developer shall meet, confer and exchange information on a regular cooperative basis, and the Developer shall conduct an inspection of the entire Project and its components (including all Substantial Completion Punch List Items), and such other investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the Final Acceptance Conditions have been satisfied. The Construction Contractor acknowledges and agrees to the rights of the Enterprises pursuant to Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, and agrees to cooperate and assist the Developer in order to comply with its obligations under Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement.
 - (c) After the Construction Contractor has issued the notices required pursuant to Section 2(a) of Part 6 of this Schedule 3 and after completion of the investigations and inspections set forth in Section 2(b) of Part 6 of this Schedule 3, the Construction Contractor shall provide the Developer a final notice when the Construction Contractor determines it has satisfied the Final Acceptance Conditions. The notice from the Construction Contractor shall include a written certification, in form reasonably acceptable to the Developer and in form and substance in accordance with the notice the Developer is required to issue pursuant to Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, that the Construction Contractor has satisfied all the Final Acceptance Conditions.
3. Upon receipt of the notice and certification given by the Construction Contractor to the Developer pursuant to Section 2(c) of Part 6 of this Schedule 3, the Developer shall provide such notice and certification to the Enterprises and, upon receipt of a response from the Enterprises pursuant to Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, either (i) provide the Construction Contractor with a copy of the Final Acceptance Certificate issued by the Enterprises pursuant to the Project Agreement setting forth the date of Final Acceptance, (ii) provide notice to the Construction Contractor setting forth in writing the reasons why Final Acceptance has not been achieved, including any condition identified by the Enterprises in any notice delivered to the Developer pursuant to Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement. If the Developer provides notice under Section 3(ii) of Part 6 of this Schedule 3, and the Construction Contractor does not Dispute the Developer's assessment, then the processes set forth in Sections 2 and 3 of Part 6 of this Schedule 3 shall be repeated until the Developer provides a copy of the Final Acceptance Certificate. If pursuant to Part 6 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, the Enterprises provide notice to the Developer setting forth why the Final Acceptance Conditions have not been satisfied pursuant to the Project Agreement and the Construction Contractor does Dispute such assessment, the Construction Contractor may request that the Developer initiate a dispute in accordance with the Dispute Resolution Procedure.

Part 7: Punch List Mechanism

1. The Construction Contractor shall comply with the procedures and schedules for preparing Punch Lists and for completing Punch List Items pursuant to the Construction Contractor's Approved Project Management Plan and the provisions of this Part 7.
2. Following any inspection conducted:
 - (a) pursuant to Section 3(a) of Part 4 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, the Construction Contractor shall promptly prepare and deliver to the Developer a list (a "Milestone Completion Punch List") of Punch List Items applicable to the relevant Payment Milestone ("Milestone Completion Punch List Items"), including a proposed date of completion for each item (which shall in no event be later than the then anticipated Substantial Completion Date);
 - (b) pursuant to Section 3(a) of Part 5 of Schedule 3 (Commencement and Completion Mechanics) of the Project Agreement, the Construction Contractor shall promptly prepare and deliver to the Developer a list (a "Substantial Completion Punch List") of Punch List Items applicable to the entire Project ("Substantial Completion Punch List Items"), including a date of proposed completion for each item (which shall in no event be later than the Final Acceptance Deadline).
3. The Developer shall notify the Construction Contractor within 10 Working Days of receipt of any Punch List pursuant to Section 3 of this Part 7 whether it Approves the contents of such Punch List or dispute or reject the inclusion (or omission) of any Punch List Item on such Punch List.
4. The Construction Contractor shall promptly commence (or, as applicable, continue) work on all Approved Punch List Items and diligently prosecute such work to completion by the date of completion specified in the Punch List and in any event no later than (i) Substantial Completion with respect to all Milestone Completion Punch Line Items and (ii) the Final Acceptance Deadline with respect to all Substantial Completion Punch List Items.
5. The Construction Contractor shall, on an ongoing basis:
 - (a) (i) verify that each item on any Punch List has been corrected or completed, (ii) provide all final documentation, and (iii) perform a final review and inspection to verify that Punch List Items have been resolved, in the case of each (i)-(iii) to the satisfaction of the Developer (acting in its discretion); and
 - (b) provide the Developer with regular written updates regarding the same.

Schedule 4 Payments

Part 1: Construction Period

1. Milestone Payments.

- 1.1 The Construction Contractor acknowledges and agrees that the Milestone Payments payable by the Enterprises to the Developer pursuant to the Project Agreement will be utilized to pay certain portions of the Monthly Payments to the Construction Contractor in accordance with Part 1, Section 12.5, and that the Developer's payment of such portions of the Monthly Payments to the Construction Contractor is expressly subject to the Pay-if-Paid Provisions.
- 1.2 Amounts due and payable by the Developer to the Construction Contractor from the Milestone Payment payable at Substantial Completion shall be subject to adjustment in accordance with Part 1, Section 12.7.

2. Monthly Deductions Reports

- 2.1 The Construction Contractor shall submit to the Developer, no later than the seventh Working Day in each month that commences after the Financial Close Date (or, if earlier, the date of issuance of NTP1) and prior to the Substantial Completion Date, a report that complies with the requirements of Section 2.2 of this Part 1.
- 2.2 Each Monthly Deductions Report required to be submitted to the Developer pursuant to Section 2.1 of this Part 1 shall be in a form agreed by the Parties (acting reasonably) and shall contain the following information in relation to (unless expressly provided otherwise in this Section 2.2) the month that immediately precedes the month in which such Monthly Deductions Report is required to be submitted:

(a) details of:

- (i) each CC Noncompliance Event (including the nature of such event, its Noncompliance Start Time and, if such time has occurred at the date of such report, its Noncompliance Rectification Time) that accrued CC Noncompliance Points in the CP Deduction Month in accordance with Table 6A.1 and Part 4 of Schedule 6 (Performance Mechanism); and
- (ii) the number of CC Noncompliance Points that accrued in respect of each such CC Noncompliance Event in the CP Deduction Month (including details of how such number was calculated),

provided that, for certainty, in relation to any CC Noncompliance Event that occurred in (A) a month prior to the CP Deduction Month but which continued to subsist during the CP Deduction Month or (B) the CP Deduction Month but which continued to subsist after the end of the CP Deduction Month, the number of CC Noncompliance Points reported pursuant to this Section 2.2(a) shall be solely the number that accrued in the CP Deduction Month in accordance with Section 3 of Part 4 of Schedule 6 (Performance Mechanism);

- (b) the aggregate number of CC Noncompliance Points that accrued in the CP Deduction Month in respect of all CC Noncompliance Events in accordance with Table 6A.1 and Part 4 of Schedule 6 (Performance Mechanism);
- (c) the calculation of the Monthly Noncompliance Deduction for the CP Deduction Month;
- (d) the cumulative total of Monthly Noncompliance Deductions for all months up to and including the CP Deduction Month;
- (e) details of:
- (i) each Non-Permitted Construction Closure (including the cause thereof, its start time and, if such time has occurred at the date of such report, its end time) that

resulted in the accrual of one or more Construction Closure Deductions in the CP Deduction Month in accordance with Section 3 of Part 1 of Schedule 6 (*Performance Mechanism*); and

- (ii) the amount of such Construction Closure Deductions that accrued in respect of each such Non-Permitted Construction Closure in the CP Deduction Month (including details of how such amount was calculated),

provided that, for certainty, in relation to any Non-Permitted Construction Closure that commenced in (A) a month prior to the CP Deduction Month but which continued to subsist during the CP Deduction Month or (B) the CP Deduction Month but which continued to subsist after the end of the CP Deduction Month, the amount of Construction Closure Deductions reported pursuant to this Section 2.2(e) shall be solely the amount that accrued in the CP Deduction Month in accordance with Section 3.2(b) of Part 1 of Schedule 6 (*Performance Mechanism*);

- (f) the calculation of the Monthly Construction Closure Deduction for the CP Deduction Month;
 - (g) the cumulative total of Monthly Construction Closure Deductions for all months up to and including the CP Deduction Month;
 - (h) the aggregate of the amounts referred to in Sections 2.2(c) and (f) of this Part 1;
 - (i) the aggregate of the amounts referred to in Sections 2.2(d) and (g) of this Part 1;
 - (j) sufficient information to evidence whether:
 - (i) either of the Noncompliance Default Events specified in paragraph a.i or a.ii of the definition thereof in Part A of Annex A (*Definitions and Abbreviations*) to this Agreement; and/or
 - (ii) either of the Increased Oversight Thresholds specified in paragraph a.i or a.ii of the definition thereof in Part A of Annex A (*Definitions and Abbreviations*) to this Agreement,
- has occurred, which information shall include the cumulative number of Noncompliance Points accrued during each of the 12 month period and the 36 month period ending at the end of the CP Deduction Month; and
- (k) sufficient information to evidence whether either of the Closure Default Events specified in paragraph a.i or a.ii of the definition thereof in Part A of Annex A (*Definitions and Abbreviations*) to this Agreement has occurred, which information shall include the cumulative amount of Construction Closure Deductions accrued during the four month period and the 12 month period ending at the end of the CP Deduction Month.

Following submission of any Monthly Deductions Report pursuant to this Part 1, the Construction Contractor shall provide such other information as may reasonably be requested by the Developer in respect of the calculation of any amounts referenced in such report.

- 2.3 The Developer shall notify Construction Contractor in writing (with reasons and any supporting documentation available to the Developer) within 12 Working Days of receipt of any such Monthly Deductions Report if there is any part of such report which the Developer disputes, provided that a failure by the Developer to notify the Construction Contractor of a Dispute within such period shall not constitute a waiver of their rights to do so at a later date.
- 2.4 If the Parties agree or it is determined pursuant to the Dispute Resolution Procedures that any Monthly Deductions Report was incorrect or inaccurate, then the Construction Contractor shall be required (if requested by the Developer) to submit a corrected report and shall, in any event, reflect such correction, as appropriate, in the next Monthly Deductions Report to be submitted to the Developer pursuant to Section 2.1 of this Part 1 after the Parties reach agreement or the Dispute is resolved, provided that, in the event that any such inaccuracy is identified or Dispute

Central 70 Project: Design and Construction Contract
Schedule 4 (Payments)

resolved after payment of the Substantial Completion Payment, the Construction Contractor shall be required to reflect the necessary adjustment, as appropriate, in the next Payment Request submitted to the Developer after identification of such inaccuracy or resolution of such Dispute.

Part 2: Intentionally Omitted

Part 3: General

1. **Intentionally Omitted**
2. **Intentionally Omitted**
3. **Intentionally Omitted**
4. **Intentionally Omitted.**
5. **Set-off**

Notwithstanding any other provision of this Agreement:

- (a) the Developer may set-off against any amount owing to the Construction Contractor under this Agreement any amount which is Agreed or Determined to be due from the Construction Contractor under this Agreement, including:
 - (i) any funds that must be withheld pursuant to the requirements of C.R.S. § 38-26-107(2) and the amount of all loss, damage, cost or expense (including reasonable attorneys' fees (including the fees of the State's Attorney General's Office)), arising out of any claim, lien or action by the Construction Contractor or any Subcontractor against the Developer with respect to the claims, rights and liens waived and released pursuant to any lien waiver executed pursuant to Part 2, Section 57.1.1.b.iii;
 - (ii) liquidated damages payable by the Construction Contractor pursuant to this Agreement, including, without limitation, Delay Liquidated Damages; and
 - (iii) any amounts permitted to be withheld in accordance with Part 2, Section 53.7 of this Agreement.
- (b) Except as set forth in Part 1, Article 8.11, the Construction Contractor may set-off against any amount owing to the Developer under this Agreement any amount which is Agreed or Determined to be due from the Developer under this Agreement.

6. **Lien Waivers**

- (a) Intentionally Omitted:
- (b) Any lien waiver required to be executed by the Construction Contractor or a Subcontractor pursuant to Part 2, Section 57.1.1.b.iii shall be:
 - (i) if, at the time of execution of such lien waiver, the Construction Contractor or a Subcontractor has not yet become entitled to receive the final payment under this Agreement or the relevant Subcontract, as applicable, substantially in the form set out in Appendix C to this Schedule 4; and
 - (ii) if, at the time of execution of such lien waiver, the Construction Contractor or a Subcontractor has received the final payment under this Agreement or the relevant Subcontract, as applicable, substantially in the form set out in Appendix D to this Schedule 4.

Appendix A

Intentionally Omitted

Appendix B

Intentionally Omitted.

Appendix C
Form of Construction Contractor and Contractor Partial Lien Waiver

[CONSTRUCTION CONTRACTOR][SUBCONTRACTOR] PARTIAL WAIVER OF LIENS

This partial lien waiver is issued pursuant to the requirements of the Project Agreement for the Central 70 Project dated as of November 21, 2017 (the "Project Agreement"), by and among: Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"); Colorado Bridge Enterprise, a government-owned business within CDOT (together with HPTE and CDOT, the "Owners") and Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware (the "Developer") for the design, construction, financing, operation and maintenance of a portion of the I-70 East corridor in Greater Denver (the "Project").

SUBCONTRACTOR: [name of Construction Contractor or Subcontractor]
[address]

OWNERS: Colorado High Performance Transportation Enterprise
Address:
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222

and

Colorado Bridge Enterprise
Address:
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222

and

Colorado Department of Transportation
Address:
4201 East Arkansas Avenue
Denver, Colorado 80222

DATE: [month][day], [year] ("Waiver Date")

APPLICABLE SUBCONTRACT: The undersigned has entered into [agreement name (Construction Contract or applicable Subcontract)] with [name], dated as of [date], for [description of the work performed] in regards to the Project for the maximum amount of [amount]¹ (the "Agreement").²

1. The undersigned is a subcontractor who has furnished labor, laborers, material, rental machinery, tools and/or equipment in connection with the Project as described in the Agreement (the "Work Performed").
2. The undersigned has been paid in full for all amounts that have become due and owing under the Agreement to date for Work Performed through the Waiver Date ("Relevant Amounts").
3. The undersigned waives and releases all claims and rights of any kind against the Owners, the Developer or the Project which the undersigned can or may have, in respect of the Relevant

¹ Modify to reflect actual payment terms, as needed

² If the undersigned is not a Principal Subcontractor, add a sentence linking the "Agreement" to the Developer through the various tiers of Subcontractors.

Central 70 Project: Design and Construction Contract
Schedule 4 (Payments)

Amounts, to file any liens against the Owners or the Project for Work Performed through the Waiver Date including, without limitation, any mechanic's or materialmen's liens, and any liens pursuant to C.R.S. §§ 38-26-101 through and including § 38-26-110.

4. The undersigned represents and warrants that all persons or entities, if any, who have, directly or indirectly, furnished labor, laborers, material, rental machinery, tools and/or equipment to the undersigned in connection with the Work Performed have been paid in full for all amounts they are owed, subject to any payment that is dependent on collection by Developer of the payments referred to in paragraph 2 above.

[remainder of page left intentionally blank; signature page follows]

[CONSTRUCTION CONTRACTOR][SUBCONTRACTOR]:

[*company name*]

By: _____

Name: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20____, by
_____ as _____ of _____

Notary Public

My Commission Expires: _____

Appendix D
Form of Construction Contractor and Subcontractor Final Waiver of Lien

[CONSTRUCTION CONTRACTOR][SUBCONTRACTOR] FINAL WAIVER OF LIENS

This lien waiver is issued pursuant to the requirements of the Project Agreement for the Central 70 Project dated as of November 21, 2017 (the "Project Agreement"), by and among: Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"); Colorado Bridge Enterprise, a government-owned business within CDOT (together with HPTE and CDOT, the "Owners") and Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware (the "Developer") for the design, construction, financing, operation and maintenance of a portion of the I-70 East corridor in Greater Denver (the "Project").

SUBCONTRACTOR: [name of Construction Contractor or applicable Subcontractor]
[address]

OWNERS: Colorado High Performance Transportation Enterprise
Address:
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222

and

Colorado Bridge Enterprise
Address:
c/o Colorado Department of Transportation
4201 East Arkansas Avenue
Denver, Colorado 80222

and

Colorado Department of Transportation
Address:
4201 East Arkansas Avenue
Denver, Colorado 80222

DATE: [month][day], [year] ("Waiver Date")

APPLICABLE SUBCONTRACT: The undersigned has entered into [agreement name] with [name], dated as of [date], for [description of the work performed] in regards to the Project for the maximum amount of [amount]³ (the "Agreement").⁴

1. The undersigned is a subcontractor who has furnished labor, laborers, material, rental machinery, tools and/or equipment in connection with the Project as described in the Agreement (the "Work Performed").
2. The undersigned has been paid in full for all amounts that have become due and owing under the Agreement to date for Work Performed through the Waiver Date ("Relevant Amounts"), subject to collection of any payment that is dependent on payment of the amount referenced in Developer's

³ Modify to reflect actual payment terms, as needed.

⁴ If the undersigned is not a Principal Subcontractor, add a sentence linking the "Agreement" to the Developer through the various tiers of Subcontractors.

Central 70 Project: Design and Construction Contract
Schedule 4 (Payments)

payment request to which this lien waiver is attached, and no work remains to be performed under the Agreement that could result in the requirement for further payments to be made to the undersigned.

3. The undersigned waives and releases all claims and rights of any kind against the Owners, the Developer or the Project which the undersigned can or may have, in respect of the Relevant Amounts, to file any liens against the Owners or the Project including, without limitation, any mechanic's or materialmen's liens, and any liens pursuant to C.R.S. §§ 38-26-101 through and including § 38-26-110.
4. The undersigned represents and warrants that all persons or entities who have furnished labor or materials to the undersigned in connection with the Work Performed have been paid in full for all amounts they are owed, subject to any payment that is dependent on collection by Developer of the payments referred to in paragraph 2 above.

[remainder of page left intentionally blank; signature page follows]

[CONSTRUCTION CONTRACTOR][SUBCONTRACTOR]:

[*company name*]

By: _____

Name: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20____, by
_____ as _____ of _____

Notary Public

My Commission Expires: _____

Schedule 5
Intentionally Omitted

Schedule 6
Performance Mechanism
Part 1: Construction Period

1. Substantial Completion Deduction Amount

The Substantial Completion Deduction Amount (“SCDA”) shall be calculated in accordance with the following formula:

$$SCDA = MND_{sc} + MCCD_{sc} + CGD$$

Where:

- (a) MND_{sc} = an amount equal to the aggregate of all Monthly Noncompliance Deductions calculated in accordance with Section 2 of this Part 1 that accrued during:
- (i) each month (m) that commences during the period from and excluding the Financial Close Date (or, if earlier, the date of issuance of NTP1) to and including the Substantial Completion Date; and
 - (ii) the month (m) in which the Financial Close Date occurs (or, if earlier, in which the date of issuance of NTP1 occurs),
- (each month (m) falling within (i) or (ii), a “CP Deduction Month”);
- (b) $MCCD_{sc}$ = an amount equal to the aggregate of all Monthly Construction Closure Deductions calculated in accordance with Section 3 of this Part 1 that accrued during each CP Deduction Month; and
- (c) CGD = an amount equal to the sum of:
- (i) any “Construction Work Small Business Goal Deduction” calculated in accordance with Section 1.3.1.a. of Schedule 15 (*Federal and State Requirements*); *plus*
 - (ii) any “Construction Period OJT Goal Deduction” calculated in accordance with Section 1.3.1.b. of Schedule 15 (*Federal and State Requirements*).

2. Monthly Noncompliance Deduction prior to Substantial Completion

The Monthly Noncompliance Deduction (“MND”) for any CP Deduction Month (m) shall be calculated in accordance with the following formula:

$$MND_m = NCPV \times NCP_m$$

Where:

- (a) $NCPV$ = \$5,000, being the unit value of each Noncompliance Point; and
- (b) NCP_m = the number of CC Noncompliance Points that accrued during CP Deduction Month (m) in accordance with Table 6A.1 and Part 4 of this Schedule 6.

3. Monthly Construction Closure Deduction

- 3.1 The Monthly Construction Closure Deduction (“MCCD”) for any CP Deduction Month (m) shall be calculated in accordance with the following formula:

$$MCCD_m = \sum_{p=1}^n CCD_p$$

Where

- (a) p = a Closure Deduction Period that commenced during CP Deduction Month (m);
- (b) n = the total number of Closure Deduction Periods that commenced during CP Deduction Month (m); and
- (c) CCD_p = the Construction Closure Deduction in respect of each Closure Deduction Period (p).

3.2 For purposes of calculating the Monthly Construction Closure Deduction for any CP Deduction Month (m) pursuant to Section 3.1 of this Part 1:

- (a) each Non-Permitted Construction Closure shall be deemed to:
 - (i) start when the relevant Closure actually starts (or is deemed to start in accordance with the proviso to the definition of Non-Permitted Construction Closure in Part A of Annex A (*Definitions and Abbreviations*) to the Construction Contract); and
 - (ii) end when the relevant Closure actually ends (or is deemed to end in accordance with such proviso);
- (b) a Construction Closure Deduction shall accrue in the CP Deduction Month in which each individual full or partial Closure Deduction Period commences;
- (c) a Closure that affects more than one travel lane shall, to the extent that such Closure otherwise constitutes a Non-Permitted Construction Closure within the definition thereof in Part A of Annex A (*Definitions and Abbreviations*) to the Project Agreement, be treated as a separate Non-Permitted Construction Closure of each affected travel lane;
- (d) the proviso to Section 2.11.14.c of Schedule 10 (*Design and Construction Requirements*) shall apply in determining the number of separate Non-Permitted Construction Closures deemed to occur pursuant to such Section;
- (e) depending upon the duration of any Non-Permitted Construction Closure, such Non-Permitted Construction Closure may result in one or more Construction Closure Deductions, which shall accrue in respect of each full or partial Closure Deduction Period that commences during the subsistence of such Non-Permitted Construction Closure; and
- (f) each Non-Permitted Construction Closure shall result in the accrual of Construction Closure Deductions in addition to any Construction Closure Deductions that accrue in respect of any other Non-Permitted Construction Closure (including where both such Closures are simultaneously caused by the same circumstances).

Part 2: Intentionally Omitted

Part 3: Intentionally Omitted

Part 4: Noncompliance Points

1. Table 6A.1 and Table 6A.2 are tables for the identification of CC Noncompliance Events, the Cure Period (if any) and Grace Period (if any) available to the Construction Contractor for each such CC Noncompliance Event and the CC Noncompliance Points applicable to such CC Noncompliance Event.
2. Subject to Section 5 of this Part 4, for any CC Noncompliance Event that has a Cure Period, such CC Noncompliance Event shall accrue the number of CC Noncompliance Points set out against such CC Noncompliance Event in Table 6A.1 or Table 6A.2, as applicable, for each full or partial Noncompliance Cure Period that commences at any time from and including:
 - (a) if such CC Noncompliance Event does not have a Grace Period, the Noncompliance Start Time; and
 - (b) if such CC Noncompliance Event has a Grace Period, the expiry of the Grace Period,in each case, until the Noncompliance Rectification Time.
3. For any CC Noncompliance Event that has no Cure Period, such CC Noncompliance Event shall accrue the number of CC Noncompliance Points set out against such CC Noncompliance Event in Table 6A.1 or Table 6A.2, as applicable, but shall not accrue any further CC Noncompliance Points during the period that the failure giving rise to the original CC Noncompliance Event continues to subsist. Notwithstanding the foregoing, any subsequent recurrence of the same CC Noncompliance Event shall be treated as a separate Noncompliance Event and shall accrue CC Noncompliance Points in accordance with this Part 4.
4. CC Noncompliance Points in respect of a CC Noncompliance Event:
 - (a) that has a Cure Period shall accrue in the month in which each individual CC Noncompliance Cure Period commences; and
 - (b) that has no Cure Period shall accrue in the month in which the Noncompliance Start Time occurs.
5. Subject to Section 1.2(b)(i) of Part 6 of this Schedule 6, if a CC Noncompliance Event has a Grace Period and the Noncompliance Rectification Time for such Noncompliance Event occurs prior to the expiry of such Grace Period, such CC Noncompliance Event shall not accrue any Noncompliance Points.
6. If the Noncompliance Start Time of any CC Noncompliance Event which has a Cure Period occurs prior to or on the Substantial Completion Date and such CC Noncompliance Event continues to subsist after the Substantial Completion Date, then:
 - (a) if such CC Noncompliance Event is set out only in Table 6A.1, such CC Noncompliance Event shall accrue the number of Noncompliance Points set out against such CC Noncompliance Event in Table 6A.1 for each full or partial Noncompliance Cure Period (to be determined by reference to the Cure Period of such CC Noncompliance Event set out in Table 6A.1) that commences prior to, on or after the Substantial Completion Date; and
 - (b) if such CC Noncompliance Event is set out in both Table 6A.1 and Table 6A.2, such CC Noncompliance Event shall accrue the number of CC Noncompliance Points set out against such Noncompliance Event:
 - (i) in Table 6A.1 for each full or partial Noncompliance Cure Period (to be determined by reference to the Cure Period of such CC Noncompliance Event set out in Table 6A.1) that commences prior to or on the Substantial Completion Date (for certainty, including where such Noncompliance Cure Period ends after the Substantial Completion Date); and

Central 70 Project: Design & Construction Contract
Schedule 6 (Performance Mechanism)

- (ii) in Table 6A.2 for each full or partial Noncompliance Cure Period (to be determined by reference to the Cure Period of such CC Noncompliance Event set out in Table 6A.2) that commences after the Substantial Completion Date.
- 7. Nothing in this Agreement shall prevent the accrual of CC Noncompliance Points in respect of both the occurrence of a CC Noncompliance Event and the CC Noncompliance Event caused by the failure to notify the Enterprises of the same Noncompliance Event in accordance with this Agreement.
- 8. The Construction Contractor acknowledges that each CC Noncompliance Event hereunder is also a PA Noncompliance Event in accordance with the Project Agreement which may result in PA Noncompliance Points being assessed by the Enterprises in accordance with Schedule 6 (Performance Mechanism) to the Project Agreement. To the extent that the Enterprises assess PA Noncompliance Points against the Developer in accordance with the Project Agreement in relation to any PA Noncompliance Event that is also a CC Noncompliance Event, the Developer shall be deemed to have assessed equivalent CC Noncompliance Points against the Construction Contractor pursuant to this Agreement.
- 9. The Developer shall only be entitled (or deemed) to assess CC Noncompliance Points against the Construction Contractor pursuant to this Agreement with respect to any CC Noncompliance Event if the Enterprises has assessed PA Noncompliance Points against the Developer in relation to the corresponding PA Noncompliance Event, and in such case only to the same extent and in the same number as any such PA Noncompliance Points assessed by the Enterprises.

Part 5: Intentionally Omitted

Part 6: Reporting Requirements

1. Notification

1.1 Notification Initiated by Construction Contractor

- (a) The Construction Contractor shall notify the Developer (for notification of the Enterprises by the Developer pursuant to Section 1.1 of Part 6 of Schedule 6 to the Project Agreement) in writing of the occurrence of any CC Noncompliance Event or the commencement of any Non-Permitted Closure or Excused Closure as soon as reasonably practicable, and in any event within twenty-four (24) hours, after the Construction Contractor first becomes aware that the CC Noncompliance Event has occurred or the Non-Permitted Closure or Excused Closure has commenced. Such notice shall:
- (i) in the case of a CC Noncompliance Event:
 - (A) provide reasonable detail of the circumstances of such CC Noncompliance Event and its Noncompliance Start Time;
 - (B) identify the number of CC Noncompliance Points and the Grace Period (if any) and the Cure Period (if any) for such CC Noncompliance Event, all as specified in Table 6A.1 or Table 6A.2, as applicable; and
 - (C) if such CC Noncompliance Event has been cured by the time notice is given pursuant to this Section 1.1(a), identify its Noncompliance Rectification Time (if such Noncompliance Event has a Cure Period) or the date and time that such Noncompliance Event was fully cured (if such Noncompliance Event does not have a Cure Period); or
 - (ii) in the case of a Non-Permitted Closure or Excused Closure:
 - (A) provide reasonable details of the circumstances of such Non-Permitted Closure or Excused Closure, its commencement time and (if it has ended by the time notice is given pursuant to this Section 1.1(a)), its end time;
 - (B) in the case of an Excused Closure:
 - (I) explain the basis (using the categories specified in paragraphs a to f of the definition of Excused Closure in Part A of Annex A (*Definitions and Abbreviations*) to the Construction Contract) on which the Construction Contractor considers that the relevant Closure is an Excused Closure; and
 - (II) confirm that the relevant Closure did not arise as a result of any of the circumstances specified in paragraph g of the definition of Excused Closure in Part A of Annex A (*Definitions and Abbreviations*) to the Construction Contract; and
 - (C) explain the steps being taken by the Construction Contractor to:
 - (I) mitigate the impact thereof;
 - (II) reopen the affected part(s) of the Project as quickly as possible to traffic; and
 - (III) if such Closure arose as the direct result of an Emergency, respond to the Emergency in accordance with the requirements of this Agreement.

The Construction Contractor acknowledges and agrees that within ten Calendar Days after receiving Developer's notice pursuant Section 1.1(a) of Part 6 of Schedule 6 to the Project Agreement, the Enterprises shall deliver to the Developer a written notice (and the Developer shall deliver a copy of such notice to the Construction Contractor) either

confirming their agreement to, or disputing (with reasons), the information contained in the Construction Contractor notice. The Construction Contractor acknowledges and accepts that due to extenuating circumstances, the Enterprises may, at its discretion, provide an extension to any Grace Period applicable to a CC Noncompliance Event so notified and will document such extension in the notice delivered by them pursuant to this Section 1.1(a), in which case the Developer shall be deemed to have extended the Grace Period applicable to such CC Noncompliance Event hereunder.

- (b) The Construction Contractor shall notify the Developer in writing (for notification by the Developer of the Enterprises) as soon as reasonably practicable, and in any event within 24 hours, after the occurrence of the Noncompliance Rectification Time in respect of any CC Noncompliance Event which has a Cure Period, the date and time that any CC Noncompliance Event which does not have a Cure Period has been fully cured or the end time of any Non-Permitted Closure or Excused Closure, including in such notice:
 - (i) in the case of a CC Noncompliance Event:
 - (A) the Noncompliance Rectification Time of such CC Noncompliance Event or, as the case may be, the date and time that such Noncompliance Event was fully cured;
 - (B) a detailed description of the manner in which such CC Noncompliance Event was cured; and
 - (C) a calculation of the total CC Noncompliance Points that accrued in respect of such CC Noncompliance Event; or
 - (ii) in the case of a Non-Permitted Closure or Excused Closure:
 - (A) the end time of such Non-Permitted Closure or Excused Closure; and
 - (B) in the case of a Non-Permitted Closure, a calculation of the total Construction Closure Deductions that accrued in respect of such Non-Permitted Closure.
- (c) The Construction Contractor acknowledges and agrees that within ten Calendar Days after receiving the Developer's notice pursuant to Section 1.1(b) of Part 6 of Schedule 6 to the Project Agreement, the Enterprises shall deliver to the Developer a written notice (and the Developer shall deliver a copy of such notice to the Construction Contractor) either confirming their agreement to, or disputing (with reasons), the information contained in the Construction Contractor's notice.
- (d) The Construction Contractor shall be entitled to satisfy its notification obligations under this Section 1.1 by ensuring that the Noncompliance and Closure Database issues email or other alerts to the Developer and the Enterprises, provided that such alerts:
 - (i) are received by the Developer and the Enterprises within the time periods required by Section 1.1(a) or (b) of this Part 6, as applicable; and
 - (ii) either:
 - (A) contain the information required by Section 1.1(a) or (b) of this Part 6, as applicable; or
 - (B) provide a direct link to such information.

1.2 Notification Initiated by the Enterprises

- (a) The Construction Contractor acknowledges and agrees that the Enterprises may deliver to the Developer a notice containing such of the information that is required to be included in the notice that the Construction Contractor should have delivered pursuant to Section 1.1(a) of this Part 6 in respect of such CC Noncompliance Event or Non-Permitted Closure that is available to the Developer.

- (b) If the Enterprises delivers a notice pursuant to Section 1.2(a) of Part 6 of Schedule 6 to the Project Agreement relating to the CC Work to the Developer, the Developer shall within five Calendar Days provide such notice to the Construction Contractor, in which case the Construction Contractor agrees it shall also be deemed to have received notice of the corresponding CC Noncompliance Event, applicable Cure Period (if any) and Grace Period (if any), and assessment of CC Noncompliance Points (if any) for purposes of this Agreement.
- (c) In the event that the Enterprises delivers a notice pursuant to Section 1.2(a) of this Part 6:
 - (i) if a CC Noncompliance Event that has a Grace Period is the subject of such notice, such CC Noncompliance Event shall be deemed not to have a Grace Period even if a Grace Period is specified for such CC Noncompliance Event in Table 6A.1 or Table 6A.2, as applicable; and
 - (ii) the failure by the CC Contractor to issue a notice in respect of the relevant CC Noncompliance Event or Non-Permitted Closure shall itself constitute a CC Noncompliance Event in accordance with item 1.14 in Table 6A.1 or item 2.16 in Table 6A.2, as applicable.

2. Noncompliance and Closure Database

2.1 Without prejudice to the Construction Contractor obligations under Section 1 of this Part 6, the Construction Contractor shall establish and maintain an electronic database that records on a real-time basis, and retains, information in relation to each and every PA Noncompliance Event, Non-Permitted Closure and Excused Closure that occurs or commences, as the case may be. At Substantial Completion, the Construction Contractor shall transfer the Noncompliance and Closure Database to the Developer. The format and design of the Noncompliance and Closure Database shall (i) include the minimum requirements set forth below, and (ii) otherwise be sufficient to permit the Developer to satisfy its obligations pursuant to Section 2 of Part 6 of Schedule 6 to the Project Agreement. At a minimum, the following data shall be recorded in such Noncompliance and Closure Database:

- (a) in respect of each PA Noncompliance Event (whether notified by the Construction Contractor to the Developer pursuant to Section 1.1(a) of this Part 6 or by the Enterprises to the Construction Contractor pursuant to Section 1.2(a) of this Part 6):
 - (i) a description of such PA Noncompliance Event in reasonable detail, including the circumstances giving rise to such PA Noncompliance Event, its Noncompliance Start Time, any applicable Cure Period or Grace Period and the number of Noncompliance Points set out for such PA Noncompliance Event in Table 6A.1 to the Project Agreement or Table 6A.2 to the Project Agreement, as applicable;
 - (ii) the location of such PA Noncompliance Event within the Project (if applicable);
 - (iii) for any PA Noncompliance Event that is not yet cured:
 - (A) the calculation of the PA Noncompliance Points that have accrued in respect of such PA Noncompliance Event up to that time; and
 - (B) the steps being taken to cure it; and
 - (iv) for any PA Noncompliance Event that the Construction Contractor considers to be cured:
 - (A) the Noncompliance Rectification Time of such PA Noncompliance Event (if such PA Noncompliance Event has a Cure Period) or the date and time that such Noncompliance Event was fully cured (if such PA Noncompliance Event does not have a Cure Period) and, in either case, the calculation of the total PA Noncompliance Points that accrued in respect of such Noncompliance Event; and

Central 70 Project: Design & Construction Contract
Schedule 6 (Performance Mechanism)

- (B) the nature of the cure in reasonable detail and the measures that have been, and will be, taken to prevent the reoccurrence of such PA Noncompliance Event; and
 - (b) in respect of each Non-Permitted Closure (whether notified by the Construction Contractor to the Developer pursuant to Section 1.1.(a) of this Part 6 or by the Enterprises to the Construction Contractor pursuant to Section 1.2.(a) of this Part 6) and each Excused Closure:
 - (i) a description of such Non-Permitted Closure or Excused Closure in reasonable detail, including the location thereof within the Project, the circumstances giving rise to such Non-Permitted Closure or Excused Closure and its commencement time;
 - (ii) for any Non-Permitted Closure or Excused Closure that is continuing:
 - (A) in the case of a Non-Permitted Closure, the calculation of the Construction Closure Deductions that have accrued in respect of such Non-Permitted Closure up to that time; and
 - (B) a description of the steps being taken by the Construction Contractor to:
 - (I) mitigate the impact thereof;
 - (II) reopen the affected part(s) of the Project as quickly as possible to traffic; and
 - (III) if such Closure arose as the direct result of an Emergency, respond to the Emergency in accordance with the requirements of this Agreement; and
 - (iii) for any Non-Permitted Closure or Excused Closure that has ended:
 - (A) the end time of such Non-Permitted Closure or Excused Closure;
 - (B) in the case of a Non-Permitted Closure, the calculation of the total Construction Closure Deductions that accrued in respect of such Non-Permitted Closure; and
 - (C) all of the steps taken by the Construction Contractor as referred to in Section 2.1(b)(ii)(B) of this Part 6 during the subsistence of such Non-Permitted Closure or Excused Closure and the measures that have been, and will be, taken to prevent the reoccurrence of similar Non-Permitted Closures or Excused Closures.
- 2.2 The database shall also record on a real-time basis:
- (a) the cumulative number of PA Noncompliance Points that have accrued and cumulative number of relevant PA Noncompliance Events that have occurred in such a manner as to allow the Parties to establish at any time whether any Noncompliance Default Event or any Increased Oversight Threshold has occurred; and
 - (b) the cumulative amount of Construction Closure Deductions that have accrued in such a manner as to allow the Parties to establish at any time whether any Closure Default Event has occurred.
- 2.3 The Construction Contractor shall provide the Developer and, pursuant to Section 2.3 of Part 6 of Schedule 6 to the Project Agreement, the Enterprises unrestricted electronic access to the Noncompliance and Closure Database at all times and the database shall be designed to enable the Developer and the Enterprises to:
- (a) inspect all entries by the Construction Contractor;

Central 70 Project: Design & Construction Contract
Schedule 6 (Performance Mechanism)

- (b) flag a request for further information from the Construction Contractor related to any entry;
- (c) flag any entry where the Developer or the Enterprises dispute the entry;
- (d) enter information in respect of each Noncompliance Event and Non-Permitted Closure notified to the Construction Contractor by the Enterprises pursuant to Section 1.2(a) of this Part 6 to the same level of detail as the Construction Contractor is required to enter in respect of Noncompliance Events and Non-Permitted Closures notified by it to the Developer pursuant to Section 1.1(a) of this Part 6;
- (e) record for each PA Noncompliance Event or Non-Permitted Closure the issuance of a notice by the Construction Contractor pursuant to Section 1.2(a) of Part 6 of Schedule 6 to the Project Agreement;
- (f) automatically generate a report recording the number and details of:
 - (i) the PA Noncompliance Events that have been cured and remain uncured; and
 - (ii) Non-Permitted Closures and Excused Closures that have ended and are continuing,in either case, including:
 - (iii) separate counts of:
 - (A) PA Noncompliance Events, Non-Permitted Closures and Excused Closures notified by Developer pursuant to Section 1.1(a) of Part 6 of Schedule 6 to the Project Agreement; and
 - (B) Noncompliance Events and Non-Permitted Closures notified by the Developer pursuant to Section 1.2(a) of Part 6 of Schedule 6 to the Project Agreement; and
 - (iv) the number of Noncompliance Points and Construction Closure Deductions:
 - (A) accrued by the Construction Contractor; and
 - (B) subject to dispute by either Party,in any such case, within any user-defined time period; and
- (g) flag the Enterprises' concurrence or otherwise that the Noncompliance Rectification Time has occurred in respect of a PA Noncompliance Event or a Non-Permitted Closure has ended.

APPENDIX A
Noncompliance Points Tables

Any single failure that constitutes a CC Noncompliance Event pursuant to more than one item in Table 6A-1 or Table 6A-2 shall be deemed only to constitute a CC Noncompliance Event pursuant to the item that is more specific to such failure. In the event of any ambiguity as to which Noncompliance Event is more specific to a failure, Section 2.4.3 of the Construction Contract shall apply.

For certainty, if an act, omission, event or other circumstance gives rise to more than one failure each of which constitutes a Noncompliance Event, all provisions of this Agreement that apply as a result of the occurrence of each such Noncompliance Event shall apply without limitation or prejudice to the provisions of this Agreement that apply as a result of the occurrence of any other such CC Noncompliance Event.

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.1	Construction Contractor’s Management Process	Updates to the Project Management Plan (PMP)	Carry out and submit to the Developer updates to the Project Management Plan at times and in the manner prescribed in the Project Management Plan and in accordance with <u>Section 2.2.1 of Schedule 8 (Project Administration)</u> .	7	N/A	1
1.2	Construction Contractor’s Management Process	Compliance with PMP	Establish, maintain, and comply with any provision of the Project Management Plan as described in <u>Section 2 of Schedule 8 (Project Administration)</u> .	7	7	2
1.3	Construction Contractor’s Management Process	Compliance with QMP	Establish, maintain, update and comply with any provision of the Quality Management Plan as described in <u>Section 6 of Schedule 8 (Project Administration)</u> .	7	7	2

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.4	Construction Contractor's Management Process	Compliance with Safety Plan	Establish, adhere to or enforce a safety policy, procedure, process, or guideline as required by the Safety Management Plan as described in <u>Section 7 of Schedule 8 (Project Administration)</u> .	2	N/A	2
1.5	Construction Contractor's Management Process	Environmental Compliance Work Plan (ECWP)	Establish, maintain, and comply with a complete ECWP and any provision as described in <u>Section 2 of Schedule 17 (Environmental Requirements)</u> .	7	7	2
1.6	Construction Contractor's Management Process	Comply with Document Control System	Comply with the requirements of the Document Control System (DCS) in accordance with <u>Section 13 of Schedule 8 (Project Administration)</u> .	2	N/A	1
1.7	Reserved					

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.8	Construction Contractor’s Management Process	Employment of Key Personnel	Cause the continuous employment in connection with the Work of any of the Key Personnel required to be employed during the Construction Period complying with the qualifications requirements or the time periods specified in <u>Schedule 27 (Key Personnel)</u> .	14	21	5
1.9	Construction Contractor’s Management Process	Licensing of Key Personnel	Submit documentation demonstrating compliance with qualification requirements with regard to Key Personnel as described in <u>Schedule 27 (Key Personnel)</u> .	7	7	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.10	Construction Contractor’s Management Process	Public Meetings and Communication	Prepare, maintain and implement the Construction Period Communications Plan (the requirements for which are detailed in <u>Section 5 of Schedule 14 (Strategic Communications)</u>) or the Crisis Communications Plan (the requirements for which are detailed in <u>Section 7 of Schedule 14 (Strategic Communications)</u>).	1	N/A	2
1.11	Construction Contractor’s Management Process	Administrative process for Meetings	Conduct, attend or follow specified process in connection with any meeting during the Construction Period as described in <u>Schedule 8 (Project Administration)</u> including providing notification to the Department of the meeting details.	N/A	N/A	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.12	Deliverables	General Deliverables	Prepare, implement, maintain, update or submit any plan, report, deliverable or other Deliverable in accordance with the provisions of this Agreement.	14	7	1
1.13	Deliverables	General Deliverables	Address or resolve the Department's comments with respect to any Deliverable (excluding any Deliverable specified in <u>Section 9(a)</u> and <u>9(b)</u> of <u>Schedule 9 (Submittals)</u>), prior to the next submittal of the Deliverable in accordance with <u>Schedule 9 (Submittals)</u> .	14	7	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.14	Deliverables	Noncompliance and Closure Reporting	Provide accurate, complete and timely reporting of (i) any Noncompliance Event and the Noncompliance Points accrued in respect of such Noncompliance Event, or (ii) any Non-Permitted Closure and the Construction Closure Deductions accrued in respect of such Non-Permitted Closure, in any such case, as required by <u>Section 1.1 of Part 6</u> of this <u>Schedule 6</u> .	N/A	N/A	1
1.15	Project Delivery and Deliverables	Federal and State Requirements	Comply in a timely, accurate and complete manner with any of the Construction Contractor's obligations (including any of the reporting requirements) contained in <u>Schedule 15 (Federal and State Requirements)</u> but, for certainty, excluding any failure described in <u>Section 1.3.1 of Schedule 15 (Federal and State Requirements)</u> .	14	7	2

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.16	Deliverables	Submit insurance records	Submit documents verifying insurance coverage and payment of insurance premiums and renewals in accordance with <u>Section 25</u> of the Construction Contract.	10	N/A	2
1.17	Deliverables	Monthly Deductions Report	Submit a Monthly Deductions Report pursuant to <u>Section 2.1 of Part 1 of Schedule 4 (Payments)</u> or <u>Section 4(b)(ii) of Schedule 5 (Milestone Payments)</u> .	7	N/A	1
1.18	Reserved					
1.19	Reserved					

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.20	Deliverables	Governmental Approvals and Permits	Deliver to the Developer: (a) any documentation required to be submitted pursuant to <u>Section 8.4.3</u> of the Construction Contract; or (b) copies of new or amended Governmental Approvals or Permits obtained in accordance with <u>Section 8.4</u> of the Construction Contract.	7	7	1
1.21	Deliverables	Record keeping for Utilities	Make records relating to Utilities available as required by <u>Section 4</u> of <u>Schedule 10 (Design and Construction Requirements)</u> .	7	7	2

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.22	Deliverables	Materials testing records	Submit to the Developer records of materials testing and information for submission to the Department’s Quality Records Database in accordance with the requirements of <u>Section 6.4.3 of Schedule 8 (Project Administration)</u> within the specified time periods and conforming to the requirements of <u>Section 6 of Schedule 8 (Project Administration)</u> and the Construction Contractor’s IQC Program.	2	2	2
1.23	Reserved					

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.24	Department Oversight	Inspection and Audit by the Department or Governmental Authorities	Comply with any requirement to provide advance notice, access to Project Records, or otherwise ensure Reasonable Efforts to support the Developer, the Department or any Governmental Authority with regard to their rights to audit, review, inspection, or testing in accordance with <u>Section 21</u> of the Construction Contract.	5	2	3
1.25	Department Oversight	Provision of access to Project Records	Keep, maintain, permit access or make available to the Developer and the Department at the specified location, within specified time of request and for the specified retention period, any Project Record as required by <u>Section 19</u> of the Construction Contract.	5	2	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.26	Department Oversight	Safe Access to Site and other off-Site locations	Provide safe physical access for the representatives of the Developer, the Enterprises or the Department, to the Site or where materials are to be inspected, at an off-Site location and to the Construction Contractor’s project field offices in connection with the CC Work and all inspections as required by <u>Schedule 8 (Project Administration)</u> .	2	N/A	4
1.27	Department Oversight	Department Facilities	Comply with any of the requirements of <u>Section 11 of Schedule 8 (Project Administration)</u> regarding the provision of offices and equipment for the Department.	7	7	1
1.28	Department Oversight	Increased Oversight	Comply with any Approved remedial plan required in accordance with the need for increased oversight by the Department as detailed in <u>Section 21.3</u> of the Construction Contract.	7	N/A	4

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.29	Notification by Construction Contractor	Recognized Hazardous Materials	Comply with the Construction Contractor's reporting or notification obligations under <u>Schedule 17 (Environmental Requirements)</u> in respect of Recognized Hazardous Materials.	N/A	1	3
1.30	Notification by Construction Contractor	Notification of Environmental breach	Notify the Developer of any breach by the Construction Contractor of any Environmental Laws, Governmental Approvals or any of the Environmental Requirements.	N/A	1	1
1.31	Notification by Construction Contractor	Utility Owner Compliance	Promptly notify the Developer (i) if any Utility Owner fails to comply with its respective URA or (ii) in accordance with the Construction Contractor's notification obligations pursuant to <u>Section 4.5.1 of Schedule 10 (Design and Construction Requirements)</u> .	N/A	7	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.32	Notification by Construction Contractor	CDPS-SCP and MS4 requirements	Notify to the Developer and the applicable Governmental Authority Construction Contractor's failure to comply with CDPS-SCP and MS4 requirements (including, but not limited to: failure to comply with BMP, incomplete SWMP, or failure to correctly implement the SWMP).	N/A	1	3
1.33	Notification by Construction Contractor	Railroad Compliance	Promptly notify the Developer regarding the compliance of Railroads with their respective RRAs during the Construction Period in accordance with <u>Section 10 of Schedule 10 (Design and Construction Requirements)</u> .	N/A	7	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.34	Project Delivery	Maintenance of Traffic Requirements	Perform CC Work in compliance with the Construction Contractor’s obligations or commitments (other than those obligations in respect of lane Closures or Closures which are subject to Construction Closure Deductions in accordance with this <u>Schedule 6</u>) in respect of maintenance of traffic as set out in <u>Section 2</u> of <u>Schedule 10</u> (<i>Design and Construction Requirements</i>), the Construction Contractor’s Maintenance Management Plan and the Construction Contractor’s Transportation Management Plan (TMP) including Temporary Traffic Control Plan (TCP) Strategies, Transportation Operations (TOP) Strategies, and Public Information (PI) Strategies (including all maintenance of traffic requirements associated with the Swansea School).	2 hours	N/A	3

42494519.9

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.35	Project Delivery	Deliverable Compliance	Comply with any requirement applicable to, or obligation of the Construction Contractor associated with, a Deliverable set out in <u>Table 2 of Schedule 8 (Project Administration)</u> required to be submitted during the Construction Period.	7	7	2
1.36	Project Delivery	Maintain Utility Service	Maintain a Utility fully operational except as specifically permitted by the Utility Owner and by any affected property in accordance with <u>Section 4.2.9 of Schedule 10 (Design and Construction Requirements)</u> .	2	N/A	3

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.37	Project Delivery	CDPS-SCP and MS4 requirements	Comply with CDPS-SCP and MS4 requirements, and the Environmental Requirements referenced in <u>Appendix A of Schedule 17 (Environmental Requirements)</u> Revision of Section 208.09 (including, but not limited to: failure to comply with BMP, incomplete SWMP, or failure to correctly implement the SWMP).	1	2	4
1.38	Project Delivery	Right-of-Way Requirements	Perform CC Work in compliance with any of the Construction Contractor's obligations as set out in <u>Schedule 18 (Right-of-Way)</u> .	N/A	N/A	3

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.39	Project Delivery	Courtesy Patrol Services	Comply with any provision of <u>Section 10</u> of, and <u>Appendix B</u> to, <u>Schedule 11 (Operations and Maintenance Requirements)</u> , excluding the General Requirements in relation to the Courtesy Patrol Services in <u>Appendix A-1 to Schedule 11, (Operations and Maintenance Requirements)</u> .	7	N/A	1
1.40	O&M Defects	Timely Remedy of Category 1 Defect	Remedy a Category 1 Defect (Immediate Action) within the Defect Remedy Period.	Defect Remedy Period	N/A	3
1.41	Reserved					
1.42	O&M Defects	Timely Remedy of Category 2 Defect	Remedy a Category 2 Defect (Permanent Repair) (for certainty, other than in an Excluded Element) within the Defect Remedy Period.	1	N/A	1
1.43	O&M Defects	Prevent occurrence of Defect	Prevent a Category 2 Defect (for certainty, other than in an Excluded Element) from deteriorating into a Category 1 Defect.	N/A	N/A	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.44	Reserved					
1.45	Nonconforming Work	Deliverables	Submit an updated NCR in accordance with <u>Section 6.5.2 of Schedule 8 (Project Administration)</u> within five Working Days after submission of an initial NCR in accordance with <u>Section 6.5.1 of Schedule 8 (Project Administration)</u> .	5	N/A	2
1.46	Nonconforming Work	Deliverables	Submit a NCR in accordance with <u>Section 6.5.7 of Schedule 8 (Project Administration)</u> within five Working Days of issuance of a NCN by the Department in accordance with <u>Section 6.5.6 of Schedule 8 (Project Administration)</u> .	5	N/A	2

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.47	Reserved					
1.48	Notification by Developer	ITS Outage	Provide notification within the time period specified in <u>Section 3 of Schedule 10 (Design and Construction Requirements)</u> for any planned ITS outage	N/A	N/A	1
1.49	Project Delivery	ITS Outage	Restore ITS functionality or power for any planned ITS outage by the time specified in <u>Section 3 of Schedule 10 (Design and Construction Requirements)</u> .	5	N/A	1
1.50	Project Delivery	ITS Outage	Maintain ITS network communications or device functionality resulting in an unplanned ITS outage identified in <u>Section 3 of Schedule 10 (Design and Construction Requirements)</u> .	1	N/A	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.51	Project Delivery	Environmental Requirements	Comply with the requirements of Environmental Laws or any of the Environmental Requirements as they relate to exceedance of permitted thresholds as required by applicable Law and all relevant Governmental Approvals.	2	2	2
1.52	Construction Contractor's Management Process	Compliance with MMP	Establish, maintain, update and comply with any provision of the Maintenance Management Plan as described in <u>Section 5 of Schedule 11 (Operations and Maintenance Requirements)</u> .	7	7	2
1.53	Construction Contractor's Management Process	Compliance with OMP	Establish, maintain, update and comply with any provision of the Operations Management Plan as described in <u>Section 9 of Schedule 11 (Operations and Maintenance Requirements)</u> .	7	7	2
1.54	Reserved					

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.55	Reserved					
1.56	Project Delivery	Deliverable Compliance	Comply with any requirement applicable to, or obligation of the Construction Contractor associated with, a Deliverable set out in <u>Section 14 of Schedule 11 (Operations and Maintenance Requirements)</u> .	7	7	2
1.57	Deliverables	Maintenance Reporting	Provide a complete, accurate and timely Annual O&M Report as required by <u>Section 13.2 of Schedule 11 (Operations and Maintenance Requirements)</u> .	14	7	1
1.58	Reserved					
1.59	Deliverables	Maintenance Reporting	Provide a complete, accurate and timely Monthly O&M Report as required by <u>Section 13.1 of Schedule 11 (Operations and Maintenance Requirements)</u> .	7	N/A	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.60	Project Delivery	Subcontracting Requirements	Meet the requirements of <u>Section 17.5</u> of the Construction Contract.	7	3	1
1.61	Project Delivery	Punch List	Prepare, maintain or timely deliver in accordance with <u>Part 7</u> of <u>Schedule 3</u> (<i>Commencement and Completion Mechanics</i>) a Punch List as required during the Construction Period (or a modification thereto) containing all items of CC Work to be completed, corrected, adjusted or modified.	7	N/A	4
1.62	Construction Contractor’s Management Process	Updates to the Environmental Compliance Work Plan (ECWP) and Environmental Status Report (ESR)	Carry out and submit to the Developer updates to the ECWP and ESR at times and in the manner prescribed in the Project Management Plan and in accordance with <u>Section 2.1.2</u> of <u>Schedule 17</u> (<i>Environmental Requirements</i>), and <u>Section 2.2.1</u> of <u>Schedule 8</u> (<i>Project Administration</i>).	7	7	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.63	Nonconforming Work	Deliverables	Submit a NCR in accordance with Section 6.5.1 of <u>Schedule 8 (Project Administration)</u> within 24 hours after the Construction Contractor first becomes aware of the Nonconforming Work.	1	N/A	2
1.64	Nonconforming Work	Nonconforming Work Remedy	Complete a Nonconforming Work Remedy within the Approved timeframe.	7	N/A	2
1.65	Nonconforming Work	Corrective Action	Complete any Corrective Action within the timeframe identified in the Approved Corrective Action Plan	7	N/A	1
1.66	Construction Contractor's Management Process	Updates to the Safety Plan	Carry out and submit to the Developer updates to the Safety Plan at times and in the manner prescribed in the Safety Plan and in accordance with Section 7.3.1.k of <u>Schedule 8 (Project Administration)</u>	7	N/A	1

Table 6A.1 - Construction Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.67	Notification by Developer	Air Quality	Comply with the Construction Contractor’s reporting or notification obligations under <u>Schedule 17 (Environmental Requirements)</u> in respect of Air Quality.	N/A	1	3

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.1	Reserved					
2.2	Reserved					
2.3	Developer’s Management Process	Compliance with Safety Plan	Adhere to or enforce a safety policy, procedure, process, or guideline as required by the Safety Plan as described in <u>Section 7</u> of <u>Schedule 8</u> (<i>Project Administration</i>).	2	N/A	4
2.4	Developer’s Management Process	Environmental Compliance Work Plan (ECWP)	Implement, maintain and comply with any provision of the ECWP as described in <u>Section 2</u> of <u>Schedule 17</u> (<i>Environmental Requirements</i>).	7	7	2
2.5	Developer’s Management Process	Comply with Document Control System	Comply with the requirements of the Document Control System (DCS) in accordance with <u>Section 13</u> of <u>Schedule 8</u> (<i>Project Administration</i>).	2	N/A	2
2.6	Reserved					
2.7	Reserved					
2.8	Reserved					
2.9	Reserved					
2.10	Reserved					

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.11	Reserved					
2.12	Reserved					
2.13	Reserved					
2.14	Reserved					
2.15	Reserved					
2.16	Deliverables	Noncompliance and Closure Reporting	Provide accurate, complete and timely reporting of (i) any Noncompliance Events and the Noncompliance Points accrued in respect of such Noncompliance Event, or (ii) any Non-Permitted Closure and the Operating Period Closure Deductions accrued in respect of such Non-Permitted Closure, in any such case as required by <u>Section 1 of Part 6</u> of this <u>Schedule 6</u> .	14	N/A	2
2.17	Reserved					
2.18	Reserved					

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.19	Project Delivery and Deliverables	Federal and State Requirements	Comply in a timely, accurate and complete manner with any of the Construction Contractor’s obligations (including any of the reporting requirements) contained in <u>Schedule 15 (Federal and State Requirements)</u> but, for certainty, excluding any failure described in <u>Section 1.3.2 of Schedule 15 (Federal and State Requirements)</u> .	14	7	2
2.20	Deliverables	Governmental Approvals and Permits	Deliver to the Developer: (a) any documentation required to be submitted pursuant to <u>Section 8.4.3</u> of the Construction Contract; or (b) copies of new or amended Governmental Approvals or Permits obtained in accordance with <u>Section 8.4</u> of the Construction Contract.	7	7	1
2.21	Reserved					
2.22	Reserved					
2.23	Reserved					
2.24	Reserved					

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.25	Department Oversight	Inspection and Audit by the Department or Governmental Entities	Comply with any requirements to provide advance notice, access to Project Records, or otherwise ensure Reasonable Efforts to support the Developer, the Department or any Governmental Authority with regard to their rights to audit, review, inspect, or conduct tests in accordance with <u>Section 21</u> of the Construction Contract.	5	N/A	1
2.26	Department Oversight	Provision of access to Project Records	Keep, maintain, permit access or make available to the Developer and the Department at the specified location, within specified time of request and for the specified retention period, any Project Record as required by <u>Section 19</u> of the Construction Contract.	5	N/A	1
2.27	Reserved					
2.28	Department Oversight	Increased Oversight	Comply with any Approved remedial plan required in accordance with the need for increased oversight by the Department as detailed in <u>Section 21.3</u> of the Construction Contract.	7	N/A	4
2.29	Reserved					
2.30	Reserved					

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.31	Project Delivery	Punch List	Prepare, maintain or timely deliver in accordance with <u>Part 7 of Schedule 3 (Commencement and Completion Mechanics)</u> a Punch List (or a modification thereto) containing all items of Work to be completed, corrected, adjusted or modified.	7	N/A	4
2.32	Project Delivery	Final Acceptance	Achieve Final Acceptance prior to the Final Acceptance Deadline.	5	N/A	15
2.33	Reserved	CDPS-SCP and MS4 requirements	Notify to the Developer, the Department and the applicable Governmental Authority Developer's failure to comply with CDPS-SCP and MS4 requirements (including, but not limited to: failure to comply with BMP, incomplete SWMP, or failure to correctly implement the SWMP).	N/A	1	2
2.34	Notification by Construction Contractor	Recognized Hazardous Materials	Comply with the Construction Contractor's reporting or notification obligations under <u>Schedule 17 (Environmental Requirements)</u> in respect of Recognized Hazardous Materials.	N/A	1	3
2.35	Notification by Construction Contractor	Notification of Environmental Breach	Notify the Developer of any breach by the Construction Contractor of any Environmental Laws, Governmental Approvals, or any of its Environmental Requirements.	N/A	1	1

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.36	Inspections, Defects and Standards	Timely and accurate inspections	Perform timely and accurate inspections in accordance with <u>Schedule 11 (Operations and Maintenance Requirements)</u> in respect of O&M Work During Construction that is the subject of the inspections identified in such <u>Schedule 11 (Operations and Maintenance Requirements)</u>	7	N/A	1
2.37	Reserved					
2.38	Reserved					
2.39	Reserved					
2.40	Reserved					
2.41	Reserved					
2.42	Reserved					
2.43	Reserved					
2.44	Reserved					
2.45	Reserved					
2.46	Reserved					

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.47	Reserved					
2.48	Reserved					
2.49	Project Delivery	Environmental Requirements	Comply with the requirements of Environmental Laws or any of the Environmental Requirements as they relate to, exceedance of permitted thresholds, as required by applicable Law and all relevant Governmental Approvals.	2	2	2
2.50	Reserved					
2.51	Reserved					
2.52	Reserved					
2.53	Reserved					
2.54	Reserved					
2.55	Reserved					
2.56	Reserved					
2.57	Reserved					

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.58	Construction Contractor's Management Process	Compliance with QMP	Maintain, update and comply with any provision of the Quality Management Plan during the Operating Period as described in <u>Section 6 of Schedule 8 (Project Administration)</u> .	7	7	2
2.59	Deliverables	Record keeping for Utilities	Make records relating to Utilities available as required by <u>Section 4 of Schedule 10 (Design and Construction Requirements)</u> .	7	N/A	2
2.60	Deliverables	Materials testing records	Submit to the Developer records of materials testing and information for submission to the Department's Quality Records Database in accordance with the requirements of <u>Section 6.4.3 of Schedule 8 (Project Administration)</u> within the specified time periods and conforming to the requirements of <u>Section 6 of Schedule 8 (Project Administration)</u> and Developer's IQC Program.	2	2	3
2.61	Reserved					
2.62	Reserved					
2.63	Project Delivery	Subcontracting Requirements	Meet the requirements of <u>Section 17.5 of the Construction Contract</u>	7	3	1
2.64	Project Delivery	ETC System outage	Prevent interference with, or damage to, the ETC System by any Construction Contractor-Related Entity resulting in an unplanned	1	N/A	4

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
			ETC System outage which is able to be rectified without the involvement of the ETC System Integrator, but which does not result in a Closure of a Tolled Express Lane.			
2.65	Reserved					
2.66	Nonconforming Work	Deliverables	Submit a NCR in accordance with <u>Section 6.5.1 of Schedule 8 (Project Administration)</u> within 24 hours after Construction Contractor first becomes aware of the Nonconforming Work.	1	N/A	2
2.67	Nonconforming Work	Nonconforming Work Remedy	Complete a Nonconforming Work Remedy with respect to CC Work within the Approved timeframe.	7	N/A	2
2.68	Nonconforming Work	Corrective Action	Complete any Corrective Action with respect to CC Work within the timeframe identified in the Approved Corrective Action Plan.	7	N/A	1
2.69	Reserved					
2.70	Reserved					
2.71	Reserved					
2.72	Reserved					

Table 6A.2 – Operating Period CC Noncompliance Events

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (days)	Grace Period (days)	Number of Points
2.73	Reserved					
2.74	Reserved					
2.75	Reserved					
2.76	Reserved					
2.77	Notification by the Construction Contractor	Air Quality	Comply with the Construction Contractor’s reporting or notification obligations under <u>Schedule 17 (Environmental Requirements)</u> in respect of Air Quality.	N/A	1	3

Schedule 7
Compensation on Termination

1. Compensation on Termination For Termination of the Project Agreement

1.1 If the Construction Contract is terminated pursuant to Part 2, Section 33.1.2.a as a result of a termination of the Project Agreement pursuant to Schedule 1 to the Project Agreement, then:

- (a) if, pursuant to the Project Agreement, the Developer is entitled to receive the Financial Close Termination Amount, the Developer shall, subject to the Pay-if-Paid Provisions, pay a Termination Amount to the Construction Contractor in an amount equal to 50% of the difference of the Financial Close Termination Amount less ; and
- (b) if, pursuant to the Project Agreement, the Developer is not entitled to receive the Financial Close Termination Amount, then neither Party shall be entitled to receive a Termination Amount.

1.2 If the Construction Contract is terminated pursuant to Part 2, Section 33.1.2.a as a result of the termination of the Project Agreement pursuant to (a) Section 33.1.2 of the Project Agreement, (b) 33.1.4 of the Project Agreement, (c) Section 33.1.5 of the Project Agreement (other than as a result of a Construction Contractor Default), (d) Section 33.1.6 of the Project Agreement, or (e) Section 33.1.7 of the Project Agreement, then the Developer shall, subject to the Pay-if-Paid Provisions, pay a Termination Amount to the Construction Contractor in an amount calculated (without double-counting) as follows:

- (i) that portion of the Contract Price that is due and payable to the Construction Contractor by the Developer and applicable to CC Work completed up to the CC Termination Date and which has not previously been paid to the Construction Contractor in accordance with the Construction Contract, any other sums due to the Construction Contractor under the terms of the Construction Contract but unpaid as at the CC Termination Date; *plus*
- (ii) Subcontractor Breakage Costs incurred by the Construction Contractor; *less*
- (iii) Account Balances; *less*
- (iv) Termination Insurance Proceeds; *less*
- (v) Termination Deduction Amounts.

Central 70 Project: Construction Contract
Schedule 7 (Compensation on Termination)

- 1.3 If the Construction Contract is terminated pursuant to Part 2, Section 33.1.2.a of the Construction Contract as a result of a termination of the Project Agreement pursuant to (a) Section 33.1.3 of the Project Agreement or (b) pursuant to Section 33.1.5 of the Project Agreement, in each case for any reason that is attributable to a failure of the Construction Contractor to perform its obligations under the Construction Contract, then the Construction Contractor shall, subject to the CC Liability Cap, be responsible to the Developer for any and all costs, Losses, liabilities, expenses, fees, penalties, fines, damages or injury of the Developer as a result of such termination, including, without limitation, amounts payable by the Developer or deductible under the Project Agreement, and amounts payable to other contractors, amounts required to discharge all outstanding liabilities of the Developer to the Lenders under the Financing Documents (including but not limited to the Project Debt) to the extent the Developer is not entitled to be compensated for the same by the Enterprises under the Project Agreement, and the amount of all equity invested in Developer by its direct and indirect owners and any projected returns on equity, as set forth in the Financial Model.
- 1.4 If the Construction Contract is terminated pursuant to Part 2, Section 33.1.2.a as a result of a termination of the Project Agreement pursuant to Section 33.1.3 of the Project Agreement other than for any reason that is attributable to a failure of the Construction Contractor to perform its obligations under the Construction Contract, then the Developer shall, subject to the Pay-if-Paid Provisions, pay a Termination Amount to the Construction Contractor in an amount calculated (without double-counting) as follows:
- (i) that portion of the Contract Price that is due and payable to the Construction Contractor by the Developer and applicable to the CC Work completed up to the CC Termination Date and which has not previously been paid to the Construction Contractor in accordance with the Construction Contract; *plus*
 - (ii) Subcontractor Breakage Costs incurred by the Construction Contractor.
2. **Compensation on Termination for Construction Contractor Default**
- If the Construction Contract is terminated pursuant to Part 2, Section 33.1.3.a, the Construction Contractor shall, subject to the CC Liability Cap, be responsible to the Developer for any and all costs, Losses, liabilities, expenses, fees, penalties, fines, damage or injury of Developer as a result of such termination, including, without limitation for all costs and expenses incurred by the Developer in tendering for, preparing, negotiating and entering into one or more contracts (each a "Replacement Contract") with one or more replacement contractors to complete all or part of the CC Work upon the same or substantially similar terms as the Construction Contract, any amount by which the aggregate sum payable by the Developer under any Replacement Contract(s) exceeds the amounts which would have been payable to the Construction Contractor under the Construction Contract, any amounts payable by the Developer or deductible under the Project Agreement and any amounts payable to the Lenders under the Financing Documents (excluding debt principal and interest), such as increased oversight costs.
3. **Compensation on Termination for Developer Default**
- If the Construction Contract is terminated pursuant to Part 2, Section 33.1.4.a, the Developer shall pay a Termination Amount to the Construction Contractor in an amount calculated (without double-counting) as follows:
- (i) that portion of the Contract Price that is due and payable to the Construction Contractor by the Developer and applicable to the CC Work completed up to the CC Termination Date and which has not previously been paid to the Construction Contractor in accordance with the Construction Contract; *plus*
 - (ii) Subcontractor Breakage Costs incurred by the Construction Contractor.

4. **Miscellaneous Compensation Provisions**

4.1 Transfer of Key Assets

The Construction Contractor shall comply with its obligations under Part 2, Section 34 of the Construction Contract as a condition precedent to the Developer's payment of any Termination Amount.

Schedule 8
Project Administration

This Agreement contains a number of references to Schedule 8 (*Project Administration*). The Developer and the Construction Contractor hereby acknowledge and agree that Schedule 8 (*Project Administration*) to the Project Agreement is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 8 (*Project Administration*) to the Project Agreement shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the Construction Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the Construction Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer's obligations and liabilities under Schedule 8 (*Project Administration*) to the Project Agreement to the extent such obligations and liabilities relate to the CC Work (as if the same were expressly referred to herein as obligations and liabilities of the Construction Contractor *mutatis mutandis*).

Schedule 9 Submittals

1. Definitions

The following terms have the respective meanings set out below for all purposes of this Schedule 9:

“Deliverable for Acceptance” means any Deliverable that, pursuant to this Agreement, must be submitted either:

- (a) for Acceptance; or
- (b) for consent, approval or like assent, to the extent that the Developer, pursuant to the express provisions of this Agreement, required to act reasonably in deciding whether to give such consent, approval or like assent.

“Deliverable for Approval” means any Deliverable that, pursuant to this Agreement, must be submitted either:

- (a) for Approval; or
- (b) for consent, approval or like assent, to the extent that such is, pursuant to the express provisions of this Agreement or pursuant to Section 2.2.4.b of the Construction Contract in the Developer’s discretion.

“Deliverable for Information” means any Deliverable that, pursuant to this Agreement, must be submitted by the Construction Contractor for Information.

“DRTL” has the meaning given to it in Section 7(a) of this Schedule 9.

“Reviewable Deliverable” means any Deliverable that is a Deliverable for Approval, a Deliverable for Acceptance or a Deliverable for Information.

2. General

The Construction Contractor acknowledges the rights and obligations of the Developer and the Enterprises under Schedule 9 (Submittals) to the Project Agreement. The Construction Contractor shall be responsible for the provision of all notices, reports, submissions, approvals and other matters required under the Project Agreement insofar as they relate to the Construction Work and O&M Work During Construction and will obtain and submit the same to the Developer (for submission by the Developer to the Enterprises) in accordance with this Agreement at such times as may be necessary to preserve the Developer’s rights under the Project Agreement and to ensure the Developer is not in breach of its obligations under the Project Agreement or the Law. All such notices and other matters shall be provided to the Developer for review two (2) Working Days prior to their submission to the Enterprises. The Construction Contractor agrees that no information that must be provided by the Construction Contractor pursuant to this Agreement shall be submitted to the Enterprises, the Lenders’ Technical Adviser or any other third party without it first being submitted to the Developer for review and comment, provided that if any such notice, report, submission, approval and other matter constitutes or includes a deviation or any material change to the Proposal Extracts or the Reference Design, such notice, report, submission, approval and other matter shall be subjected to the Developer’s Approval. With respect to any notice, report, submission, approval and other matter subject to review and comment by the Developer, the Construction Contractor shall incorporate all comments in such notice, report, submission, approval and other matter, and shall thereafter resubmit any such notice, report, submission, approval and other matter to the Developer for review and comment.

3. **Intentionally Omitted**

4. **Submission of Deliverables**

- (a) Each Reviewable Deliverable submission shall:
 - (i) include a signed and dated certification by the Construction Contractor in form and substance reasonably Acceptable to the Developer, that such Reviewable Deliverable is complete, is suitable for the purpose for which it is submitted and meets the requirements of this Agreement; and
 - (ii) be accompanied by such supplemental reference information and materials as are reasonably requested by the Developer in advance.
- (b) The Construction Contractor may resubmit any previously submitted Deliverable for Approval or Deliverable for Acceptance, as applicable, that was not previously Approved or Accepted, or otherwise consented to, approved or assented to, without conditions, provided that Construction Contractor clearly identifies and documents in its resubmission how all prior conditions and comments have been addressed.

5. **Intentionally Omitted**

6. **Intentionally Omitted**

7. **Tracking of Deliverables**

- (a) Prior to the issuance of NTP1, the Construction Contractor shall submit to the Developer for Acceptance, as part of its Project Management Plan delivered pursuant to Schedule 8 (Project Administration), the Deliverable Requirements Tracking List (“DRTL”).
- (b) The DRTL shall be prepared so as to satisfy each requirement set forth in Section 7(b) of Schedule 9 (*Submittals*) to the Project Agreement.
- (c) Following the Developer’s Acceptance of the DRTL, the Construction Contractor shall use the DRTL to track the status of all Reviewable Deliverables, including all submissions and resubmissions and responses from the Developer and the Enterprises.
- (d) The Construction Contractor shall deliver to the Developer for Acceptance (and for delivery to the Enterprises for their Acceptance) monthly updates to the DRTL to track the status of all Reviewable Deliverables, including updates to the DRTL as may be necessary to reflect the inclusion of any Reviewable Deliverable that was not previously included in the DRTL.

8. **Sequencing**

- (a) The Construction Contractor shall use Reasonable Efforts to schedule, prioritize and coordinate all Reviewable Deliverables to allow an efficient and orderly Reviewable Deliverables review process pursuant to this Schedule 9 and the DRTL.
- (b) The Construction Contractor acknowledges and agrees that, pursuant to the Project Agreement, to the extent that the Construction Contractor exceeds any of the limits on Reviewable Deliverables set out in Schedule 9 (*Submittals*) to the Project Agreement or the DRTL, the Department or the Enterprises, as applicable, shall (acting reasonably and taking into account the number and nature of any other Reviewable Deliverables that it and/or they may concurrently be in the process of reviewing) determine a time period for the review of the Reviewable Deliverables that exceed such limit.
- (c) The Construction Contractor acknowledges and agrees that, pursuant to the Project Agreement, neither the Department nor the Enterprises shall be obligated to concurrently review five or more Reviewable Deliverables that require review by the same specialty experts (as reasonably determined by the Department or the Enterprises pursuant to the Project Agreement) unless the Department or the Enterprises has or have previously Approved such concurrent review.

9. **Intentionally Omitted**

Schedule 10
Design and Construction Requirements

This Agreement contains a number of references to Schedule 10 (*Design and Construction Requirements*). The Developer and the Construction Contractor hereby acknowledge and agree that Schedule 10 (*Design and Construction Requirements*) to the Project Agreement is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 10 (*Design and Construction Requirements*) to the Project Agreement shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the Construction Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the Construction Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer's obligations and liabilities under Schedule 10 (*Design and Construction Requirements*) to the Project Agreement to the extent such obligations and liabilities relate to the CC Work (as if the same were expressly referred to herein as obligations and liabilities of the Construction Contractor *mutatis mutandis*).

Schedule 10A
Applicable Standards and Specifications

This Agreement contains a number of references to Schedule 10A (*Applicable Standards and Specifications*). The Developer and the Construction Contractor hereby acknowledge and agree that Schedule 10A (*Applicable Standards and Specifications*) to the Project Agreement is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 10A (*Applicable Standards and Specifications*) to the Project Agreement shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the Construction Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the Construction Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer's obligations and liabilities under Schedule 10A (*Applicable Standards and Specifications*) to the Project Agreement to the extent such obligations and liabilities relate to the CC Work (as if the same were expressly referred to herein as obligations and liabilities of the Construction Contractor *mutatis mutandis*).

Schedule 10B
Contract Drawings

This Agreement contains a number of references to Schedule 10B (*Contract Drawings*). The Developer and the Construction Contractor hereby acknowledge and agree that Schedule 10B (*Contract Drawings*) to the Project Agreement is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 10B (*Contract Drawings*) to the Project Agreement shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the Construction Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the Construction Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer's obligations and liabilities under Schedule 10B (*Contract Drawings*) to the Project Agreement to the extent such obligations and liabilities relate to the CC Work (as if the same were expressly referred to herein as obligations and liabilities of the Construction Contractor *mutatis mutandis*).

Schedule 11
Operations and Maintenance Requirements

This Agreement contains a number of references to Schedule 11 (*Operations and Maintenance Requirements*). The Developer and the Construction Contractor hereby acknowledge and agree that Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the Construction Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the Construction Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer's obligations and liabilities under Schedule 11 (*Operations and Maintenance Requirements*) to the Project Agreement to the extent such obligations and liabilities relate to the CC Work (including, without limitation, the O&M Work During Construction) (as if the same were expressly referred to herein as obligations and liabilities of the Construction Contractor *mutatis mutandis*).

Schedule 12
Intentionally Omitted

Schedule 13 Required Insurances

1. INSURANCE TO BE PROVIDED BY THE CONSTRUCTION CONTRACTOR

From the Financial Close Date until (unless specified otherwise in this Section 1 of this Schedule 13) the Substantial Completion Date, the Construction Contractor will obtain and maintain, or cause to be obtained and maintained, the Insurance Policies with respect to the CC Work (including O&M Work During Construction) and the Project described in this Section 1 of this Schedule 13.

1.1. "All Risk" Builders' Risk

Builder's Risk insurance written on an "all risks" basis, completed value form, on a non-reporting basis, insuring against "all risks", including the following perils: loss or damage by fire, collapse, lightning, windstorm, tornado, flood, earthquake, hail, explosion, riot, vandalism and malicious mischief, civil commotion, aircraft, vehicle impact, terrorism (both domestic and foreign acts of terrorism), smoke and such other risks as are usual to a similarly situated project, such insurance to:

- a. be in an amount not less than:
 - i. the lesser of:
 - A. (or such other amount proposed by Construction Contractor and consented to by the Developer (such consent not to be unreasonably withheld)), which amount in either case reflects the full replacement cost of the CC Work and the Project, including on and off-site fabrication, installation, storage and staging areas; and
 - B. the Probable Maximum Loss for the CC Work and the Project (and, with respect to any sublimits, subject to Sections 1.1.c, 1.1.d, 1.1.e, 1.1.g.ii and 1.1.g.iv of this Schedule 13, the Probable Maximum Loss in respect of the relevant peril), including on and off-site fabrication, installation, storage and staging areas; *plus*
 - ii. until such date as the demolition of the existing viaduct is completed:
 - A. ; *plus*
 - B. in extra expense insurance, which extra expense insurance may be combined with that specified in Section 1.1.g.ii of this Schedule 13, subject to a combined limit of with respect to any one loss, to cover, among other things, the additional expenses incurred for traffic rerouting following an insured loss to the viaduct;
- b. provide for either a DE 5 or LEG 3 exclusion pertaining to the cost of making good any faulty work, faulty materials, or any design error or omission;
- c. provide coverage for demolition/debris removal costs and increased cost of construction, with a minimum sublimit of
- d. provide "Ordinance or Law Coverage", with a minimum sublimit of
- e. if such insurance places a sublimit on flood coverage, include a sublimit which shall be no less than the greater of:
 - i. ; and
 - ii. the Probable Maximum Loss in respect of such peril;
- f. include coverage for delay in start-up on a gross income basis for the greater of:
 - i. 12 months of delay; and

- ii. the Probable Maximum Delay;
- g. include coverage for the following, with the limits specified below:
 - i. property in transit (in-land only) and unnamed locations;
 - ii. extra/expediting expenses (with a minimum sublimit of _____);
 - iii. off premises services interruption to a minimum of FLEXA perils cover;
 - iv. professional fees (with a minimum sublimit of _____);
 - v. valuable papers;
 - vi. hot and cold testing and commissioning (with a minimum limit of 120 Calendar Days);
 - vii. prevention of access (with a minimum limit of eight weeks); and
 - viii. ingress/egress (with a minimum limit of eight weeks);
- h. provide for interim payments in the event of any loss; and
- i. name the Lenders as loss payees as their interests may appear.

1.2. Commercial General Liability

Commercial general liability insurance (together with any excess or umbrella liability) against claims for personal injury (including bodily injury and death) and property damage or loss (including liabilities as a result of repairs and alterations) however arising occurring with respect to the CC Work or the Project, including on and off-site fabrication, installation, storage and staging areas, such insurance to:

- a. be on an occurrence form (as that term is used in the insurance industry) with a combined single limit of not less than _____ per occurrence and in the aggregate which may be provided in a layered placement, with the layers excess of the primary general liability to provide excess automobile liability and employers' liability;
- b. be subject to an ISO CG 22 80 endorsement and no other professional services exclusions; and
- c. cover at least the following hazards:
 - i. premises and operations liability;
 - ii. completed operations for a period of not less than eight years after the Substantial Completion Date or, if later, the expiration of any applicable statutes of limitation or repose;
 - iii. independent contractors;
 - iv. blanket contractual liability for all contracts;
 - v. sudden and accidental pollution to a minimum of 240 hours detection and a further 240 hours reporting to insurers;
 - vi. broad form property damage;
 - vii. contingent employers' liability;
 - viii. non-owned automobile liability (provided that the limits, scope and amount of coverage are not less than would be provided by the Insurance Policy required pursuant to this Section 1.2, at the option of the Construction Contractor such coverage may instead be provided under the Insurance Policy required pursuant to Section 1.6 of this Schedule 13);
 - ix. cross liability and severability of interests; and

- x. employees as additional insureds.

1.3. Workers' Compensation and Employers' Liability

Workers' compensation insurance, as required by the statutory limits of the State, and employers' liability with a limit of not less than _____ and excess liability coverage.

1.4. Professional Liability

a. From the Financial Close Date until the eighth anniversary of the Substantial Completion Date (or for a total period of ten (10) years from the Financial Close Date if the insurance is provided by a policy specific to this Project), professional liability insurance, which may be written on a claims made form with limits of liability not less than _____ per claim and _____ annual aggregate (or, if the insurance is provided by a policy specific to this Project, policy aggregate) for:

- i. the Construction Contractor;
- ii. the Lead Engineer (as defined in the ITP and, as of the Agreement Date, as identified in the Proposal); and
- iii. each other Subcontractor (if any) that both:
 - A. is responsible primarily for engineering and design of any of those structural Elements of the Work that the Construction Contractor is required to design and construct in accordance with the requirements of Section 13 of Schedule 10 (Design and Construction Requirements); and
 - B. in the performance of its work as a Subcontractor acts, or employs any individual who acts, as a licensed professional engineer in responsible charge of structural design work.

b. The Construction Contractor will ensure that all other professionals performing design, engineering, quality management, inspection, surveying and related professional services in respect of the CC Work and the Project carry or are covered by professional liability insurance for limits that are in accordance with Good Industry Practice.

1.5. Contractors' Pollution Liability and Pollution Legal Liability (Combined Form)

Contractors' pollution liability and pollution legal liability insurance for the CC Work and the Project, which may be written on a claims made form, such insurance to:

- a. be with limits of not less than _____ per occurrence (or such similar term as defined in the policy or policies) and _____ aggregate; and
- b. include coverage for:
 - i. environmental impairment liability;
 - ii. third party bodily injury;
 - iii. property damage liability (including remediation and clean-up costs);
 - iv. disposal site and transportation extensions; and
 - v. underground storage tanks; and
- c. provide for an extended reporting period until the earlier of: (i) the eighth anniversary of the Substantial Completion Date; and (ii) the tenth anniversary of the Agreement Date, provided that, should such contractors' pollution liability and pollution legal liability insurance be provided in separate policies, the limits of _____ per occurrence (or such similar term as defined in the policy or policies) and _____ aggregate will apply to each policy.

1.6. Automobile Liability

Automobile liability insurance on any owned, non-owned, and hired automobile used in connection with the CC Work and the Project with a limit of not less than _____ per occurrence.

1.7. Aircraft Liability

If and when aircraft are used in the performance of the CC Work and the Project, aircraft liability insurance (including owned and non-owned aircraft) which coverage will be with limits of not less than _____ per occurrence and _____ in the aggregate. Where the only aircraft used in the performance of the CC Work and the Project are unmanned aerial vehicle(s), at the option of the Construction Contractor, such coverage may instead be provided under the Insurance Policy required pursuant to Section 1.2 of this Schedule 13.

1.8. Railroad Liability and Railroad Protective Liability

If such coverage is not already provided under the commercial general liability insurance required pursuant to Section 1.2 of this Schedule 13, railroad liability and railroad protective liability insurance which coverage shall be with limits of not less than _____ per occurrence and _____ in the aggregate or, if higher, such other limits as required by UPRR, BNSF or DRIR in connection with the CC Work and the Project. This insurance shall be in effect only at such times as are required by the relevant Railroad.

1.9. Marine Cargo

If and when any property, materials or equipment intended to be used in connection with the CC Work and the Project are to be shipped by sea, marine cargo insurance which coverage shall provide coverage in an amount of not less than full replacement value per occurrence.

1.10. Contractors' Equipment

Contractors' equipment insurance covering any piece of equipment with a replacement cost in excess of _____ which coverage shall provide coverage in an amount of not less than full replacement value per occurrence.

1.11. Insureds

All Insurance Policies required pursuant to this Section 1 of this Schedule 13:

- a. other than the policies required pursuant to Sections 1.2, 1.3, 1.4, 1.6, 1.7, 1.8, and 1.10 of this Schedule 13, must include the Developer and the Construction Contractor as named insureds;
- b. other than the policies required pursuant to Sections 1.3, 1.4, 1.8, 1.9 and 1.10 of this Schedule 13, must include the Developer and the Specified Additional Insureds as additional insureds; and
- c. other than the policies required pursuant to Sections 1.3, 1.4, 1.8 and 1.10, must include the Lenders as additional insureds.

2. INSURANCE TO BE PROVIDED BY THE DEVELOPER

From the Financial Close Date until (unless specified otherwise in this Section 2 of this Schedule 13) the Substantial Completion Date, the Developer will obtain and maintain, or cause to be obtained and maintained, the Insurance Policies with respect to the Project described in this Section 2 of this Schedule 13.

2.1. Commercial General Liability

Commercial general liability insurance (together with any excess or umbrella liability) against claims for personal injury (including bodily injury and death) and property damage or loss (including liabilities as a result of repairs and alterations) however arising occurring with respect

to the Work or the Project, including on and off-site fabrication, installation, storage and staging areas, such insurance to:

- a. be on an occurrence form (as that term is used in the insurance industry) with a combined single limit of not less than _____ per occurrence and in the aggregate _____ which may be provided in a layered placement, with the layers excess of the primary general liability to provide excess automobile liability and employers' liability;
- b. be subject to an ISO CG 22 80 endorsement and no other professional services exclusions; and
- c. cover at least the following hazards:
 - i. premises and operations liability;
 - ii. completed operations for a period of not less than eight years after the Substantial Completion Date or, if later, the expiration of any applicable statutes of limitation or repose;
 - iii. independent contractors;
 - iv. blanket contractual liability for all contracts;
 - v. sudden and accidental pollution to a minimum of 240 hours detection and a further 240 hours reporting to insurers;
 - vi. broad form property damage;
 - vii. contingent employers' liability;
 - viii. non-owned automobile liability (provided that the limits, scope and amount of coverage are not less than would be provided by the Insurance Policy required pursuant to this Section 2.1, at the option of the Developer such coverage may instead be provided under the Insurance Policy required pursuant to Section 2.3 of this Schedule 13);
 - ix. cross liability and severability of interests; and
 - x. employees as additional insureds.

2.2. Workers' Compensation and Employers' Liability

Workers' compensation insurance, as required by the statutory limits of the State, and employers' liability with a limit of not less than _____ and excess liability coverage.

2.3. Automobile Liability

Automobile liability insurance on any owned, non-owned, and hired automobile used in connection with the Work and the Project with a limit of not less than _____ per occurrence.

2.4. Insureds

All Insurance Policies required pursuant to this Section 2 of this Schedule 13:

- a. must include the Developer as named insured; and
- b. other than the policies required pursuant to Section 2.2 of this Schedule 13, must include the Construction Contractor and the Specified Additional Insureds as additional insureds; and
- c. other than the policies required pursuant to Sections 2.2 and 2.3 of this Schedule 13, must include the Lenders as additional insureds.

3. GENERAL REQUIREMENTS

3.1. Probable Maximum Loss Study

3.1.1. Whenever this Schedule 13 references:

- a. “Accepted PML Study”, such term means the PML Study (and any update thereto) Accepted by the Enterprises;
- b. “PML Study”, such term has the meaning given to it in Section 3.1.2 of this Schedule 13;
- c. “Probable Maximum Delay”, such term means each probable maximum delay period limit determined from time to time pursuant to an Accepted PML Study; and
- d. “Probable Maximum Loss”, such term means each probable maximum loss amount limit (or sublimit) determined from time to time pursuant to an Accepted PML Study.

3.1.2. If, at any time, the Construction Contractor elects to place the insurance required pursuant to Section 1 of this Schedule 13 on a Probable Maximum Loss and Probable Maximum Delay basis, the Construction Contractor shall submit to the Developer, for Acceptance, a Probable Maximum Loss and Probable Maximum Delay study (a “PML Study”, which term, if such a study has previously been submitted by Developer pursuant to this Section, shall include any updates thereto submitted by the Construction Contractor pursuant to this Section) performed for the Construction Contractor by its Insurance Broker prior to the placement of coverage required pursuant to Section 1 of this Schedule 13.

3.2. Deductibles

Each Insurance Policy may include deductibles and, for certainty, shall not include any self-insured retentions except that a self-insured retention may be utilized on the Insurance Policies required pursuant to Sections 1.4 and 1.5 of this Schedule 13.

3.3. Placement on Occurrence Basis

Except for the Insurance Policies required pursuant to Sections 1.4 and 1.5 of this Schedule 13, all liability insurance Policies shall be placed on an occurrence and not a claims made basis.

3.4. Reinstatement Work and Loss Payee Provisions

Any loss payee provision in any Insurance Policy shall be consistent and not conflict with the requirements of Section 25.5 of the Construction Contract.

3.5. Maintenance Yard

All references in this Schedule 13 to “the CC Work and the Project” (or statements to similar effect) shall be interpreted to include, with effect from the Snow and Ice Control Commencement Date, the Maintenance Yard (including activities performed thereat).

Schedule 14 Strategic Communications

1. GENERAL

1.1. General Requirements

- 1.1.1. Providing timely, relevant and context sensitive information is a critical component of the Project. The Construction Contractor, the Developer and the Department shall work collaboratively to provide a robust and coordinated communications approach to achieve the overall Strategic Communication goals. The Construction Contractor shall be responsible for development and implementation of a communication strategy in collaboration with the Developer and the Department and in accordance with the requirements of this Schedule. The Construction Contractor shall document these communication strategies in an overall Strategic Communications Plan, which shall comprise the individual plans required within this Schedule and which is consistent with and expands upon the draft Strategic Communications Plan submitted with the Proposal.
- 1.1.2. The Strategic Communications Plan shall be developed with an awareness of the following issues:
- a. Communication and outreach commitments made in the I-70 East EIS;
 - b. Presence of an environmental justice community and limited English proficient residents and business owners in close proximity to project;
 - c. Community “fatigue” from lengthy I-70 East EIS;
 - d. Diversity of stakeholders, including local residents, local governments, commuters, small and local businesses, and major national/international corporations;
 - e. Large, separate infrastructure projects planned near the Project area including the redevelopment of the National Western Center; and
 - f. Use of a public-private partnership to deliver this Project.

2. STAFF REQUIREMENTS

2.1. General Requirements

- 2.1.1. The Construction Contractor shall provide a full-time Project Communications Manager (PCM) with at least seven years’ professional experience working on design-build construction projects and a practical understanding of construction schedules, Transportation Management Plans (TMPs), and CC Work performance processes; experience with and understanding of the importance of maintaining good relationships between the Project and government, businesses, residents, the general public, and other stakeholders; and experience with implementing communication and Public Involvement and Information (PI) strategies on projects of similar scope, nature, and complexity as this Project. The PCM shall be responsible for overseeing all Construction Contractor communications efforts during the CC Term.
- 2.1.2. The Construction Contractor shall provide a full-time Spanish/English bilingual Community Liaison with experience in and knowledge of the Swansea-Elyria neighborhoods. The Community Liaison shall coordinate closely with the Developer and the Department and be responsible throughout the CC Term for ensuring that local residents, businesses and nonprofit groups are informed about the Project and have a single point of contact for all questions and concerns. The Community Liaison shall be housed at the property located on Parcel No. AP-93 and Parcel No. AP-93A (as listed in Appendix A to Schedule 18 (Right-of-Way)) (namely, 3600 East 46th Avenue) a minimum of three days per week (or at a frequency mutually agreed upon by the Construction Contractor and the Developer) until the Project License Start Date in respect thereof (or any later date that is a reasonable period (as agreed by the Parties (acting reasonably) prior to the date that the Construction Contractor proposes to demolish such property).

- 2.1.3. The Construction Contractor, the Developer and the Department shall jointly determine which members of the Construction Contractor's communications team shall be housed at the Construction Contractor's office or at the 3600 East 46th Avenue property and at what times in the period prior to the Project License Start Date in respect thereof (or any later date as specified in Section 2.1.2).

3. STAFF COORDINATION

3.1. General Requirements

3.1.1. Construction Contractor's Communications Team

Prior to the issuance of NTP1, the Construction Contractor shall submit to the Developer (for submission to the Department for Information) the names and resumes of all members of its communications team with assigned roles and responsibilities and provide a staff availability list covering all days and hours during the Construction Period. The Construction Contractor shall update such information quarterly during the Construction Period and at such other times as are reasonably required to ensure that such information remains up to date.

- 3.1.2. Throughout the duration of the CC Term, the Construction Contractor shall hold weekly Strategic Communication meetings, to include the Developer and the Department's Communications Team, at the Project office. At these meetings the Construction Contractor, the Developer and the Department will discuss weekly communications issues and provide details for upcoming media advisories/press releases, community meetings, Lane Closure Reports, the use of personalized outreach activities, website updates and information line recordings. The agenda for each meeting shall be the responsibility of the PCM and shall be submitted to the Developer and the Department in advance of each meeting.

3.1.3. Public Involvement Services Contact Sheet

The Construction Contractor shall prepare a PI Contact Sheet containing the names of appropriate Strategic Communications personnel for the Project. At a minimum, the contact list shall include the name, address, phone number(s) and email addresses for the following individuals or organizations. The PI Contact Sheet shall be submitted to the Developer and the Department for Information prior to the issuance of NTP1 and updated annually throughout the CC Term and at such other times as are reasonably required to ensure that such information remains up to date.

- a. Construction Contractor, Developer and Department;
 - i. Project Director;
 - ii. HPTE Director;
 - iii. Project Communications Manager;
 - iv. Project website administrator;
 - v. Community Liaison; and
 - vi. Project Colorado Transportation Management Center (CTMC) contact;
- b. City and County of Denver;
 - i. Mayor's Office;
 - ii. Public Works;
 - iii. PI Office;
 - iv. Chamber of Commerce;
 - v. Fire/rescue; and
 - vi. Police department;

Central 70 Project: Design and Construction Contract
Schedule 14 (Strategic Communications)

- c. City of Aurora;
 - i. City Manager's Office;
 - ii. Public Works;
 - iii. PI Office;
 - iv. Chamber of Commerce;
 - v. Fire/rescue; and
 - vi. Police department;
- d. City of Commerce City;
 - i. City Manager's Office;
 - ii. Public Works;
 - iii. Public Information Office (PIO);
 - iv. Chamber of Commerce;
 - v. Fire/Rescue; and
 - vi. Police Department;
- e. Local State Patrol Office;
- f. Local hospitals;
- g. Key stakeholders: to be provided by the Developer or the Department, including but not limited to the following:
 - i. Local schools and school districts;
 - ii. Businesses;
 - iii. Community centers;
 - iv. Visitor/tourist destinations;
 - v. Churches; and
 - vi. Registered Neighborhood Organizations and neighborhood associations;
- h. Railroads;
- i. Airports;
- j. Utility Owners;
- k. Commercial vehicle operators, including airport shuttles and taxi companies; and
- l. Others as defined by the Developer or the Department.

4. STRATEGIC COMMUNICATIONS PLANS

4.1. General Requirements

- 4.1.1. The Construction Contractor shall prepare and maintain a:
 - a. Construction Period Communications Plan (CPCP);
 - b. Intentionally Omitted; and
 - c. Crisis Communications Plan (CCP).
- 4.1.2. Each plan shall include planned communications strategies; primary stakeholder communications lists; and identification of any PI issues and proposed outreach. Each plan shall be submitted to the Developer (for submittal to the Department for its Approval) for Approval according to the

Central 70 Project: Design and Construction Contract
Schedule 14 (Strategic Communications)

timelines provided in this Schedule. The Construction Contractor shall monitor and improve the effectiveness of each plan and resubmit for Acceptance annually upon the anniversary of the initial Approval by the Department or whenever the following conditions exist:

- a. A plan or procedure no longer adequately addresses the matters it was originally intended to address;
 - b. A plan or procedure does not conform to the requirements of this Agreement;
 - c. An audit by the Developer or the Department identifies a deficiency requiring an update; or
 - d. Organizational structure changes require revision to a plan.
- 4.1.3. The Construction Contractor shall clearly identify in a cover sheet what changes were made in each update to expedite the Developer's and the Department's review. Also, a red line and a final copy shall be provided.
- 4.1.4. Each plan shall describe the basic roles and responsibilities between the Developer, the Department and the Construction Contractor. In general:
- a. Department Responsibilities
The Developer and the Construction Contractor acknowledge that the Department is responsible for communicating overall vision on the Project including why the Project is needed, what Work will be done, how the Project will benefit customers, how the Project fits into the community, and how the Project fits into broader transportation plans. The Department will communicate the overall purpose of, implementation of, and education on how to use, the Tolled Express Lanes.
 - b. Construction Contractor Responsibilities
The Construction Contractor is responsible for communicating overall coping information during the Construction Period including details about the TMP, environmental information, and other activities that affect residents and businesses.
 - c. Joint Department/Construction Contractor Responsibilities
The Construction Contractor shall collaborate with the Department to develop key messages related to Construction Work and O&M Work During Construction activities. The Construction Contractor acknowledges that the Department will have final Approval before the messages are disseminated.
 - i. Government Relations
Throughout the CC Term, all communication requests received by the Developer or the Construction Contractor from Governmental Authorities shall be immediately referred to the Department (not including those requests related to Project management or coordination for Local Agency Permits). The Construction Contractor shall assist in giving timely information to the Department regarding construction Activities, and shall participate in meetings as requested.
 - ii. Media Requests
The Construction Contractor shall make project managers, supervisors, and other area experts available to the Department for assistance in media requests. The Construction Contractor shall also assist in media site visits and adhere to media deadlines when possible.

5. CONSTRUCTION PERIOD COMMUNICATIONS PLAN

5.1. General Requirements

5.1.1. The Construction Contractor shall prepare and maintain a CPCP to develop two-way communication of Project information with the public. The CPCP shall be used by the Construction Contractor throughout the duration of the Construction Period to manage and implement the PI process. The Construction Contractor's CPCP shall be submitted to the Department and the Developer for Approval prior to the issuance of NTP 1.

5.1.2. The CPCP shall include the following:

a. Community, Government and Business Stakeholders

The Construction Contractor shall use a variety of strategic PI approaches and tools to ensure that stakeholders have accurate information about the Project schedule, progress and construction impacts, as well as address issues as they arise.

When necessary, PI strategies shall be tailored to individual stakeholders and shall specify which approaches and tools will be used to disseminate information. Specific organizations shall be provided by the Department utilizing the database established through the I-70 East EIS. Project stakeholders include, but are not limited to, the following groups:

- i. Area residents;
- ii. Local and regional business owners, employees and customers;
- iii. Registered Neighborhood Organizations and neighborhood associations;
- iv. Local community organizations;
- v. Local churches;
- vi. Local schools;
- vii. Property owners and property management companies;
- viii. Commuters;
- ix. Transportation management/advocacy organizations;
- x. Denver International Airport;
- xi. National Western Center;
- xii. Regional Transportation District (RTD);
- xiii. Traveling public;
- xiv. Local, regional, and state government officials;
- xv. Delivery and courier services;
- xvi. Taxis, shuttles, and rental car companies;
- xvii. Commercial vehicle operators, Ports of Entry and Denver Permit Office, and Colorado Motor Carriers Association;
- xviii. Emergency response agencies, such as the Colorado State Highway Patrol, and local police departments, sheriff departments, fire departments, ambulance service providers, and hospitals;
- xix. Tourist destinations and organizations;
- xx. Colorado Department of Transportation (CDOT) employees and other internal team members, including CDOT Headquarters, the Office of Communications and the Government Relations Office;

Central 70 Project: Design and Construction Contract
Schedule 14 (Strategic Communications)

- xxi. Disadvantaged Business Enterprises and Emerging Small Businesses;
 - xxii. Utility Owners; and
 - xxiii. Railroads.
- b. Key Communication Topics
- i. The CPCP shall describe outreach strategies specific to the following topics:
 - A. Coping Strategies

The Construction Contractor shall develop and implement community and business relations strategies that communicate coping messages to stakeholders including those listed in Section 5.1.2.a of this Schedule 14. Coping messages shall focus on providing stakeholders with the information they need to make short-term and long-term decisions about how they can deal with the Construction Work and O&M Work During Construction with as little disruption as possible.
 - B. Environmental Information
 - (I) The CPCP shall describe an overall plan for communicating environmental information, including the Construction Contractor's environmental commitments, with the public. Such description shall include:
 - (aa) a process for responding to environment-related inquiries from stakeholders and the public;
 - (bb) instances when outreach tools (e.g. graphics and videos) will be developed to explain complex environmental topics; and
 - (cc) how environmental information will be incorporated into broader outreach tools, including public meetings and project newsletters.
 - (II) The CPCP shall develop a plan for coordinating any environmental mitigation requirements as provided in Schedule 17 (Environmental Requirements), as they pertain to stakeholders including those listed in Section 5.1.2.a of this Schedule 14, to ensure that stakeholders are aware of and participate in those areas where appropriate.
 - (III) The Construction Contractor shall make the Environmental Compliance Work Plan (ECWP) monthly update as provided in accordance with Schedule 17 (Environmental Requirements) available to the Developer (and Developer shall make such monthly update available to the Department) for posting to the Project website on a monthly basis. The Construction Contractor shall make the results of all PM10 monitors, as specified in Schedule 17 (Environmental Requirements), available on the Project website as specified in Schedule 17 (Environmental Requirements).
 - C. Noise

The CPCP shall develop a plan for communicating the scheduling of high noise events as well as temporary and permanent noise wall construction with individual property owners and impacted communities.

D. Coordination with Local Schools

The CPCP shall develop a plan for coordinating with the Department's Safe Routes to School Coordinator to verify walking and biking maps are up-to-date and reflect changes in access during the Construction Period. The CPCP shall develop a plan for coordinating with Denver Public Schools, and all schools within close proximity of the Project, including Swansea Elementary School, Garden Place Academy, and Bruce Randolph School.

E. Access to Transit and Pedestrian and Bicycle Routes

The CPCP shall identify a plan for communicating to the public and other associated stakeholders significant impacts and routing changes pertaining to mass transit, bicycles, pedestrian and handicap mobility.

F. National Western Center Coordination

The CPCP shall identify a strategy for coordinating with the anticipated redevelopment of the National Western Center. This strategy shall at a minimum describe the frequency of joint meetings, shared communication tools, and how lane closures and access impacts will be coordinated between the two projects. This strategy shall be developed with input from the MOT Task Force per Schedule 10, Section 2.6.

G. Cover Coordination and Outreach

The CPCP shall describe a process for continuing to engage the community in the development of the Cover. This shall include coordination with the City of Denver to involve local residents in selecting a name for the Cover as well as any final design considerations that would benefit from resident input.

H. Swansea Elementary School Coordination

The CPCP shall describe a process for engaging Swansea Elementary School staff and students throughout the Construction Period. This shall include providing safety training for school personnel, educating students about safety near construction areas, providing notification of construction activities occurring near the school, and consulting with school operations personnel on alternative travel routes.

I. Aesthetic and Design Features

The CPCP shall describe a process for inviting local artists, school children, and community members to further develop aesthetic features reflecting neighborhood identity. The CPCP shall identify which features (e.g. retaining or noise walls) will reflect this input.

5.2. Public Information Outreach Tools

The Construction Contractor shall provide a PI tool box with the flexibility to meet different stakeholder needs. The Construction Contractor shall continue to coordinate with the Developer and the Department to ensure that the tools employed during the Project are effective. All PI materials shall be provided in English and Spanish, unless Approved otherwise by the Developer.

a. Phone and Email

- i. The Construction Contractor shall establish and maintain from the issuance of NTP2 throughout the CC Term a PI office equipped with a telephone, voicemail, and computers. The Project information telephone line shall be the Department's current Project hotline number. The voicemail for the project information line shall be recorded in English and Spanish and provide an updated message each

week, or each day if necessary, concerning relevant completion dates and forthcoming activities on the Project and allow the recording of a message from the caller. If unable to answer the PI line, the Construction Contractor shall check and respond to voicemail messages throughout each day that construction operations and lane Closures are being carried out. During times of highly impactful construction activity or extended night work as identified by the Department, the Construction Contractor shall provide 24-hour coverage of the PI telephone line.

- ii. Throughout the CC Term, the Construction Contractor shall track inquiries made by citizens and businesses, including names, addresses, phone numbers, and follow-up action taken in response to inquiries; such inquiries and any follow-up action shall be entered into Dialog, a web-based contact and issue tracking database provided by the Department. The Construction Contractor shall pay for the necessary Dialog license. The system shall provide an automated report to the Department, the Developer and the Construction Contractor each week. All inquiries and complaints shall be followed up with a return phone call or email from either the Construction Contractor and/or, when necessary (and as requested by the Developer (pursuant to a request from the Construction Contractor) or determined by the Department), the Department. The following information shall be recorded:
 - A. Provide the date and time of call;
 - B. Contact information (name, phone number, street address, and e-mail address);
 - C. Location and description of complaint and/or request; and
 - D. Response provided including date and manner of response and whether request was relayed to the Department for response.

b. Public Meetings

- i. The Construction Contractor shall host and facilitate one in person public meeting within one month after the issuance of NTP2. This meeting shall have two primary purposes: 1) to introduce the Construction Contractor and the Developer to the local community and 2) to seek input on defining community values per Instructions to Proposers Part B, Section 1.1.e. Additional public meetings shall be held at key times (e.g. prior to removal of the viaduct) during the CC Term, as identified by the Department (in consultation with the Developer and the Construction Contractor). An agenda for all such meetings shall be submitted to the Developer and the Department for Acceptance two weeks prior to the meeting date. The Construction Contractor shall ensure participation by the Construction Contractor's environmental team in these meetings. The Construction Contractor shall publicize these meetings through multiple means including local media, paid advertisements in newspapers, email, inserts in local newsletters, door-to-door flyers, mailers and others. The Construction Contractor shall utilize a stakeholder list, which will be provided by the Department prior to the issuance of NTP1, which will include local elected officials, city/county staff, and surrounding Local Agencies.
- ii. All public meetings shall be held within the corridor boundaries; however, where relevant, the Construction Contractor shall host meetings in the neighborhood location(s) closest to the upcoming Construction Work or O&M Work During Construction. In order to remove barriers to public participation, the Construction Contractor shall provide childcare, food, and appropriate language translators at public meetings designed to achieve broad participation from Project area residents, unless it is determined by mutual agreement of the Parties that these services are not necessary.

Central 70 Project: Design and Construction Contract
Schedule 14 (Strategic Communications)

- iii. All public meetings shall inform attendees of Project plans and schedules and provide information on how to receive updates on the Project (via email address list and/or the Department's preferred email messaging system). The Construction Contractor will provide Project displays that explain information on Construction Work, environmental commitments and information, O&M Work During Construction, phasing, traffic impacts, etc. Project displays and other presentation materials used at the public meetings shall be of professional quality and designed to clearly convey accurate Project information to a non-technical audience. All displays shall be provided in English and Spanish. Copies of the most recent Project newsletter shall also be made available by the Developer at all public meetings.
 - iv. The Construction Contractor shall, in coordination with the Developer and the Department, respond to all feasible requests to attend regular community and stakeholder meetings or community events, such as those organized by nonprofit groups and neighborhood and business associations. The Construction Contractor shall provide appropriate technical staff, as required.
- c. Business Meetings
- In addition to the public meetings required to be held pursuant to Section 5.2.b of this Schedule 14, the Construction Contractor shall organize and lead at least two public meetings specifically focused on local and regional business impacts within two months after the issuance of NTP2 and shall host additional meetings focused on local and regional business impacts at designated project phases (e.g. major or extended closures) as identified by the Department.
- d. Social Media
- The Construction Contractor shall utilize the Department's social media platforms, including Facebook and Twitter, to share information with the public. All social media posts shall be submitted to the Developer and the Department for Acceptance one Working Day in advance of inclusion on social media.
- e. Stakeholder Distribution List
- The Construction Contractor shall develop a master distribution list of contacts to be used for general PI, publications, and informational flyers/newsletters. The Department's database established through the I-70 East EIS shall be used as the basis for development of this list/database as well as the Department's preferred email messaging system. This list or database shall be submitted to the Developer and the Department for Acceptance prior to issuance of NTP2 and updated annually throughout the duration of the CC Term. Through the Construction Contractor's data gathering process, the Construction Contractor shall assist the Department in supplementing the database and the preferred email messaging system.
- f. Tours and Communication Events
- The Construction Contractor shall, at the request of the Developer or the Department, be available to participate in all media, business and government official tours of the construction areas. The Construction Contractor shall participate in the coordination and delivery of communication events (e.g. groundbreaking or grand openings). The Department will lead tours and events.
- g. Lane Closure Reports
- The Construction Contractor shall throughout the CC Term submit a Lane Closure Report each Thursday as required by Schedule 10, Section 2 (*Maintenance of Traffic*) for the following week (Saturday through Friday) for Information. This report shall be provided to the list of contacts as provided by the Department.
- h. Traffic Alerts

Central 70 Project: Design and Construction Contract
Schedule 14 (Strategic Communications)

The Construction Contractor shall throughout the Term submit a weekly traveler alert each Thursday for distribution on the Department's preferred email system and COTRIP weekly. The alert shall include I-70 Mainline, CDOT Roadways, and Local Agency Roadways and any activity that may impact the traveling public. Upcoming alerts shall be reviewed and discussed during the weekly Strategic Communications meetings.

i. WebPage Updates

The Construction Contractor shall work with the Developer and the Department to develop internet web page content for a Project website developed by the Enterprises and CDOT specifically for this Project. The Construction Contractor shall provide consistent updates with the latest Project information (web page development experience is not necessary as the Construction Contractor will supply information for the Department web page template). Updates shall contain all appropriate links to/from other sites if applicable, e.g., local city, county, bus service, etc. as well as associated graphics, e.g. detour maps. The Construction Contractor will ensure the web page is updated at least weekly, and otherwise as reasonably required, with pertinent schedule information, new photos, contact information, etc. All proposed updates to the web page content shall be submitted to the Developer and the Department for Acceptance two Working Days in advance of inclusion on the website.

j. Project Newsletters

Throughout the Construction Period, the Construction Contractor shall prepare and distribute a monthly newsletter. The newsletter shall be provided in English and Spanish. The first newsletter shall be distributed within 30 Calendar Days following the issuance of NTP2. The newsletter shall at a minimum provide summary information on the Project's purpose and schedule, list any upcoming job fairs or opportunities, list the Project information line, email address, web address, Project map and a construction safety message, and any other matters reasonably requested by the Developer or the Department. The newsletter shall be submitted to the Developer and the Department for Acceptance prior to distribution. The Department will provide the Developer (and upon receipt, the Developer shall provide the Construction Contractor) a newsletter template which will include the Project's logo. The Construction Contractor shall be responsible for distributing the newsletter to the master distribution list of contacts as described in Section 5.2.e of this Schedule 14. The newsletter shall be distributed via email once per month and distributed door-to-door to the impacted project area – approximately 2500 households—once per quarter.

k. Language Assistance for Limited English Proficient Persons

The Construction Contractor shall provide access to Limited English Proficient (LEP) persons. LEP persons are individuals for whom English is not their primary language and who have a limited ability to read, write, speak or understand English. The Construction Contractor's Community Liaison shall ensure LEP assistance for the Project including, but not limited to, translation during individual conversations and short communication materials such as door hangers or simple web updates. The Construction Contractor acknowledges that the Department will provide translation of all other communication materials and interpretation services at meetings. The Construction Contractor shall document all measures taken to communicate with LEP persons and record all requests for language assistance and submit details thereof in the CPCP quarterly report and the MOCP quarterly report.

l. Public Communication Collateral

The Construction Contractor shall develop a variety of outreach collateral to share information, including coping strategies, to the public as necessary for major project milestones such as long-term Closures or impactful Construction Work or O&M Work During Construction activities (i.e. nighttime noise, restricted access, Utility impacts, etc.). The Construction Contractor's Community Liaison shall work with the Developer and the

Central 70 Project: Design and Construction Contract
 Schedule 14 (Strategic Communications)

Department to determine which collateral shall be used. Collateral could include newsletters, fact sheets, emails, flyers, social media updates, etc. and in all cases shall be submitted to the Developer and the Department for Acceptance prior to distribution. The Construction Contractor shall use the Department provided branding on all PI materials throughout the Project and adhere to the CDOT *The Colorado Brand Guidelines*. The Construction Contractor shall not use its own logos or Subcontractor logos for public communications materials. All collateral material intended for broad distribution shall include Spanish translation, provided by the Department.

m. Personalized Outreach Activities

Throughout the Construction Period the Construction Contractor shall utilize door-to-door outreach, personal phone calls and related activities. The use of these activities shall be discussed at the weekly Strategic Communication meetings and mutually agreed upon by the Construction Contractor, the Developer and the Department.

n. Photos/Videos

Without prejudice to the Construction Contractor' obligations to take photos under Section 10 of Schedule 8 (Project Administration), the Construction Contractor shall take and submit photos/videos of the CC Work on regular intervals. Except as noted below, a cell phone camera is permitted. Photographs/videos may include traffic control, paving, slope repair, erosion control, bridge deck and rail work, and other key areas of work identified by the Construction Contractor, the Developer, Department, and PCM for use in reports to interested agencies, social media, and flyers. A minimum of two digital photographs shall be submitted each week to the Developer and the Department. The Construction Contractor shall also develop videos for public distribution to share progress of the Project either annually or at key project milestones. The Construction Contractor shall also develop videos as necessary to communicate key coping strategies as directed by the Developer and the Department. The Construction Contractor shall provide professional aerial photographs annually to show progress of the corridor during the Construction Period.

o. Project Identification Signing

The Construction Contractor shall provide one large project identification sign for each direction of travel along the I-70 Mainline at the Project limits. Sign layout and position shall be Accepted by the Developer and the Department prior to installation. Project identification signs shall be installed within 14 Calendar Days following the issuance of NTP2. Project identification signs shall be MUTCD compliant and contain the following information:

- i. Project logo;
- ii. Project start and estimated completion dates; and
- iii. Developer name and PI hotline number.

5.2.2. Response and Deliverables Protocol

The Construction Contractor shall comply with Table 1 in responding to communications from stakeholders and the public:

Table 1 Response Protocol

Type of Communication	Timing of Response
Hotline calls	Check messages throughout day Respond same day (initial call) or within 24 hours (including weekends if work is occurring)
Email	Same day (within two Working Days for high volume situations)
Call from Department staff	As soon as possible (no later than 24 hours)

Webpage and social media inquiries	Same day (within two Working Days for high volume situations)
Public meeting inquires	Within one week of the meeting

5.3. CPCP Quarterly Reporting

5.3.1. The Construction Contractor shall prepare a quarterly communications report during the Construction Period. The initial report shall be provided to the Developer and the Department for Acceptance no later than 10 Working Days after the 90th Calendar Day following the issuance of NTP2. Each quarterly report shall be provided in English and, if requested by a member of the public, Spanish. The CPCP quarterly report shall include the following:

- a. A summary of primary Construction Work and O&M Work During Construction activities performed during the preceding quarter (refer to Progress Reports as required in Schedule 8 (Project Administration));
- b. Detailed summary of Strategic Communication efforts as part of the Progress Report activities performed during the preceding quarter;
- c. Detailed summary of the ECWP as part of the Progress Report activities, environmental mitigation summary, and a list of the date and time of any PM10 alert thresholds reached or exceeded, in each case, during the preceding quarter;
- d. A summary of progress in implementing the Small and Disadvantaged Business Participation Plan’s Construction Contract Plan from the preceding quarter;
- e. A summary of progress in implementing the Workforce Development Plan from the preceding quarter;
- f. Detailed summary of number of accidents cleared during the preceding quarter; and
- g. Detailed summary of measures taken to communicate with LEP persons and requests for language assistance during the preceding quarter.

6. INTENTIONALLY OMITTED

7. CRISIS COMMUNICATIONS PLAN

7.1. General Requirements

7.1.1. The Construction Contractor shall prepare and maintain a Crisis Communications Plan (CCP) for the Construction Contractor’s response to Emergencies and incidents at any time during the CC Term. The Construction Contractor shall coordinate this approach with the Construction Contractor’s overall Incident Management Plan. The Construction Contractor’s CCP shall be submitted to the Developer and the Department for Approval prior to the issuance of NTP 1.

7.1.2. The Construction Contractor acknowledges and accepts that in an event of a crisis, the Department will be the lead agency to handle communication with the media, public, the Department staff, etc. The Construction Contractor shall be available to help coordinate with the Department and provide information necessary to respond to the crisis.

7.1.3. The CCP shall include:

- a. Types of potential Emergencies;
- b. Designated staff to respond to the Emergency;
- c. Approaches to addressing potential Emergencies; and
- d. Boilerplate messaging that includes:
 - i. Cause of specific disruptions (whether construction related or not);
 - ii. Actions being taken to alleviate the problem;

- iii. Impact to the public and notification procedures;
- iv. Instructions for coping with/avoiding the impact (e.g. detours); and
- v. Anticipated duration of the disruption.

7.1.4. The Construction Contractor shall provide specific details on internal coordination and communication that will occur with the Developer team (including the Construction Contractor), the Department, and other stakeholders.

7.1.5. Emergency Information Dissemination - Communications Tree

The CCP shall include an Emergency response telephone and email tree established by the Construction Contractor. All appropriate personnel shall be included on this communications tree for immediate response in the event of an Emergency. The telephone/email tree shall be divided into areas of expertise so the proper people are called and/or emailed for specific Emergency situations. The Project Director, PCM, the Construction Contractor and the Developer shall be included on the communications tree for notification of any Emergency that may arise. The Construction Contractor shall develop and maintain a contact list of Emergency service providers as part of its CCP. The Construction Contractor shall provide information to Emergency service providers. The Construction Contractor shall submit the Emergency response communications tree to the Developer and the Department for Acceptance prior to the issuance of NTP 1.

8. DELIVERABLES AND PUBLIC NOTIFICATIONS

8.1. Deliverables

At a minimum, the Construction Contractor shall submit the following to the Developer (for submission to the Department) for Information, Acceptance, or Approval in accordance with the timeframes specified:

Table 2 Deliverables

Deliverable	Information, Acceptance, or Approval	Schedule
Construction Contractor's Communications Team Details	Information	Prior to the issuance of NTP 1. Updates submitted quarterly during the Construction Period
Public Involvement Services Contact Sheet	Information	Prior to the issuance of NTP 1. Updates submitted annually and otherwise as required
Stakeholder Distribution List	Acceptance	Prior to the issuance of NTP 2. Updates submitted annually
Construction Period Communications Plan (CPCP)	Approval/Acceptance	Prior to the issuance of NTP 1 for Approval Updates submitted annually for Acceptance
Reserved		
CPCP Quarterly Report	Acceptance	10 Working Days after 90 Calendar Days after issuance of NTP 2; quarterly thereafter
Reserved		
Crisis Communications Plan (CCP)	Approval/Acceptance	Prior to the issuance of NTP 1 for Approval Updates submitted annually for Acceptance
Emergency response communications tree	Acceptance	Prior to the issuance of NTP 1

Central 70 Project: Design and Construction Contract
 Schedule 14 (Strategic Communications)

Deliverable	Information, Acceptance, or Approval	Schedule
Traffic alerts/media releases	Acceptance	Weekly by Thursday at 10:30 a.m.
Lane Closure Reports	Information	Weekly by Thursday at 10:30 a.m.
Newsletters	Acceptance	Five Working Days prior to scheduled quarterly distribution date during the Construction Period
Project identification sign layout	Acceptance	To permit installment by 14 Calendar Days following the issuance of NTP 2
Fliers, posters or other public material	Acceptance	As needed, five Working Days prior to the scheduled distribution date or, in cases of rapid response, 48 hours prior to distribution
Photos	Acceptance	Two a month or as requested Aerial photographs annually during the Construction Period
Video	Acceptance	One annually or at key project milestones
Social media posts	Acceptance	As needed, one Working Day in advance of inclusion on social media
Web page content	Acceptance	Weekly or as often as reasonably required, two Working Days in advance of inclusion on the website

8.2. Public Notification

The Construction Contractor shall comply with Table 3 in providing the following information to the public:

Table 3 Submittal Time to the Public

Deliverable	When to be published
Full road closures, detours, and major traffic impacts lasting seven Calendar Days or longer	14 Calendar Days prior to the beginning of activity in any area of the Project.
Major project activities (such as major lane shifts, bridge demolitions, etc.) lasting seven Calendar Days or less	7 Calendar Days prior to the beginning of the activity.
Other remaining types of Construction Activities in any area of the Project including: <ul style="list-style-type: none"> ▪ Night Work ▪ Heavy Noise Work ▪ Utilities ▪ Change of business/residential access 	7 Calendar Days prior to the beginning of activity in any area of the Project or as determined jointly by the Developer and Department.
Other construction updates (e.g., cancellation of planned closures, additional lane closures, closure removals, major traffic shifts, etc.) that directly impact the public.	As soon as known with at least 24 hours' notice.

Schedule 15
Federal and State Requirements

1. GENERAL REQUIREMENTS

1.1. Civil Rights Program Manager

- 1.1.1. The Construction Contractor shall retain a full-time Civil Rights Program Manager (“CRPM”) who shall be responsible for the day-to-day operational components of, and serve as the primary contact to the Developer for, all matters and requirements concerning:
- a. Davis-Bacon and related Acts (contained in Section 2.1 of this Schedule 15);
 - b. equal employment opportunity (contained in Section 2.2 of this Schedule 15);
 - c. Title VI of the Civil Rights Act (contained in Section 2.3 of this Schedule 15);
 - d. Americans with Disabilities Act (contained in Section 2.4 of this Schedule 15);
 - e. compliance with certain Federal Law requirements relating to the matters set out in Parts I through V of Appendix H to this Schedule 15 (contained in Section 2.5 of this Schedule 15);
 - f. small business participation and workforce development (contained in Sections 5 and 6 of this Schedule 15); and
 - g. community development programs (contained in Section 7 of this Schedule 15)
(together, the “Civil Rights Requirements”).
- 1.1.2. The CRPM shall have at least three years’ professional experience working on transportation-related construction projects and knowledge of small business and workforce applicable regulations and best practices to ensure compliance with all the Civil Rights Requirements.
- 1.1.3. The CRPM position shall be filled prior to issuance of NTP1, and remain filled through the duration of the Construction Period. The appointment of the CRPM, and any replacement thereof, shall be subject to the Developer’s Acceptance.

1.2. Meetings and Reporting

1.2.1. Construction Period Monthly Meeting Requirement

The Construction Contractor, through its CRPM, shall host monthly meetings with the Developer and the Department during the Construction Period at such times and locations as are reasonably convenient to the Developer and the Department. The purpose of such meetings shall be to discuss all matters concerning the Civil Rights Requirements. The Construction Contractor, the Developer and the Department shall jointly set the agenda for each meeting and the Developer or the Department may request the presence of specific Persons participating on the Project, as necessary.

1.2.2. Construction Period Monthly Reporting Requirements

As part of its monthly Progress Report submissions made during the Construction Period pursuant to Section 4.1 of Schedule 8 (*Project Administration*), the Construction Contractor shall submit to the Developer for Acceptance all reports referenced in this Schedule 15 as applicable during the Construction Period, including as necessary to comply with the Construction Period small business participation reporting requirements contained in Appendix A to this Schedule 15, the Construction Period workforce development program reporting requirements contained in Appendix B to this Schedule 15 and the Davis-Bacon reporting requirements contained in Section 2.1.3 of this Schedule 15.

1.2.3. Construction Period Semi-Annual Self-Assessment

No later than each anniversary of the commencement of each Contract Year and of the date that is six months thereafter in each Contract Year during the Construction Period, the Construction Contractor shall submit to the Developer:

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- a. for Approval, an assessment of its progress toward achieving the Construction Work Small Business Goals described in Section 6.1 of this Schedule 15; and
- b. for Acceptance, an assessment of its progress toward achieving the Workforce Development Goals applicable during the Construction Period.

Additional requirements for such self-assessments are contained in Appendices A and B to this Schedule 15.

1.2.4. Construction Period Annual Progress Review

During the Construction Period the Construction Contractor shall participate in an annual review (on a Contract Year basis) of its progress toward achieving the Small Business and Workforce Development Goals applicable during the Construction Period. Additional requirements for such reviews are contained in Appendices A and B to this Schedule 15. Such review shall also consider the Construction Contractor's compliance with its obligations under Section 7 of this Schedule 15.

1.2.5. Intentionally Omitted

1.2.6. Intentionally Omitted

1.2.7. Web-based compliance system

During the Construction Period, the Construction Contractor shall use B2Gnow and LCPtracker, the Enterprises' web-based certified payroll and contractor compliance system, to submit Deliverables required by this Schedule 15 and to report payments to Subcontractors so as to document compliance with Part 2, Section 17.5 of this Agreement. For any required Deliverable that is not supported by the Enterprises' B2Gnow or LCPtracker software, the applicable Deliverable shall be submitted to the Developer in a form mutually agreed between the Parties (both acting reasonably).

1.3. Deductions

1.3.1. Construction Period

Failure to Achieve Construction Work Small Business Goals

- a. The failure by the Construction Contractor both (a) to achieve any Construction Work Small Business Goal as of the Substantial Completion Date and (b) to have made good faith efforts (as determined by reference to Part II of Appendix A to this Schedule 15) to achieve such goal shall result in a payment deduction pursuant to Schedule 6 (*Performance Mechanism*). The deduction shall be determined as follows (with the result to be rounded to the nearest whole number) and be calculated in accordance with Sections 2 and 3 of Part II of Appendix A to this Schedule 15:

(Relevant Construction Work Small Business Goal Percentage – Actual Percentage of Relevant Participation Achieved) x (Total Dollar Value of, as applicable to the relevant goal, all (i) Design Services or (ii) Other Construction Work or (iii) Other Construction Work and Routine O&M Work) = Amount of deduction to be assessed.

Failure to Achieve Construction Period OJT Goal

- b. The failure by the Construction Contractor to achieve the Construction Period OJT Goal as of the Substantial Completion Date shall result in a payment deduction pursuant to Schedule 6 (*Performance Mechanism*). The deduction shall be determined as follows (with the result to be rounded to the nearest whole number):

(Construction Period OJT Goal – Actual OJT Employment Hours on Other Construction Work during the Construction Period calculated in accordance with Section 1 of Part III of Appendix B to this Schedule 15) x \$28.50 = Amount of deduction to be assessed.

Re-evaluations of Failures to Achieve Construction Work Small Business Goals and Construction Period OJT Goal

- c. Any failure to achieve any Construction Work Small Business Goal or the Construction Period OJT Goal as of the Substantial Completion Date which failure resulted in a deduction as determined pursuant to, as applicable, Section 1.3.1a or 1.3.1b of this Schedule 15, is subject to re-evaluation after (i) Approval by the Developer in accordance with Section 8 of Part III of Appendix A to this Schedule 15 or Section 7 of Part IV of Appendix B to this Schedule 15 of, as applicable, the Construction Period Small and Disadvantaged Business Final Report or the Construction Period Workforce Development Final Report submitted by the Construction Contractor prior to the Final Acceptance Date and (ii) the issuance of the Developer's report pursuant to the relevant such Section.

Following such re-evaluation (to be made with respect to compliance as of the Final Acceptance Date, and not as of the Substantial Completion Date), the Developer shall recalculate any deductions previously made pursuant to Sections 1.3.1a and 1.3.1b (such recalculations to be made by reference to the Final Acceptance Date). If such recalculations result in a lower deduction relative to the relevant deduction previously made pursuant to Section 1.3.1a or Section 1.3.1b of this Schedule 15, the Construction Contractor shall be entitled to include the differential in the next Payment Request that it submits to the Developer as an amount payable to the Construction Contractor by the Developer.

1.3.2. Intentionally Omitted

2. LABOR, EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

2.1. Davis-Bacon and Related Acts (DBRA) Compliance

2.1.1. Application to all Construction, Alteration and Repairs

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

2.1.2. Wage Rates

The minimum wage rates to be used for purposes of compliance with Section 2.1.1 of this Schedule 15 throughout the Construction Period are established by the U.S. Department of Labor. Current rates are attached as Appendix D to this Schedule 15.

2.1.3. Compliance and Reporting

The Construction Contractor shall ensure that all employees performing work subject to DBRA classifications and rates working during the CC Term receive the minimum compensation required in accordance with DBRA and other Law. The Construction Contractor shall provide weekly certified payrolls to the Developer throughout the CC Term for all activities subject to DBRA. The Construction Contractor shall, and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall, pursuant to Part 2, Section 19 of this Agreement, maintain and make available for review, inspection and audit by the Department and the Developer all such Project Records as are necessary to document compliance with DBRA and other law. During the Construction Period, the CRPM shall be the person responsible for reporting this data to the Developer.

2.2. Equal Employment Opportunity

2.2.1. Executive Order 11246

The Construction Contractor shall, and shall ensure that all Subcontractors shall, comply with all Laws that prohibit certain employment practices. In furtherance of this and in accordance with Executive Order 11246 and Appendix E to this Schedule 15, the Construction Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The provisions contained in Appendix E to this Schedule 15 shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

2.2.2. Affirmative Action

The Construction Contractor shall take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. The Construction Contractor shall, and shall ensure that all Subcontractors shall, comply with CDOT's Standard Special Provision "Affirmative Action Requirements Equal Employment Opportunity" (attached as Appendix F to this Schedule 15). Appendix F shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

2.3. Title VI of the Civil Rights Act and Related Statutes

2.3.1. Non-Discrimination Provisions

Pursuant to Title VI of the Civil Rights Act of 1964 and related statutes, the Construction Contractor shall not, and shall ensure that none of the Subcontractors shall, exclude from participation in the Construction Work and O&M Work During Construction, deny the benefits of, or subject to discrimination, any person in the United States on the ground of race, color, national origin, sex, age or disability. The Construction Contractor shall, and shall ensure that all Subcontractors shall, comply with all applicable Federal and State nondiscrimination Law and with the required terms of USDOT Order No. 1050.2A "USDOT Standard Title VI/Non-Discrimination Assurances, which are set out in Appendix G to this Schedule 15. The Construction Contractor shall include the clauses contained in Parts I through IV of Appendix G in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

2.3.2. Notice and Complaints

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

2.4. Americans with Disabilities Act

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

2.5. Required Federal Provisions, Federal-Aid Construction Contracts, for FHWA 1273

2.5.1. Applicability

As the Construction Work will be financed in whole or in part with Federal funds, all the statutes, rules and regulations promulgated by the Federal government and applicable to work financed in whole or in part with Federal funds will apply to such work. In accordance with Section 1 of The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273" ("FHWA 1273") attached as Appendix H to this Schedule 15, FHWA 1273 applies to, and shall be included in, this Agreement and (subject to Section 2.5.3 of this Schedule 15) all Subcontracts under which any part of the Construction Work is performed, excluding those Subcontracts that are purchase orders, rental agreements or other agreements for supplies or services (other than design services). FHWA 1273 applies to, and shall be incorporated by reference in any contract, for work done under any purchase order, rental agreement, or agreement for other services.

2.5.2. Definitions

For purposes of Appendix H to this Schedule 15 the following terms or phrases in FHWA 1273 shall have the respective meanings set out below:

- a. "Developer contracting officer", "Developer resident engineer", or "authorized representative of the Developer" shall mean the Developer or its authorized representative;
- b. "contractor", "prime contractor", "bidder" or "prospective primary participant" shall mean the Construction Contractor or its authorized representative;
- c. "contract" or "prime contract" shall mean this Agreement or any other Subcontract as may be appropriate under the circumstances;
- d. "subcontractor", "supplier", "vendor", "prospective lower tier participant" or "lower tier subcontractor" shall mean, as appropriate, contractors other than the Construction Contractor or any other Subcontractor as may be appropriate under the circumstances; and
- e. "Developer", "agency" or "Developer or agency entering into this transaction" shall mean the Developer, except where a different Developer or agency is specified.

2.5.3. Sections Applying to the Construction Contractor

Sections VI.1 and VI.2 of FHWA Form 1273 shall apply only to the Construction Contractor.

2.5.4. Compliance Reviews

The Developer will periodically conduct compliance reviews to ensure that the Construction Contractor and all Subcontractors are complying with the requirements of FHWA 1273. The Construction Contractor shall, and shall ensure that Subcontractors, remedy any noncompliance with the requirements of FHWA 1273 in a timely manner, whether or not such noncompliance is first identified by the Developer.

3. COMPLIANCE WITH FHWA BUY AMERICA REQUIREMENT

3.1. General Requirement

The Construction Contractor shall, and shall cause each Subcontractor (as applicable), to comply with the FHWA Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in this Agreement only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1 % of the aggregate value of the Construction Work to be performed under this Agreement.

3.2. Additional Documentation Requirements

Additional Buy America documentation requirements are contained in Section 6.4.3.b.iv of Schedule 8 (Project Administration). The Construction Contractor shall require each Subcontractor providing steel and iron material to the Project to complete and submit to the Construction Contractor all certificates required for the Construction Contractor to comply with its obligations under Section 6.4.3.b.iv of Schedule 8 (Project Administration).

4. GENERAL FEDERAL REQUIREMENTS

4.1. Non-Collusion

The provisions in this Section 4.1 are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the FHWA of this Agreement that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom this Agreement would be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746 was included in the Proposal.

4.2. Convict Produced Materials

FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials. Materials produced after July 1, 1991 by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987. The Construction Contractor and each Subcontractor shall comply with such requirements and the Construction Contractor agrees to include this Section 4.2 in each Subcontract, without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

4.3. Access to Records and Record Retention

As required by 2 CFR Parts 200 and 1201, and without limiting the Construction Contractor's obligations under Part 2, Section 19 of this Agreement, the Construction Contractor and its Subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of the Construction Contractor and such Subcontractors which are directly pertinent to any grantee, subgrantee or financing contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 2 CFR Parts 200 and 1201, the Construction Contractor and its Subcontractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed (or, if applicable, for such longer period as is required pursuant to Part 2, Sections 19.1.6 and 19.1.7 of this Agreement). The Construction Contractor agrees to include this Section 4.3 in each Subcontract, without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

5. SMALL BUSINESS PARTICIPATION AND WORKFORCE DEVELOPMENT

5.1. Required Plans

- 5.1.1. Construction Period: The Construction Contractor shall submit, and obtain Approval from the Developer of, a Small and Disadvantaged Business Participation Plan (for purposes of this Schedule 15, the "SDBPP") and a Workforce Development Plan (for purposes of this

Schedule 15, the “WDP”) prior to the issuance of NTP1. Both plans shall be consistent with and expand upon the draft plans submitted with the Proposal. Requirements for the SDBPP are contained in Appendix A to this Schedule 15 and requirements for the WDP are contained in Appendix B to this Schedule 15.

5.1.2. Intentionally Omitted

5.2. Investigations

As it determines necessary, the Developer may conduct reviews or investigations of participants in the Project to ensure Construction Contractor’s compliance with its obligations under this Schedule 15 with respect to DBEs, ESBs, OJT and local hiring, including: the Construction Contractor; all Subcontractors; DBE and ESB firms and applicants for DBE and/or ESB certification that are not themselves Subcontractors; all OJT and local hire participants; and complainants. The Construction Contractor is required to (and shall ensure its Subcontractors and each of their Subcontractors) cooperate fully and promptly with compliance reviews, certification reviews, investigations and other requests for information, in any such case, by the Developer in connection with Construction Contractor’s compliance with this Section 5 and Section 6 of, and Appendices A, B and C to, Schedule 15.

5.3. Intimidation and retaliation

The Construction Contractor shall not (and shall ensure that its Subcontractors and each of their Subcontractors shall not) intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by CDOT’s DBE, ESB or OJT programs or the Project’s local hiring program, each as implemented for this Project pursuant to this Schedule 15, or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under any such program.

5.4. Assurance of Non-Discrimination

By entering into this Agreement, the Construction Contractor agrees to the following assurance (which for purposes of Construction Contractor Default number (36) in Part 2, Section 32.1.1 of this Agreement shall constitute a material obligation) and shall include it in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract:

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

5.5. OJT Program and Minimum Wages

The intent of the On-the-Job Training (OJT) program plan is to provide an innovative approach to train and upgrade females and minorities (as that term is defined in Section B.i.D. of Appendix F to this Schedule 15 in the journey worker status of the skilled crafts. Training opportunities may be provided with on-the-job trainees or duly registered apprentices.

The minimum wage rate for OJT program participants during the Construction Period is \$13.55 per hour, which is the equivalent to the minimum base wage rate listed for “Laborer Pipelayer” in Appendix D to this Schedule 15.

The Construction Contractor shall ensure that payment to all OJT program participants is not less than such minimum rates from time to time. In addition, trainees/apprentices working in the skilled crafts must be paid the Davis-Bacon wage decision full fringe benefit rate per hour for the

classification of work required by the approved program in accordance with Appendix D to this Schedule 15.

6. SMALL BUSINESS AND WORKFORCE DEVELOPMENT GOALS

6.1. Summary of Goals

The following table summarizes the goals defined in greater detail in Sections 6.2 and 6.3 of, and Appendices A, B and C to, this Schedule 15 with respect to DBEs, ESBs, OJT and local hiring.

Collectively, the Construction Work Small Business Goals and the Workforce Development Goals (each as separately defined in Sections 6.2 and 6.3 of this Schedule 15) are referred to herein as the “Small Business and Workforce Goals”.

	Disadvantaged Business Enterprise	Emerging Small Business	On-the-Job-Training	Local Hiring
Construction Period				
Design Services	11.6%	3%	N/A	760,000 total employment hours with 380,000 employment hours performed by new hires
Other Construction Work	12.5%	3%	200,000 employment hours	
Routine O&M Work	N/A		N/A	

6.2. Small Business Goals

6.2.1. Construction Period Goals

- a. As further outlined in Appendix A to this Schedule 15, the Construction Contractor shall make good faith efforts to achieve the DBE and ESB Construction Period goals set out in Section 6.1 of this Schedule 15: “DBE Design Goal” (11.6%); “ESB Design Goal” (3%); “DBE Construction Goal” (12.5%); and “ESB Construction Goal” (3%) (each as calculated pursuant to Section 2 of Part II of Appendix A to this Schedule 15) (collectively, the “Construction Work Small Business Goals”). Following consultation with the Construction Contractor, the Developer may lower any of these goals at any time if it reasonably believes, upon evaluation of the DBE and ESB markets, that such goal is unachievable.
- b. The Construction Contractor shall also assist in the development of DBEs and ESBs as outlined in the Construction Contractor’s Approved SDBPP. The Construction Contractor shall ensure that during the Construction Period at least one of its (or its Subcontractors’) employees is responsible for working with small businesses and has three or more years of experience in small business outreach and capacity building.

6.2.2. Intentionally Omitted

6.3. Workforce Development Goals

The Construction Contractor is obligated to achieve the Local Hiring Goal and the Construction Period OJT Goal (collectively defined as the “Workforce Development Goals”), as further detailed in this Section 6.3.

6.3.1. Construction Period Goals

On-the-Job Training Goal

- a. The Construction Contractor shall be obligated to achieve the OJT goal for the Construction Period set out in Section 6.1 of this Schedule 15 (the “Construction Period OJT Goal”), as calculated by reference to Other Construction Work comprised of skilled

craft work and otherwise in accordance with Appendix B to this Schedule 15. Failure to achieve the Construction Period OJT Goal shall result in a payment deduction pursuant to Section 1.3.1.b of this Schedule 15.

Local Hiring Goal

- b. The local hiring goal for the Construction Period is 760,000 total contract employment hours with a minimum of 380,000 hours performed by new hires (the "Local Hiring Goal"), as calculated in accordance with Section 2 of Part III of Appendix B to this Schedule 15. For certainty, achievement of the Local Hiring Goal requires the Construction Contractor to have achieved both the total employment hours goal and the new hire employment hours goal. For the purposes of this Schedule 15, a new hire is any individual hired by their employer after the Agreement Date. Monetary incentives for achieving and exceeding the Local Hiring Goal are described in Section 2 of Part V of Appendix B of this Schedule 15. Local hires may be or have been participants in the OJT program.

6.3.2. Intentionally Omitted

6.4. Assignment of Financial Deductions and Incentives to Subcontractors

Subject to the mandatory payment and dispute resolution provisions in Part 2, Section 17.5 of this Agreement and Section 2.(b) of Part A of Schedule 16 (*Mandatory Terms*), the Construction Contractor may assign financial deductions and incentives associated with Small Business and Workforce Goals to Subcontractors pursuant to the terms of the relevant Subcontractor's Subcontract, provided that the Developer Accepts the terms of such assignment and financial consequences prior to execution of the relevant Subcontract (provided that no such Acceptance is required with respect to any such assignment to a Principal Subcontractor). Any Construction Contractor request for the Developer's Acceptance shall include the relevant Subcontract terms and a description of how the Construction Contractor will monitor and assist the relevant Subcontractor's efforts at achieving the desired small business and/or workforce participation in connection with such assignment. Any such proposed assignment must be proportionate to the amount and type of work to be provided by the relevant Subcontractor. Notwithstanding any assignment of financial deductions and incentives associated with Small Business and Workforce Goals being made, no such assignment shall relieve the Construction Contractor of its responsibility in meeting its Small Business and Workforce Goals outlined in Sections 6.2 and 6.3 of this Schedule 15.

7. COMMUNITY DEVELOPMENT PROGRAMS

7.1. Community Development Programs

The Construction Contractor acknowledges the rights and obligations of the Developer and the Enterprises under Sections 7.1(a) and (b) of Schedule 15 (*Federal and State Requirements*) to the Project Agreement. The Construction Contractor shall promptly provide the Developer with all assistance reasonably requested by the Developer in connection therewith.

In order to contribute to the community development needs of the high need neighborhoods located along the Project area and otherwise create a positive relationship between local communities and the Construction Contractor, the Construction Contractor shall:

- a. Intentionally Omitted;
- b. Intentionally Omitted;
- c. in partnership with Swansea Elementary school, develop and/or fund a construction education curriculum for the school designed to impart math and engineering concepts relevant to the construction of the Project; and
- d. establish any other programs that it considers appropriate for the purposes of achieving the community development objective referred to above in relation to such neighborhoods.

7.2. Annual Report

The Construction Contractor shall submit, and obtain Acceptance from the Developer of, a report (in a form to be agreed between the Parties, both acting reasonably) prior to NTP2, with subsequent reports to be submitted to the Developer for Acceptance no later than 30 Calendar Days (1) before the end of each Contract Year that ends during the Construction Period, (2) after the Substantial Completion Date and (3) before the end of each Contract Year that ends during the Operating Period during which any of such programs remain active and, in each case, prior to the annual progress review conducted in respect of the relevant Contract Year pursuant to Section 1.2.4 or 1.2.6, as applicable, of this Schedule 15. Each such report shall (to the extent known at the time of submission of such report) describe:

- a. each of the programs that has been, or will be, established by the Construction Contractor to comply with its obligations under Section 7.1 of this Schedule 15;
- b. the participation and any equivalent targets that have been established in relation to each of the programs;
- c. progress towards achieving such targets, both on an aggregate and a Contract Year basis; and
- d. any other relevant information.

8. DELIVERABLES

At a minimum, the Construction Contractor shall submit the following to the Developer for Information, Acceptance, or Approval in accordance with the specified timeframes:

Table 1. Deliverables

Deliverable	Information, Acceptance, or Approval	Schedule
Details of the Civil Rights Program Manager (CRPM)	Acceptance	Prior to the issuance of NTP1, and at the time of any replacement.
Annual EEO Report (FHWA Form PR 1391)	Acceptance	Annually by August 15 during the Construction Period.
Davis-Bacon monthly payroll reports	Acceptance	Monthly during the Construction Period.
Small and Disadvantaged Business Participation Plan (SDBPP)	Approval	Prior to the issuance of NTP1
Annual Small Business Commitments	Acceptance	Concurrently with the SDBPP and concurrently with the Annual Performance Progress Review Report thereafter during the Construction Period.
Small Business Commitment for each DBE and ESB	Acceptance	Concurrently with the Annual Small Business Commitments or by 10th Working Day of each month, and no earlier than 90 Calendar Days prior to the firm commencing work.
Joint Venture Commitments	Acceptance	Concurrently with the Annual Small Business Commitments or by 10th Working Day of each month, and no earlier than 90 Calendar Days prior to the firm commencing work.
Joint Check Letter	Approval	Prior to any payment intended to be made with a joint check to a DBE or ESB.

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

Deliverable	Information, Acceptance, or Approval	Schedule
Small Business Commitment Modification	Acceptance	Prior to occurrence requiring termination or modification or, if that is not possible, within five Calendar Days of the occurrence.
Small and Disadvantaged Business monthly reports	Acceptance	No later than the tenth Working Day of each month during the Construction Period.
Semi-annual small and disadvantaged business assessment	Approval	Every six months during the Construction Period.
Uniform Report of DBE Awards or Commitments and Payments Form	Acceptance	Bi-annually by May 15 and November 15.
Annual small and disadvantaged business annual performance progress review report	Approval	No later than 30 Calendar Days before the end of each Contract Year during the Construction Period.
Construction Period Small and Disadvantaged Business Final Report	Approval	No later than 30 Calendar Days prior to the Substantial Completion Date, with update as needed no later than 30 Calendar Days prior to the Final Acceptance Date.
Workforce Development Plan (WDP)	Approval	Prior to the issuance of NTP1.
Yearly WDP update	Approval	No later than 30 Calendar Days prior to the commencement of each Contract Year during Construction Period.
Approval form for each proposed OJT apprentice and trainee	Approval	Approval must occur before training begins
Enrollment and Residency Disclosure for each proposed local worker	Acceptance	Acceptance must occur before individual's hours may count toward the goal.
OJT monthly reports	Acceptance	Monthly during the Construction Period.
Local hiring monthly reports	Acceptance	Monthly during the Construction Period.
Semi-annual workforce development assessment	Acceptance	Every six months during the Construction Period.
Construction Period Workforce Development Final Report	Approval	No later than 30 Calendar Days prior the Substantial Completion Date, with update as needed no later than 30 Calendar Days prior the Final Acceptance Date.
Community Development Program report	Acceptance	Prior to the issuance of NTP2, no later than 30 Calendar Days prior to the commencement of each Contract Year during the Construction Period and no later than 30 Calendar Days after Substantial Completion.
Requests to assign portions of the Small Business and Workforce Development Goals and associated deductions/incentives to Subcontractors	Acceptance	Prior to the execution of the applicable Subcontract.

9. APPENDICES

Appendix A Construction Work Small Business Goals Compliance and Plan Requirements

Appendix B Construction Period Workforce Development Goals Compliance and Plan Requirements

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

Appendix C	Intentionally Omitted
Appendix D	Davis-Bacon Wage Decisions
Appendix E	Executive Order No. 11246
Appendix F	CDOT's Special Standard Provision for "Affirmative Action Requirements Equal Employment Opportunity"
Appendix G	USDOT Standard Title VI/Non-Discrimination Assurances
Appendix H	FHWA Form 1273 (Revised May 1, 2012)

Appendix A
Construction Work Small Business Goals Compliance and Plan Requirements

Part I. Small and Disadvantaged Business Participation Plan (SDBPP)

The Construction Contractor's SDBPP shall include the following:

1. Identification of the CPRM and the other team members responsible for small business program development, including:
 - a. The names of the small business team members and team members' experience working with small businesses or agencies on transportation or construction projects.
 - b. The roles and responsibilities of the team members, including descriptions of their activities as well as the delegated authority of the team members and how they are integrated with Key Personnel on the Project, and identification of meetings they will attend.
2. Strategic Approach for Meeting Goals during the Construction Period including:
 - a. Outline of how the Construction Contractor will calculate the value of Design Services and Other Construction Work in compliance with Part II of this Appendix A.
 - b. An estimated schedule for achievement of each of the Construction Work Small Business Goals. The Construction Contractor shall outline the expected participation toward achieving each goal over the Construction Period and identify an annual target for each goal for each Contract Year during the Construction Period. This outline shall set the framework for achieving the Construction Work Small Business Goals during the Construction Period.
 - c. For each Construction Work Small Business Goal, a list of the areas of Construction Work the Construction Contractor has identified for potential DBE or ESB participation with a range of the approximate percentage of the value of the applicable Construction Work relative to the value of all Construction Work. The SDBPP must reflect a reasonable approach to meeting the goals with ready, willing and able DBEs and ESBs to perform the applicable Construction Work. The Construction Contractor shall consult the respective directories at www.coloradobe.org and www.coloradoesb.org to ensure availability to meet the goals. If already selected, DBE or ESB team members should be identified in respect of their relevant area(s) of Construction Work.
 - d. The strategic approach to integrating achievement of small business participation into the overall approach to subcontracting, including discussion of how the Construction Contractor will communicate opportunities, create a transparent process, unbundle work to establish opportunities for small businesses, or take other actions to secure DBE and ESB participation.
 - e. A description of how participation will be monitored and tracked. Describe the internal procedures through which the Construction Contractor will ensure the Construction Work Small Business Goals are met. This will include distribution of the goal responsibilities to Subcontractors, collecting data on Subcontractor participation and performance, ensuring only valid performance is counted, etc.
3. Approach to small business development and assistance including:
 - a. Methods for ensuring prompt payment to all Subcontractors (for certainty, not only DBE or ESB Subcontractors), including a description as to whether and how the Construction Contractor will implement any additional prompt payment requirements, beyond those mandated in Part 2, Section 17.5 of this Agreement, as well as the process by which the Construction Contractor will track and monitor the following: invoicing by Subcontractors; prompt payment to Subcontractors; and release of retainage. This portion of the plan shall include any efforts that the Construction Contractor and Subcontractors that are not themselves DBEs or ESBs will make to assist with mobilization efforts and early

- purchase of materials, or any other payment measures that will aid the viability of small business participation in the Construction Work.
- b. Assistance with bonding and insurance, including a description of any measures to be implemented by the Construction Contractor or its team members to assist DBEs and ESBs with bonding and insurance while maintaining compliance with the applicable provisions of this Agreement and the requirements of Law. This may include any of the following: adding DBEs and ESBs to insurance plans; waiving bond requirements; phased bonding; and limitations on bond and insurance requirements imposed by Subcontractors.
 - c. Small business outreach, training, and development, including at a minimum, a description of how Construction Contractor will:
 - i. conduct a mandatory outreach event directed at DBE and ESB firms after the Agreement Date and prior to the issuance of NTP2;
 - ii. collaborate with and utilize CDOT's established Connect2DOT Program (www.connect2dot.org);
 - iii. assist in the development and facilitation of a Connect2DOT Transportation Leading Edge Course for firms participating or seeking to participate in the Construction Work (see <http://www.connect2dot.org/need-assistance/leading-edge> for more information);
 - iv. regularly bring Project updates to and participate in CDOT's quarterly Small Business Collaborative Forums;
 - v. on a monthly basis, provide a list of upcoming subcontracting opportunities and events for distribution via the Connect2DOT newsletter;
 - vi. conduct any other measures of outreach, training and development and the resources dedicated to such measures; and
 - vii. conduct any other activities or efforts not included in the above related to achievement of the Construction Work Small Business Goals.

Part II. Good Faith Efforts, Commitments and Counting

1. Good Faith Efforts Requirement. Pursuant to Section 6.2.1 of this Schedule 15, the Construction Contractor is required to make good faith efforts to achieve the Construction Work Small Business Goals. Good faith efforts means all necessary and reasonable steps to achieve the relevant goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to achieve the goal, even if not fully successful. For additional guidance on how the Developer will determine whether or not it considers that the Construction Contractor has made good faith efforts, see 49 CFR Part 26 Appendix A.
 - a. The Construction Contractor's good faith efforts toward achieving the Construction Work Small Business Goals shall be evaluated annually at a minimum but a final determination by the Developer as to whether the Construction Contractor has complied with its obligation to make good faith efforts shall be made at Substantial Completion. The Developer may issue a written non-compliance warning as it deems necessary if it believes the Construction Contractor is not making good faith efforts at any time during the Construction Period.
 - b. For each Construction Work Small Business Goal, the Construction Contractor shall submit, and obtain the Acceptance of the Developer of, its annual small business commitments prior to the commencement of every Contract Year during the Construction Period. The initial list of annual small business commitments shall be submitted concurrently with the Construction Contractor's SDBPP for Acceptance by the Developer prior to the issuance of NTP1. Each year thereafter, the annual small business commitments shall be submitted with the Annual Performance Progress Review Report

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

(as required to be submitted pursuant to Section 5 of Part III of this Appendix A) no later than 30 Calendar Days prior to the commencement of each Contract Year. The annual small business commitments shall list all Small Business Commitments to DBE and ESB firms for the upcoming Contract Year sufficient to meet or exceed the annual participation target established for such year by the Construction Contractor in its SDBPP. A "Small Business Commitment" is a portion of the Design Services or Other Construction Work, identified by dollar amount and Construction Work area, designated by the Construction Contractor for participation by a particular DBE or ESB. For each firm listed, the Construction Contractor shall also provide a "Commitment Confirmation Form" in a form to be agreed between the Parties (both acting reasonably) (further described in Section 3 of this Part II) for Acceptance.

- c. If the total eligible participation in the annual small business commitments does not meet the Construction Contractor's identified annual target, the Construction Contractor shall provide a description of the good faith efforts made to obtain commitments prior to submission of the annual small business commitments and additional good faith efforts that will be made during the current year to maintain compliance with the SBDPP. This description of good faith efforts is subject to Approval by the Developer.
2. Construction Work Small Business Goal Calculation. The goals shall be calculated as follows:
- a. For purposes of this Schedule 15, the Construction Work to be performed during the Construction Period shall be separated (i) into design-related activities ("Design Services") (as further defined below) and (ii) all other work to be performed during the Construction Period under the terms of this Agreement (excluding, for certainty, O&M Work During Construction) ("Other Construction Work").
 - b. For the purposes of this Schedule 15, "Design Services" shall be comprised of all program management, construction management, feasibility study, preliminary engineering, design, engineering, surveying, mapping, and architectural related services that comprise part of the Construction Work; provided, however, that, (i) the following (or equivalent) Design Services performed by the Construction Contractor or its Subcontractors such as construction surveying, erosion control consulting, health and safety plans, and public involvement may, at the Construction Contractor's reasonable discretion, be considered Other Construction Work and (ii) the Construction Contractor may request that any other Design Services that are under the direct control of the Construction Contractor be included in the Other Construction Work subject to the Developer's consent. The Construction Contractor must establish whether design-related activities under the direct control of the Construction Contractor will be considered in Design Services or Other Construction Work and make any other requests for modifications to these categories in its draft SDBPP. The Developer may request additional data to verify the value of the Design Services.
 - c. The dollar value of the DBE Design Goal and ESB Design Goal shall each be determined by multiplying the percentage of the goal set out in Section 6.1 of this Schedule 15 by the total value of the Design Services. Subject to Section 3 of this Part II of this Appendix A, only the performance of Design Services by DBEs and ESBs, respectively, shall count toward achieving the respective goals, provided that (for certainty) the participation in the performance of Design Services by a firm that is certified as both a DBE and an ESB shall count towards the achievement of both goals.
 - d. The dollar value of the DBE Construction Goal and ESB Construction Goal shall each be determined by multiplying the percentage of the goal set out in Section 6.1 of this Schedule 15 by the total value of the Other Construction Work. Subject to Section 3 of this Part II of this Appendix A, only the performance of Other Construction Work by DBEs and ESBs, respectively, shall count toward achieving the respective goals, provided that (for certainty) the participation in the performance of Other Construction Work by a firm that is certified as both a DBE and an ESB shall count towards the achievement of both goals.

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

3. Counting Eligible Participation. Unless otherwise specified in this Appendix A, eligible DBE participation will be counted in accordance with 49 CFR 26.55. ESB participation will be counted in the same manner as DBE participation with the exception that ESBs do not have work codes and therefore are not limited to performance in certain work areas.
 - a. In order for the work performed by a DBE or ESB to count toward achieving a Construction Work Small Business Goal, the Construction Contractor must have an Accepted Small Business Commitment for the Construction Work to be performed. All proposed Small Business Commitments to DBE and ESB firms must be submitted to the Developer for Acceptance prior to the DBE or ESB commencing work in order for the participation to be counted toward the relevant Construction Work Small Business Goal. Once Accepted, Small Business Commitments are enforceable obligations from the Construction Contractor under this Agreement. Each DBE and ESB firm must be certified for the work to be performed upon submission of the Small Business Commitment.
 - i. For firms not listed in its annual small business commitments, the Construction Contractor shall submit a "Commitment Confirmation Form," in a form to be agreed between the parties (both acting reasonably), no later than the 10th Working Day of each month during the CC Term. The Commitment Confirmation Form must be submitted no earlier than 90 Calendar Days prior to the firm commencing work.
 - ii. For trucking participation by DBE and/or ESB firms, the Construction Contractor may submit an overall trucking commitment for an annual period with a list of DBE or ESB firms that will perform work under such commitment. Each DBE and ESB firm listed may provide no more than \$100,000 of participation under this commitment. The Construction Contractor shall submit a Commitment Confirmation Form for each listed firm and the annual overall commitment for each goal shall be submitted for Approval concurrently with its list of annual small business commitments. For any individual trucking firm with a commitment more than \$100,000, the Construction Contractor shall submit a separate Small Business Commitment for that firm.
 - b. The Construction Work performed by a DBE or ESB must be reasonably construed to be included in the work area identified by the Construction Contractor in the Accepted Small Business Commitment. DBE firms must be certified in the applicable work code (NAICS code plus descriptor) for the work to be performed. A DBE cannot receive credit for work in an area for which it is not certified.
 - c. The Developer's DBE Program does not permit the counting of participation by non-certified trucking firms.
 - d. In accordance with 49 CFR 26.55(2), the Construction Contractor shall only count a reasonable fee for contract-specific services toward achieving the relevant Construction Work Small Business Goal. Non-contract specific expenses may not be counted. In the case of temporary employment placement agencies, only the placement fee and fees for a temporary employee that will be specifically and exclusively used for work on the Project shall count toward achieving the relevant Construction Work Small Business Goal; the temporary employee's hourly fee will not count.
 - e. Work by a DBE or ESB firm that was not certified for the work to be performed upon execution of its Subcontract will not count toward achieving the relevant Construction Work Small Business Goal. If a DBE or ESB is decertified in the work to be performed after Acceptance of a Small Business Commitment and the execution of a Subcontract, the Construction Contractor may still count the DBE or ESB participation toward achieving the relevant Construction Work Small Business Goal.
 - f. If the Construction Contractor seeks to count participation by a DBE or ESB firm engaged in a joint venture, the Construction Contractor shall seek Acceptance from the Developer

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

of the joint venture's eligible participation by submitting the joint venture agreement explaining the work and management arrangement between the joint venture.

4. Commercially Useful Function ("CUF") Reviews. All DBEs and ESBs must perform a commercially useful function as defined by 49 CFR § 26.55.
 - a. The Construction Contractor shall monitor all DBE and ESB firms to ensure those firms are performing a CUF. The Developer shall determine whether a DBE or ESB firm has performed a CUF on the Project. If the Developer determines that a firm is not performing a CUF pursuant to 49 CFR § 26.55, no work performed by such firm shall count toward achieving the relevant Construction Work Small Business Goal.
 - b. The use of joint checks to DBEs and ESBs must be Approved by the Developer before used to make a payment. The Construction Contractor shall request Approval for the use of a joint check in a written letter signed by the DBE/ESB and the Construction Contractor, stating the reason for the joint checks and the approximate number of checks that will be needed.
5. Small Business Commitment modifications. The Construction Contractor shall not terminate, reduce or otherwise modify the work to be performed under a Small Business Commitment without Acceptance from the Developer. If, due to exigent circumstances, it is not possible for the Construction Contractor to seek Acceptance prior to termination, reduction or modification, the Construction Contractor shall submit to the Developer a request for Acceptance within five Calendar Days of the occurrence requiring such action. Requests for Acceptance shall be made upon a form mutually agreed by the Construction Contractor and the Developer (both acting reasonably).
 - a. Terminations and reductions include instances in which the Construction Contractor seeks to perform work originally designated for a DBE/ESB Subcontractor with its own forces, those of an Affiliate, a non-DBE/ESB firm or with another DBE/ESB firm.
 - i. In order to receive Acceptance of a termination or reduction, the Construction Contractor shall, at a minimum, have good cause for the termination or reduction as outlined in 49 CFR § 26.53(f).
 - ii. Prior to requesting Acceptance of a termination or reduction, the Construction Contractor shall provide the firm written notice of the Construction Contractor's intent to terminate or reduce the commitment and the reason for such termination or reduction, with a copy to the Developer. In such notice of intent, the Construction Contractor shall provide the firm at least five Working Days to respond to the notice and to inform the Developer and the Construction Contractor of the reasons, if any, why it objects to the proposed termination or reduction and any reasons why it considers that it should not be Accepted. The Construction Contractor is not required to provide the five Working Days' written notice in cases where the DBE or ESB has provided written notice that it is withdrawing. The notice period may be reduced by the Developer in its discretion if required by public necessity. The Construction Contractor shall not request Acceptance until the period has passed or been waived.
 - b. Requests for other modifications, such as the addition of Work to be performed by the DBE or ESB, shall be made by submitting an updated Commitment Confirmation Form for Acceptance by the Developer.
 - c. The Construction Contractor shall make good faith efforts to replace any DBE or ESB commitment that has been terminated or reduced with another DBE or ESB firm as outlined in 49 CFR § 26.53(g).

Part III. Reporting Requirements

1. Disclosure of information: In order for the Developer to monitor and enforce the requirements of this Schedule 15, the Construction Contractor shall accurately track and disclose to the

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- Developer the cumulative value of the Design Services, the cumulative value of the Other Construction Work, and the value of all individual Subcontracts (and, for certainty, this requirement shall apply to all Subcontracts and not just DBE or ESB Subcontracts). The Developer may verify this information by reviewing contracts and payment documents which shall be provided upon request.
2. Monthly Reporting: In accordance with Schedule 8 (Project Administration) the Construction Contractor shall submit a monthly summary report (in a form to be agreed between the Parties, both acting reasonably) to the Developer for Acceptance no later than the tenth Working Day of each month during the Construction Period. The report shall include:
 - a. Subcontractor Participation and Payment: total value of (1) Design Services, (2) all Other Construction Work, and (3) all other O&M Work During Construction to date (regardless of the entity that has performed such Work); a detailed breakdown of all Subcontractors (and, for certainty, this requirement shall apply to all Subcontractors and not just DBE or ESB Subcontractors) that have participated on the Project to date, separated by these same three categories of work. It shall include:
 - i. firm name;
 - ii. whether the firm is an ESB or DBE and the Small Business Commitment amount to the firm and whether the firm is a Small Subcontractor;
 - iii. Subcontract amount; area of work performed; total paid to date to the firm; most recent invoice date and amount; most recent payment date and amount;
 - iv. identification of all parties to the relevant Subcontract and to the higher and lower tier Subcontracts associated with the Subcontract; and
 - v. any other relevant information to facilitate the Developer's assessment of compliance by the Construction Contractor with Part 2, Section 17.5 of this Agreement in relation to the Subcontract.
 - b. Outreach and Upcoming Opportunities: a description of work areas on the Project for which the Construction Contractor is seeking Subcontractors. The description shall also include upcoming outreach and training events.
 - c. Compliance Issues Report: details of any issues that the Developer should be aware of regarding DBE and ESB participation on the Project. This may include payment disputes, non-performance by DBEs and ESBs, significant scope of work changes, potential CUF concerns or other performance issues.
 3. Semi-annual Assessment: In addition to the monthly report required to be submitted in the relevant month, the Construction Contractor shall, pursuant to Section 1.2.3 of this Schedule 15, also submit to the Developer for Approval on a semi-annual basis an assessment of progress (in a form to be agreed between the Parties, both acting reasonably) toward achieving the Construction Work Small Business Goals, including a summary of solicitation and good faith efforts to date, and anticipated DBE and ESB participation for the next six months.
 4. Uniform Report of DBE Awards or Commitments and Payments Form: By May 15 and November 15 of each year, the Construction Contractor shall submit to the Developer for Acceptance a completed Uniform Report of DBE Awards or Commitments and Payments Form that has been completed in accordance with Appendix B of 49 CFR Part 26.
 5. Annual Performance Progress Report and Reviews: In addition to the monthly and semi-annual reports referred to in Sections 2 and 3 of this Part III, the Construction Contractor shall submit an annual report (in a form to be agreed between the Parties, both acting reasonably) to the Developer for Approval no later than 30 Calendar Days before the end of each Contract Year and prior to the annual progress review conducted in respect of such Contract Year pursuant to Section 1.2.4 of this Schedule 15, which report shall include the following information:

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- a. Bidders List: The Construction Contractor shall list all firms that submitted a quote to participate on the Project. The list shall include a description of the work for which the bid was submitted, whether the firm is a DBE or ESB, and whether they were selected for the work.
 - b. Participation Assessment: A summary and assessment of DBE and ESB participation of the past Contract Year and total to date progress made toward achieving the Construction Work Small Business Goals.
 - c. Strategies for continuing implementation of the SDBPP: This shall include proposed areas of work for DBEs and ESBs and outreach efforts for the next Contract Year.
 - d. If necessary, a request for amending the SDBPP if the Construction Contractor has not met its annual target for the current Contract Year or if the Construction Contractor has not met other commitments detailed in the SDBPP. The request shall include a revised schedule of annual targets for each Construction Work Small Business Goal. The revised schedule of annual targets shall include a description of the Construction Contractor's approach to making up the participation not achieved during the current Contract Year.
6. Developer Annual Assessment: Within 30 Calendar Days after each Annual Performance Progress Review conducted pursuant to Section 1.2.4 of this Schedule 15, the Developer shall provide a written determination on the Construction Contractor's progress toward achieving the Construction Work Small Business Goals. Progress will be based on the Construction Contractor's demonstrated good faith efforts, compliance with its SDBPP and meeting the schedules and milestones described in the plan.
 7. Final Report: The Construction Contractor shall submit, for Approval by the Developer, its final report (in a form to be agreed between the Parties, both acting reasonably) on DBE and ESB participation during the Construction Period no later than 30 Calendar Days prior to the Substantial Completion Date. The final report shall include a summary report of total DBE and ESB participation toward achieving each of the Construction Work Small Business Goals. The report shall include the Small Business Commitment amount, the actual dollar amount paid to each DBE or ESB firm, the eligible participation amount, area of work performed, and the total value of the Design Services and Other Construction Work. In the event that Construction Contractor failed to achieve any Construction Work Small Business Goal as of the Substantial Completion Date (as determined by the Developer pursuant to Section 8 of Part III of this Appendix A of this Schedule 15), the Construction Contractor shall submit, for Approval by the Developer, an updated report no later than 30 Calendar Days prior to the Final Acceptance Date.
 8. Developer Report: Following Approval of the Construction Contractor's report (or any update thereto) submitted pursuant to Section 7 of Part III of this Appendix A, the Developer will evaluate the data to determine, and issue a written report setting out its determination of, whether the Construction Contractor has (i) achieved each of the Construction Work Small Business Goals as of the Substantial Completion Date (or, as applicable, as of the Final Acceptance Date) and (ii) in relation to any such goal that has not been met, demonstrated that it has made good efforts to achieve such goal.

Appendix B

Construction Period Workforce Development Goals Compliance and Plan Requirements

Part I. Workforce Development Plan Requirements

The WDP shall at a minimum include the following elements:

1. General Plan Requirements:
 - a. A written statement indicating the Construction Contractor's commitment to achieve the Construction Period OJT Goal and the Local Hiring Goal.
 - b. A description of the CRPM and other team members responsible for implementing the Construction Contractor's WDP, including the name of each team member, a description of their workforce development experience, and a description of their roles and responsibilities on this Project.
 - c. A description of how the Construction Contractor and all Subcontractors will recruit their workforce, including planned outreach events involving the local community. The Construction Contractor shall describe how it will work with CDOT-approved workforce development organizations to advertise job openings locally.
 - d. A description of how the Construction Contractor plans to utilize Subcontractors to achieve the Construction Period OJT Goal and Local Hiring Goal.
 - e. A description of how the Construction Contractor plans to utilize high school outreach programs such as Denver Public Schools' Career Connect and Arrupe Jesuit's Corporate Workforce Program to staff administrative, internship, or other opportunities.
2. On-The-Job Training Plan: With respect to OJT:
 - a. Identification of the number and description of the skilled craft areas where trainees and apprentices will be used during the Construction Period on Other Construction Work.
 - b. The minimum length and type of training that will be offered for each position.
 - c. A description of how the Construction Contractor will monitor hours completed, training provided, and how the Construction Contractor will alleviate barriers to employment, graduation and successful permanent placement.
 - d. A description of the Construction Contractor's approach to graduating participants. The Construction Contractor shall identify a target number of graduates in order to maximize participant graduation rates from the pre-approved trainee/apprenticeship programs during the Construction Period.
 - e. An annual schedule indicating the distribution of training hours over each Contract Year for the duration of the Construction Period.
 - f. The Construction Contractor shall describe recovery tools and methods that will be implemented should appropriate progress not be made toward the overall goal attainment.
3. Local hiring plan: With respect to local hiring
 - a. Strategic approach for meeting the Local Hiring Goal, including the identification of jobs targeted for recruitment, the estimated length of employment associated with identified jobs, and an estimated schedule of the distribution of hours for the Construction Period.
 - b. A description of how the Construction Contractor shall provide assistance to prospective and actual local employees to alleviate barriers to employment and to promote retention.
 - c. A description of how the Construction Contractor shall monitor and track hours worked and of the internal procedures through which the Construction Contractor will ensure the Local Hiring Goal will be met. This will include distribution of the goal responsibilities to

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- Subcontractors, collecting data on Subcontractor participation and performance, and ensuring only valid participation is counted.
- d. A description of how the Construction Contractor plans to ensure compliance with the residency requirements in Section 2 of Part III of this Appendix B for workers that will count toward the Local Hiring Goal.
 - e. An affirmative statement that no existing employees of the Construction Contractor or any Subcontractor will be displaced or have their employment terminated as a result of the Local Hiring Goal.
4. Plan Updates. The WDP is intended to be a living document and shall be updated or revised as necessary during the course of the Construction Period, including as requested by the Developer. At a minimum, an update of the WDP shall be submitted to the Developer for Approval no later than 30 Calendar Days prior to the commencement of each Contract Year.

Part II. Advertisement of Job Openings

To ensure local workers are given full and fair opportunity to participate in the hiring process for vacant positions, the Construction Contractor and all Subcontractors shall advertise all job openings with Developer-approved workforce development organizations for a period of seven Calendar Days before such job openings can be advertised through any other sources.

Part III. Counting goal participation

- 1. Counting OJT participation
 - a. OJT participation that counts toward satisfying the Construction Period OJT Goal shall be calculated based on the aggregate number of employment hours on Other Construction Work (excluding, for certainty, O&M Work During Construction) worked by trainees and apprentices who satisfy the requirements below.
 - b. The employment of the following categories of individuals by the Construction Contractor (and Subcontractors) shall count towards achieving the Construction Period OJT Goal:
 - i. trainees that are enrolled in a program approved by the Developer and FHWA;
 - ii. apprentices that are enrolled and duly registered in a U.S. Department of Labor approved program; and/or
 - iii. trainees that are enrolled in an approved program with Colorado Contractors Association (CCA).
 - c. In addition, a proposed apprentice or trainee must have been Approved by the Developer for such individual's participation to be counted toward achieving the Construction Period OJT Goal. Approval must occur before employment hours can be counted toward the goal. To obtain Approval for the apprentice or trainee, the Construction Contractor must submit the following to the Developer for each apprentice and each trainee:
 - i. evidence of the registration of the trainee or apprentice into the approved training program; and
 - ii. the completed CDOT form for each trainee or apprentice.
 - d. The employment of a trainee/apprentice in a skilled craft will not be counted toward the Construction Period OJT Goal if that individual has already worked or been paid at a professional/journeyman level status for more than 6 months prior to Approval of their participation as a trainee/apprentice.
 - e. Before training begins, the Construction Contractor shall provide each trainee with a copy of the approved training program, pay scale, pension and retirement benefits, health and disability benefits, promotional opportunities, other employer policies and complaint procedures.

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

2. Counting local hiring program participation

- a. For the purposes of this Schedule 15, the geographic area applicable to the Local Hiring Goal consists of the following zip codes: 80010, 80011, 80019, 80022, 80205, 80207, 80211, 80216, 80221, 80238, 80239, 80249, and 80266.
- b. For a worker's hours to be eligible for the Local Hiring Goal, the individual must perform a function on the Project (whether as skilled or non-skilled labor) and meet one of the following eligibility criteria:
 - i. **Current Resident:** An individual that has resided in the local hire geographic area for a minimum of 60 consecutive Calendar Days and continues to reside in the geographic area. A current resident's hours are eligible to count toward the Local Hiring Goal for as long as the individual resides in the local hire geographic area;
 - ii. **Former Resident:** An individual that resided in the local hire geographic area for a minimum of 180 consecutive Calendar Days provided that such period of residency ended no more than one year prior to the Agreement Date. A former resident's hours are eligible to count toward the Local Hiring Goal for the duration of the Construction Period;
 - iii. **Displaced Resident:** An individual that was subjected to a Right-of-Way relocation. A displaced resident's hours are eligible to count toward the Local Hiring Goal for the duration of the Construction Period.
- c. A proposed local worker must have been Accepted by the Developer for such individual's hours to be counted toward the Local Hiring Goal. Acceptance must occur before the participation can be counted toward the Local Hiring Goal. To gain Acceptance, the Construction Contractor must submit the following to the Developer for each local worker:
 - i. Completed Local Hiring Program Enrollment, in a form to be agreed between the Parties (both acting reasonably);
 - ii. A self-certifying Residency Disclosure, in a form to be agreed between the Parties (both acting reasonably), signed by the individual whose employment hours are to be counted toward the Local Hiring Goal; and
 - iii. Any additional documentation to prove residency or prior residency on a case-by-case basis as the Developer determines is necessary.
- d. Hours worked by local workers must be documented and reported (pursuant to Part IV of this Appendix B) to the Developer in a format mutually agreed upon by the Construction Contractor and the Developer (both acting reasonably).
- e. The Construction Contractor shall notify the Developer when an Accepted current resident worker no longer meets the eligibility requirements within 14 Calendar Days of the local worker's employer obtaining knowledge of the local worker's new residency status. The Construction Contractor may seek Acceptance for the worker to count as a former resident if eligible. Failure to notify the Developer in accordance with this Section may result in all of the individual local worker's hours being disqualified from counting toward the Local Hiring Goal.
- f. The Construction Contractor and all Subcontractors are prohibited from displacing or terminating existing employees to attain the Local Hiring Goal.

Part IV. Reporting requirements

1. Disclosure of Information: In order to monitor and enforce the requirements of this Schedule 15, the Construction Contractor shall disclose employment records for trainees and apprentices as well as individuals that will count toward achieving the Local Hiring Goal. The Developer may verify employment records and information by reviewing personnel files as well as interviewing any individual employed by the Construction Contractor or any Subcontractor.
2. Records: The Construction Contractor shall keep records regarding the progress of the Workforce Development Plan participation on the Project, including Subcontractor participation.
3. Reports: The Construction Contractor shall submit each of the following reports for Acceptance:
 - a. Monthly report: In accordance with Schedule 8 (*Project Administration*) the Construction Contractor shall submit a monthly report (in a form to be agreed between the Parties, both acting reasonably) to the Developer no later than the tenth Working Day of each Month during the Construction Period. The report shall include:
 - i. On-The-Job Training reports, which shall include the following, at a minimum:
 - A. Total employment hours expended during the Construction Period to date separated into skilled craft employment hours, professional services employment hours, and all other employment hours.
 - B. Total employment hours by trainees/apprentices expended during the Construction Period to date.
 - C. Updated projected employment hours by trainees/apprentices for the Work during the Construction Period.
 - D. If the projected employment hours are less than the Construction Period OJT Goal, the Construction Contractor shall provide an explanation detailing how it intends to meet the OJT participation projections outlined in its WDP, including a description of activities and other proactive measures intended to facilitate increased OJT participation.
 - E. A list of current and new (i.e. since the last report) trainees/apprentices by providing full name, employer, description of services or applicable work code, start date, skilled craft program registered in (including verification of enrollment) for trainees/apprentices, total hours worked in current month, pay rate, total hours worked to date on the Project, supervisor full name, and a description of the training and performance level.
 - F. Any performance problems with the training/apprenticeship participants and how the problems were resolved, including any reasons for participants leaving the Project.
 - G. A list of trainees/apprentices that have graduated or successfully completed their training program, and last date worked on site.
 - H. A signature by the Construction Contractor certifying the information in the report is accurate.
 - ii. Local Hiring Program reports, which shall include the following, at a minimum:
 - A. Total employment hours expended during the Construction Period to date separated into skilled craft employment hours, professional services employment hours, and all other employment hours.
 - B. Total hours worked by individuals hired locally during the Construction Period to date, separated into skilled craft employment hours, professional service employment hours, and all other employment hours.

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- The Construction Contractor shall specify whether each worker is considered a new hire.
- C. Projected local hiring hours to be utilized during the Construction Period.
 - D. If the projected local hiring hours worked are less than the Local Hiring Goal, the Construction Contractor shall provide an explanation detailing how it intends to achieve the Local Hiring Goal including any remedies necessary to meet the Local Hiring Goal.
 - E. A list of current newly (i.e. since the last report) employed locally hired individuals, within that month, by providing full name, address, employer, description of services or applicable work code, start date, skilled craft program registered in (including verification of enrollment for newly employed individuals) if applicable, total hours worked in current month, pay rate, total hours worked to date on the Project, supervisor full name, address verification, and a description of performance level.
 - F. Any performance problems with the locally hired individuals and how the problems were resolved, including any reasons for individuals leaving the Project.
 - G. A signature by the Construction Contractor certifying the information in the report is accurate.
4. Semi-annual Assessment: In addition to the monthly report required to be submitted in the relevant month, the Construction Contractor shall, pursuant to Section 1.2.3 of this Schedule 15, also submit to the Developer for Acceptance on a semi-annual basis an assessment of progress (in a form to be agreed between the Parties, both acting reasonably) toward achieving the Workforce Development Goals applicable during the Construction Period, which shall include the following:
- a. a summary of solicitation and good faith efforts to date, effectiveness of the program, identification of areas for improvement, and recommendations for improving the WDP; and
 - b. a notification as to whether the Construction Contractor considers that it has achieved any of the incentive milestones described in Sections 1.a to 1.c of Part V of this Appendix B. For any On-the-Job Training milestone reached, the Construction Contractor shall submit documentation evidencing that the trainee/apprentice has graduated from the applicable OJT Program and has since worked at least six months as a full-time journeyman on the Project in the skilled craft for which the individual graduated. Documentation shall include payrolls showing the individual worked as a fulltime journeyman.
5. Annual Performance Progress Review: The Construction Contractor shall participate in an annual meeting with the Developer within 30 Calendar Days before the end of each Contract Year to review its progress with its Workforce Development Plan and toward achieving the Workforce Development Goals applicable during the Construction Period. Within 30 Calendar Days after the annual performance review meeting, the Developer will provide a written assessment as to whether the Construction Contractor has made adequate progress toward achieving the Construction Period OJT Goal and the Local Hiring Goal. Progress will be based on the Construction Contractor's demonstrated efforts with implementing its Workforce Development Plan and meeting the schedules and milestones described within the Workforce Development Plan.
6. Final Report: The Construction Contractor shall submit, for Approval by the Developer, its final report (in a form to be agreed between the Parties, both acting reasonably) on OJT and local hiring participation during the Construction Period no later than 30 Calendar Days prior to the Substantial Completion Date. The final report shall include total participation data through Substantial Completion. In the event that the Construction Contractor failed to achieve either the

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

Local Hiring Goal or the Construction Period OJT Goal as of the Substantial Completion Date (as determined by the Developer pursuant to Section 7 of this Appendix B), the Construction Contractor shall submit, for Approval by the Developer, an updated report no later than 30 Calendar Days prior to the Final Acceptance Date.

7. Developer Report: Following Approval of the Construction Contractor's report (or any update thereto) submitted pursuant to Section 6 of this Appendix B, the Developer will evaluate the data to determine, and issue a written report setting out its determination of, whether the Construction Contractor has achieved as of the Substantial Completion Date (or, as applicable, as of the Final Acceptance Date) each of the Local Hiring Goal and the Construction Period OJT Goal. Such report shall also confirm whether or not the Construction Contractor is entitled to be paid any incentive payment(s) pursuant to Section 2 of Part V of this Appendix B and, if so entitled, the amount thereof (including relevant calculations).

Part V. Monetary Incentives for Workforce Participation

The Construction Contractor acknowledges that any performance incentives payable by the Enterprises to the Developer with respect to workforce participation as set forth in Part V of Appendix B of Schedule 15 (*Federal and State Requirements*) of the Project Agreement will be utilized to pay certain portions of the Monthly Payments to the Construction Contractor, and that the Developer's payment of such portions of the Monthly Payments to the Construction Contractor is expressly subject to the Pay-if-Paid Provisions.

Appendix C
Intentionally Omitted

Appendix D
Davis-Bacon Wage Decisions

The wage decisions provided in this Appendix D shall apply for the duration of the Construction Period. Those wage decisions are:

- Minimum Wages, Colorado, U.S. Department of Labor Decision **No. CO170016** dated June 9, 2017, which applies to Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, and Park counties.
- Minimum Wages, Colorado, U.S. Department of Labor Decision **No. CO170019** dated September 22, 2017, which applies Denver and Douglas counties.

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

Decision Nos. CO170016 dated January 06, 2017 supersedes Decision Nos. CO160016 dated January 08, 2016.		<u>Modifications</u>			<u>ID</u>
		<u>MOD Number</u>	<u>Date</u>	<u>Page Number(s)</u>	
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.		1	04-07-17	1	1
		2	06-09-17	1	2
General Decision No. CO170016 applies to the following counties: Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, and Park counties.					
General Decision No. CO170016 The wage and fringe benefits listed below reflect collectively bargained rates.					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
	ELECTRICIAN (Traffic Signalization Only):				
1000	Clear Creek	29.60	10.77	1	
	POWER EQUIPMENT OPERATOR:				
	Drill Rig Caisson				
1001	Smaller than Watson 2500 and similar	27.60	10.10	2	
1002	Watson 2500 similar or larger	27.92	10.10	2	
	Crane (50 tons and under)				
1003	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	27.75	10.10	2	
	Crane (51 - 90 tons)				
1004	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	27.92	10.10	2	
	Crane (91 - 140 tons)				
1005	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	28.55	10.10	2	
1006	Scraper				
1007	Single bowl under 40 cubic yards	27.75	10.10	2	
1008	40 cubic yards and over	27.92	10.10	2	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
	CARPENTER:			
	Excludes Form Work			
1009	Adams	16.61	3.88	
1010	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	19.27	5.08	
	Form Work Only			
1011	Adams	16.78	3.57	
1012	Broomfield, Clear Creek, Elbert, Gilpin	19.11	5.46	
1013	Jefferson	16.88	3.81	
1014	Park	17.28	5.38	
	CEMENT MASON/CONCRETE FINISHER:			
1015	Adams	16.05	3.00	
1016	Arapahoe	18.70	3.85	
1017	Broomfield, Clear Creek, Elbert, Gilpin	18.37	3.00	
1018	Jefferson	18.02	3.42	
1019	Park	17.09	2.85	
	ELECTRICIAN:			
	Excludes Traffic Signal Installation			
1020	Adams	31.00	14.01	
1021	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	35.13	6.83	
	Traffic Signalization Electrician			
1022	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	27.25	7.10	
1023	Jefferson	26.78	5.44	
	Traffic Signalization Groundsman			
1024	Adams	13.96	2.80	
1025	Arapahoe, Broomfield, Elbert, Gilpin, Park	15.24	3.81	
1026	Clear Creek	15.70	2.14	
1027	Jefferson	15.19	4.72	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
1028	FENCE ERECTOR	13.02	3.20	
1029	FORM WORKER – Arapahoe	15.30	3.90	
	GUARDRAIL INSTALLER:			
1030	Adams	12.89	3.45	
1031	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	12.89	3.20	
	HIGHWAY/PARKING LOT STRIPING:			
	Painter			
1032	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	12.62	3.21	
1033	Jefferson	14.21	3.21	
	IRONWORKER:			
	Reinforcing			
1034	Adams	22.14	0.77	
1035	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	16.69	5.45	
1036	Park	19.98	2.89	
1037	Structural	18.22	6.01	
	LABORER:			
	Asphalt Raker			
1038	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	16.29	4.25	
1039	Park	17.41	1.86	
1040	Asphalt Shoveler	21.21	4.25	
1041	Asphalt Spreader	18.58	4.65	
	Common or General			
1042	Adams	16.29	4.25	
1043	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	16.67	4.27	
1044	Jefferson	16.51	4.27	
1045	Park	15.64	2.46	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	Concrete Saw (Hand Held)			
1046	Adams	16.29	5.20	
1047	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	16.29	6.14	
	Landscape and Irrigation			
1048	Adams, Arapahoe, Broomfield, Elbert, Gilpin, Jefferson, Park	12.26	3.16	
1049	Clear Creek	14.98	3.16	
	Mason Tender - Cement/Concrete			
1050	Adams	17.71	2.83	
1051	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	16.96	4.04	
1052	Jefferson	16.29	4.25	
1053	Park	15.08	3.10	
1054	Pipelayer	13.55	2.41	
	Traffic Control (Flagger)			
1055	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	9.55	3.05	
1056	Jefferson	9.73	3.05	
1057	Park	9.42	3.21	
	Traffic Control (Sets Up/Moves Barrels, Cones, Install Signs, Arrow Boards and Place Stationary Flags)			
1058	Adams, Arapahoe, Broomfield, Elbert, Gilpin, Jefferson	12.43	3.22	
1059	Clear Creek	13.14	3.20	
1060	Park	12.76	3.20	
1061	PAINTER (Spray Only)	16.99	2.87	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1062	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	22.67	8.75	
1063	Park	22.67	8.72	
1064	Asphalt Paver	24.97	6.13	
	Asphalt Roller			
1065	Adams	24.20	7.70	
1066	Arapahoe	22.68	8.72	
1067	Broomfield, Clear Creek, Elbert, Gilpin	23.41	7.67	
1068	Jefferson	22.84	7.69	
1069	Park	22.84	8.72	
	Asphalt Spreader			
1070	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	22.67	8.67	
1071	Jefferson	23.34	8.06	
1072	Backhoe/Trackhoe			
1073	Adams	20.31	4.24	
1074	Arapahoe	24.59	6.24	
1075	Broomfield, Clear Creek, Elbert, Gilpin	22.19	6.48	
1076	Jefferson	21.99	5.60	
1077	Park	20.81	6.58	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't):			
	Bobcat/Skid Loader			
1078	Adams, Broomfield, Clear Creek, Elbert, Gilpin	15.37	4.28	
1079	Arapahoe	18.23	4.28	
1080	Jefferson	16.85	4.28	
1081	Park	22.46	0.00	
1082	Boom	22.67	8.72	
	Broom/Sweeper			
1083	Adams, Broomfield, Clear Creek, Elbert, Gilpin, Park	22.70	8.07	
1084	Arapahoe	22.67	8.73	
1085	Jefferson	22.18	8.36	
	Bulldozer			
1086	Adams	25.20	6.72	
1087	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	26.90	5.59	
1088	Concrete Pump	21.60	5.21	
	Crane			
1089	Adams, Park	22.82	8.72	
1090	Jefferson	23.55	6.68	
	Drill			
1091	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	20.48	4.71	
1092	Jefferson	20.65	5.74	
1093	Forklift	15.91	4.68	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't):			
	Grader/Blade			
1094	Adams	23.94	8.23	
1095	Arapahoe	22.67	8.72	
1096	Broomfield, Clear Creek, Elbert, Gilpin, Park	23.90	7.93	
1097	Jefferson	23.28	7.73	
1098	Guardrail/Post Driver	16.07	4.41	
	Loader (Front End)			
1099	Adams	23.09	8.72	
1100	Arapahoe	26.80	4.84	
1101	Broomfield, Clear Creek, Elbert, Gilpin	23.20	8.33	
1102	Jefferson	23.06	7.76	
1103	Park	22.67	8.72	
	Mechanic			
1104	Adams	22.82	8.72	
1105	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	24.04	7.35	
1106	Jefferson	23.56	8.72	
	Oiler			
1107	Adams, Jefferson	21.97	8.72	
1108	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	23.73	8.41	
	Roller/Compactor (Dirt and Grade Compaction)			
1109	Adams	16.70	3.30	
1110	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	20.30	5.51	
1111	Park	16.52	3.13	
1112	Rotomill	16.22	4.41	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't):			
	Screed			
1113	Adams	27.89	3.50	
1114	Arapahoe	22.67	8.72	
1115	Broomfield, Clear Creek, Elbert, Gilpin	24.67	6.02	
1116	Jefferson	22.64	8.43	
1117	Park	20.36	3.04	
1118	Tractor	13.13	2.95	
	TRUCK DRIVER:			
	Distributor			
1119	Adams	15.80	5.27	
1120	Arapahoe	19.62	5.27	
1812	Broomfield, Clear Creek, Elbert, Gilpin	18.19	5.27	
1121	Jefferson	19.46	6.04	
	Dump Truck			
1122	Adams	16.68	5.27	
1123	Arapahoe	18.94	5.27	
1124	Broomfield, Clear Creek, Elbert, Gilpin	16.47	5.27	
1125	Jefferson	16.97	4.78	
1126	Park	15.40	3.21	
	Lowboy Truck			
1127	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	17.25	5.27	
1128	Jefferson	19.80	6.42	
1129	Mechanic	26.48	3.50	
	Multi-Purpose Speciality and Hoisting Truck			
1130	Adams, Broomfield, Clear Creek, Elbert, Gilpin, Park	17.49	3.17	
1131	Arapahoe	15.79	2.48	

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
1132	Jefferson	15.13	3.89	

General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER (con't.):			
	Semi/Trailer Truck (Includes Pickup and Pilot Car)			
1133	Adams, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	18.39	4.13	
1134	Arapahoe	16.00	2.60	
	Single Axle (Includes Pickup and Pilot Car)			
1135	Adams, Jefferson	13.93	3.68	
1136	Arapahoe	15.10	3.77	
1137	Broomfield, Clear Creek, Elbert, Gilpin, Park	14.74	3.68	
1138	Truck Mounted Attenuator	12.43	3.22	
	Water Truck			
1139	Adams	17.50	5.19	
1140	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	19.36	4.07	
1141	Jefferson	17.57	5.27	

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

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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

END OF GENERAL DECISION NO. CO170016

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170019				
The wage and fringe benefits listed below reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
1288	Denver County - Over 6 cubic yards	27.75	10.10	3
	Motor Grader			
1289	Douglas county - Blade Rough	27.60	10.10	3
1290	Douglas county - Blade Finish	27.92	10.10	3
	Crane			
1291	50 tons and under	27.75	10.10	3
1292	51 to 90 tons	27.92	10.10	3
1293	91 to 140 tons	28.55	10.10	3
	Scraper			
1294	Single bowl under 40 cubic yards	27.75	10.10	3
1295	40 cubic yards and over	27.92	10.10	3
General Decision No. CO170019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
1296	CARPENTER (Excludes Form Work)	19.27	5.08	
	CEMENT MASON/CONCRETE FINISHER:			
1297	Denver	20.18	5.75	
1298	Douglas	18.75	3.00	
1299	ELECTRICIAN (Excludes Traffic Signal Installation)	35.13	6.83	
1300	FENCE ERECTOR (Excludes Link/Cyclone Fence Erection)	13.02	3.20	
1301	GUARDRAIL INSTALLER	12.89	3.20	
	HIGHWAY/PARKING LOT STRIPING:			
	Painter			
1302	Denver	12.62	3.21	
1303	Douglas	13.89	3.21	
	IRONWORKERS:			
1304	Reinforcing (Excludes Guardrail Installation)	16.69	5.45	
1305	Structural (Includes Link/Cyclone Fence Erection), (Excludes Guardrail Installation)	18.22	6.01	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	LABORERS:			
1306	Asphalt Raker	16.29	4.25	
1307	Asphalt Shoveler	21.21	4.25	
1308	Asphalt Spreader	18.58	4.65	
	Common or General			
1309	Denver	16.76	6.77	
1310	Douglas	16.29	4.25	
1311	Concrete Saw (Hand Held)	16.29	6.14	
1312	Landscape and Irrigation	12.26	3.16	
	Mason Tender - Cement/Concrete			
1313	Denver	16.96	4.04	
1314	Douglas	16.29	4.25	
	Pipelayer			
1315	Denver	13.55	2.41	
1316	Douglas	16.30	2.18	
	Traffic Control			
1317	Flagger	9.55	3.05	
1318	Sets Up/Moves Barrels, Cones, Install Signs, Arrow Boards and Place Stationary Flags, (Excludes Flaggers)	12.43	3.22	
	PAINTER:			
1319	Spray Only	16.99	2.87	
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1320	Denver	22.67	8.72	
1321	Douglas	23.67	8.47	
	Asphalt Paver			
1322	Denver	24.97	6.13	
1323	Douglas	25.44	3.50	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Asphalt Roller			
1324	Denver	23.13	7.55	
1325	Douglas	23.63	6.43	
1326	Asphalt Spreader	22.67	8.72	
	Backhoe/Trackhoe			
1327	Douglas	23.82	6.00	
1328	Bobcat/Skid Loader	15.37	4.28	
1329	Boom	22.67	8.72	
	Broom/Sweeper			
1330	Denver	22.47	8.72	
1331	Douglas	22.96	8.22	
1332	Bulldozer	26.90	5.59	
1333	Concrete Pump	21.60	5.21	
	Drill			
1334	Denver	20.48	4.71	
1335	Douglas	20.71	2.66	
1336	Forklift	15.91	4.68	
	Grader/Blade			
1337	Denver	22.67	8.72	
1338	Guardrail/Post Driver	16.07	4.41	
	Loader (Front End)			
1339	Douglas	21.67	8.22	
	Mechanic			
1340	Denver	22.89	8.72	
1341	Douglas	23.88	8.22	

Central 70 Project: Design and Construction Contract
 Schedule 15 (Federal and State Requirements)

General Decision No. CO170019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Oiler			
1342	Denver	23.73	8.41	
1343	Douglas	24.90	7.67	
	Roller/Compactor (Dirt and Grade Compaction)			
1344	Denver	20.30	5.51	
1345	Douglas	22.78	4.86	
1346	Rotomill	16.22	4.41	
	Screed			
1347	Denver	22.67	8.38	
1348	Douglas	29.99	1.40	
1349	Tractor	13.13	2.95	
	TRAFFIC SIGNALIZATION:			
	Groundsman			
1350	Denver	17.90	3.41	
1351	Douglas	18.67	7.17	
	TRUCK DRIVER:			
	Distributor			
1352	Denver	17.81	5.82	
1353	Douglas	16.98	5.27	
	Dump Truck			
1354	Denver	15.27	5.27	
1355	Douglas	16.39	5.27	
1356	Lowboy Truck	17.25	5.27	
1357	Mechanic	26.48	3.50	
	Multi-Purpose Specialty & Hoisting Truck			
1358	Denver	17.49	3.17	
1359	Douglas	20.05	2.88	

General Decision No. CO170019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER (con't.):			
	Pickup and Pilot Car			
1360	Denver County	14.24	3.77	
1361	Douglas County	16.43	3.68	
1362	Semi/Trailer Truck	18.39	4.13	
1363	Truck Mounted Attenuator	12.43	3.22	
	Water Truck			
1364	Denver County	26.27	5.27	
1365	Douglas County	19.46	2.58	

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

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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

END OF GENERAL DECISION NO. CO170019

Appendix E
Executive Order No. 11246

The following clauses from Executive Order No. 11246 shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to its provisions in place of "Construction Contractor":

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

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

8. Construction Contractor will include the provisions of Sections 1 to 8 of this Appendix E in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Construction Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Construction Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Construction Contractor may request the United States to enter into such litigation to protect the interests of the United States."

**Appendix F
 CDOT’s Special Standard Provision for
 “Affirmative Action Requirements Equal Employment Opportunity”**

A. AFFIRMATIVE ACTION REQUIREMENTS

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

- i. The Construction Contractor acknowledges the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set out in this Appendix F.
- ii. The goals and timetables for minority and female participation, expressed in percentage terms for the Construction Contractor’s aggregate workforce in each trade on all construction work in the covered area are as follows:

Goals and Timetable for Minority Utilization

TIMETABLE - UNTIL FURTHER NOTICE			
Economic Area	Standard Metropolitan Statistical Area (SMSA)	Counties Involved	Goal
157 (Denver)	2080 Denver-Boulder	Adams, Arapahoe, Boulder, Denver, Douglas, Gilpin, Jefferson.....	13.8%
GOALS AND TIMETABLES FOR FEMALE UTILIZATION			
Until Further Notice.....6.9% -- Statewide			

These goals are applicable to all the Construction Contractor’s Construction Work performed in the covered area. If the Construction Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Construction Contractor also is subject to the goals for both its Federally involved and non-Federally involved construction.

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

- iii. The Construction Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 Working Days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- iv. As used in this specification, and in the contract resulting from this solicitation, the “covered area” is the county or counties shown on the Invitation for Bids and on the

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

plans. In cases where the work is in two or more counties covered by differing percentage goals, the highest percentage will govern.

B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

- i. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) As used in these Specifications:
 - A. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - B. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - C. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Developer Form 941.
 - D. "Minority" includes;
 1. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 3. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 4. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- ii. Whenever the Construction Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- iii. If the Construction Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. The Construction Contractor must be able to demonstrate its participation in and compliance with the provisions of any such Hometown Plan. If the Construction Contractor is participating in an approved Plan it is required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors toward a goal in an approved Plan does not excuse any covered contractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- iv. The Construction Contractor shall implement the specific affirmative action standards provided in paragraphs vii A through P of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Construction Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance Programs Office or from Federal procurement contracting officers. The Construction Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- v. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Construction Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Construction Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- vi. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Construction Contractor during the training period, and the Construction Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- vii. The Construction Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Construction Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Construction Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following;
 - A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Construction Contractor's employees are assigned to work. The Construction Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Construction Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Construction Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.
 - C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source of community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Construction Contractor by the union or, if referred, not employed by the Construction Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Construction Contractor may have taken.
 - D. Provide immediate written notification to the Director when the union with which the Construction Contractor has a collective bargaining agreement has not referred to the Construction Contractor a minority person or woman sent by the Construction Contractor, or when the Construction Contractor has other information that the union referral process has impeded the Construction Contractor's efforts to meet its obligations.
 - E. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

programs and apprenticeship and trainee programs relevant to the Construction Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Construction Contractor shall provide notice of these programs to the sources compiled under paragraph vii.B of these specifications.

- F. Disseminate the Construction Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Construction Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the Construction Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- G. Review, at least annually, the Construction Contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- H. Disseminate the Construction Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Construction Contractor does or anticipates doing business.
- I. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Construction Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Construction Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a the Construction Contractor's workforce.
- K. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.
- M. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Construction Contractor's obligations under these specifications are being carried out.

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- N. Ensure that all facilities and the Construction Contractor's activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - P. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Construction Contractor's EEO policies and affirmative action obligation.
- viii. Contractors (including the Construction Contractor) are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (paragraphs vii.A through P). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the Construction Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraphs vii.A through P of these specifications provided that the Construction Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Construction Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Construction Contractor. The obligation to comply, however, is the Construction Contractor's and failure of such a group to fulfil an obligation shall not be a defense for the Construction Contractor's noncompliance.
- ix. A single goal for minorities and a separate single goal for women have been established. The Construction Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Construction Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Construction Contractor has achieved its goals for women generally, the Construction Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- x. The Construction Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.
- xi. The Construction Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- xii. The Construction Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. If the Construction Contractor fails to carry out such sanctions and penalties it shall be in violation of these specifications and Executive Order 11246, as amended.
- xiii. The Construction Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph vii of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Construction Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- xiv. The Construction Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- xv. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

C. SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES.

- i. *General.*
 - A. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA 1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.
 - B. The Construction Contractor will work with the Developer and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
 - C. The Construction Contractor and all his/her Subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, SubSection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The Construction Contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the Subcontractor.
- ii. *Equal Employment Opportunity Policy.* The Construction Contractor will accept as its operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, or disability, and to promote the full realization of equal employment opportunity through a positive continuing program;

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, 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.

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- iii. *Equal Employment Opportunity Officer.* The Construction Contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (herein after referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.
- iv. *Dissemination of Policy.*
 - A. All members of the Construction Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Construction Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum.
 - B. 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 Construction Contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
 - C. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Construction Contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the Construction Contractor.
 - D. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Construction Contractor's procedures for locating and hiring minority group employees.
 - 1. In order to make the Construction Contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Construction Contractor will take the following actions:
 - a. Notices and posters setting forth the Construction Contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - b. The Construction Contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- v. *Recruitment.*
 - A. When advertising for employees, the Construction Contractor will include in all advertisements for employees the notation; "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
 - B. The Construction Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants,

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, The Construction Contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the Construction Contractor for employment consideration.

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

- C. The Construction Contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.
- vi. *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, or disability. The following procedures shall be followed;
- A. The Construction Contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - B. The Construction Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - C. The Construction Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Construction 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 Construction Contractor will promptly investigate all complaints of alleged discrimination made to the Construction Contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Construction Contractor will inform every complainant of all of his avenues of appeal.
- vii. *Training and Promotion.*
- A. The Construction Contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - B. Consistent with the Construction Contractor's work force requirements and as permissible under Federal and State regulations, the Construction Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
- C. The Construction Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - D. The Construction Contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
- viii. *Unions.* If the Construction Contractor relies in whole or in part upon unions as a source of employees, the Construction Contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women with the unions, and to effect referrals by such unions of minority and female employees. Actions by the Construction Contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- A. The Construction Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
 - B. The Construction Contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.
 - C. The Construction 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 Construction Contractor, the Construction Contractor shall so certify to the State highway Developer and shall set forth what efforts have been made to obtain such information.
 - D. In the event the union is unable to provide the Construction Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Construction Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Construction Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the Construction Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such the Construction Contractor shall immediately notify the State highway agency.
- ix. *Subcontracting.*
- A. The Construction Contractor will use his best efforts to solicit bids from and to utilize minority group Subcontractors or Subcontractors with meaningful minority group and female representation among their employees. The Construction Contractor shall obtain lists of minority-owned construction firms from State highway agency personnel.
 - B. The Construction Contractor will use his best efforts to ensure Subcontractor compliance with their equal employment opportunity obligations.

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- x. *Records and Reports.*
 - A. The Construction Contractor will keep such records as are necessary to determine compliance with the Construction Contractor's equal employment opportunity obligations. The records kept by the Construction Contractor will be designed to indicate:
 - 1. The number of minority and nonminority group members and women employed in each work classification on the project.
 - 2. The Progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
 - 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and
 - 4. The progress and efforts being made in securing the services of minority group Subcontractors or Subcontractors with meaningful minority and female representation among their employees.
 - B. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

The Construction Contractor will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391.

Appendix G

USDOT Order No. 1050.2A “USDOT Standard Title VI/Non-Discrimination Assurances”

Part I – All Contracts

During the performance of this Agreement, the Construction Contractor, for itself, its assignees, and successors in interest agrees as follows:

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

Part II – Clauses for Transfer of Real Property Acquired or Improved under the Activity, Facility, or Program

The Construction Contractor for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that, in the event facilities are constructed, maintained, or otherwise operated on the property subject to the Project License for a purpose for which a US DOT activity, facility, or

program is extended or for another purpose involving the provision of similar services or benefits, the licensee will maintain and operate such facilities and services in compliance with all requirements imposed by Non-discrimination Law such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

Part III – Clauses for Construction/Use/Access to Real Property Acquired under the Activity, Facility or Program

The licensee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) the licensee will use the premises in compliance with all other requirements imposed by or pursuant to Non-discrimination Law.

Parts IV – Non-Discrimination Authorities

Without prejudice to the generality of any other nondiscrimination provisions in this Agreement, during the performance of this Agreement, the Construction Contractor, for itself, its assignees, and successors in interest agrees to comply with the following Non-discrimination Law (as any such Law is amended from time to time):

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

The Age Discrimination Act of 1975, (42 U.S.C. § 6101 et seq.), as amended, (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, (42 U.S.C. §§ 12131-12189), (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities), as implemented by US DOT regulations at 49 C.F.R. parts 37 and 38;

The Federal Aviation Administration’s Non-discrimination statute, (49 U.S.C. § 47123), (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations(ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 et seq.), (prohibits discrimination because of sex in education programs or activities).

Appendix H
Required Contract Provisions

Federal-Aid Construction Contracts

- I. General
- II. Nondiscrimination
- III. Nonsegregated 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. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (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).

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.

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). 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 bid proposal or request for proposal 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).

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.
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. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this Section related to 23 CFR Part 230 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 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, 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 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, 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 230, 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 (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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 35 and 29 CFR 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.
 - 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, 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 who 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.
 - 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, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - 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. 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, 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, 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, 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 and 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. Assurance Required by 49 CFR 26.13(b):**
 - a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
 - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor 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 contracting agency deems appropriate.
- 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 \$10,000 or more.

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

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, 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). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

- a. All laborers and mechanics employed or working upon the site of the work, 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 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.
- b. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. 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 shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall 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.
 - (1) The contracting officer shall 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 shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

and wage rate and fringe benefits therefore 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 utilized 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) 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 shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. 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.
- (3) 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 shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour 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.
- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this Section 1.b., shall 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.
- c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. 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, 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.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be

considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, 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.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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 Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Website at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this Section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- i. That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed 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 Regulations, 29 CFR part 3;
 - 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 of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.a.(2) of this section.
- (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of title 18 and Section 231 of title 31 of the United States Code.
- b. The contractor or subcontractor shall make the records required under paragraph 3.a. of this Section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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 may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

- a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed 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 Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall 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

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall 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, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
 - d. 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. 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 journeymen 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.
 6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 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.
 9. **Disputes concerning labor standards.** 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 he or she) 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 Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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 watchmen 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.

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. 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 watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 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.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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" 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:
 - (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

Central 70 Project: Design and Construction Contract
Schedule 15 (Federal and State Requirements)

- (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.
2. 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. 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.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

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 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.
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 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).
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 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 1, 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

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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.

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 Developer 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.
- 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.
- 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.
- 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 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee 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 grantee or subgrantee 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 Developer or agency entering into this transaction.
- 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 Developer 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.

- 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. 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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- 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 Developer or agency may terminate this transaction for cause or default.

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 Developer or agency;
 - (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;
 - (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; 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.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. 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)

- a. By signing and submitting this proposal, the prospective lower tier 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 Developer, 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.
- 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 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 grantee or subgrantee 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 grantee or subgrantee 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 Developer or agency with which this transaction originated.
- 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.
- 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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- 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 Developer or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal Developer or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall 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 20).

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.

**Schedule 16
Mandatory Terms**

Part A: Subcontracting Terms

1. Mandatory Terms for Subcontracts of Every Tier

Each Subcontract shall:

- (a) include an acknowledgement and agreement from the lower-tier Subcontractor:
 - (i) of and to all the terms of the Project Agreement to the extent expressly applicable to it as a Subcontractor;
 - (ii) that:
 - (A) the Colorado General Mechanics' Lien Statute, C.R.S. §§ 38-22-101, *et seq.*, is not available to such Subcontractor as a remedy for non-payment with respect to the Project and, as such, such Subcontractor shall not file or permit to be filed any mechanics' lien, materialmens' lien, or other lien against the Enterprises or CDOT, or the Project, in the records of the Clerk and Recorder of the City of Denver or in any other real property records;
 - (B) notwithstanding Section 1(a)(ii)(A) of this Part A of this Schedule 16, the Colorado Contractor's Bond and Lien on Funds Statute, C.R.S. §§ 38-26-101, *et seq.*, provides remedies to public authorities and subcontractors in the event of a non-payment of a subcontractor (which remedies are in the form of deductions by the public authority from payments to the contractor and liens by subcontractors against relevant payment bonds) and, therefore, pursuant to C.R.S. §§ 38-26-107 and, as contemplated by Section 5 of Schedule 5 (*Milestone Payments*) of the Project Agreement, if such Subcontractor has an unpaid claim under its Subcontract, such Subcontractor may file a verified statement of the amount due and unpaid with the Enterprises at any time up to and including, but not after, the Substantial Completion Date (following which filing the Enterprises shall be entitled to withhold funds from Developer pursuant to Section 5(a)(i) of Part 3 of Schedule 4 (*Payments*) of the Project Agreement as a result of such claim); and
 - (C) such Subcontractor shall execute and deliver any lien waiver as and when required to be executed by it pursuant to Sections 2.4(b)(ii) or 2.4(b)(iii) of Part 2 of Schedule 4 (*Payments*) of the Project Agreement or Sections 4(c)(ii) or 4(c)(iii) of Schedule 5 (*Milestone Payments*) of the Project Agreement; and
 - (iii) that:
 - (A) all notices, documentation and other information required to be delivered by Developer to the Enterprises or, as applicable, the Department pursuant to the Project Agreement shall be directly delivered by Developer and not by such Subcontractor acting, directly or indirectly, on Developer's behalf, except to the extent that the Enterprises Approve in advance the direct delivery of such type of notice by such Subcontractor to the Enterprises or, as applicable, the Department; and
 - (B) the Enterprises (and the Department) may, in their discretion, disregard any notice delivered by such Subcontractor contrary to Section 1(a)(iii)(A) of this Part A of this Schedule 16;

- (b) incorporate all terms and provisions:
 - (i) that the Project Agreement requires to be expressly incorporated in such Subcontract; and
 - (ii) as are otherwise necessary for Developer to comply with its obligations under the Project Agreement with respect to the compliance of Subcontractors with certain provisions of the Project Agreement, including:
 - (A) Sections 8.1.2, 8.3.1.a, 8.5, 8.6.1.a, 15.4.b, 17.5, 19.1, 20.1.2, 20.1.4, 20.1.5, 20.1.6, 25.2.7.b and 30.1.4.b of the Project Agreement; and
 - (B) Sections 2.1, 2.2, 2.3, 2.4, 2.5, 3, 4.2, 4.3, 5.2, 5.3, 5.4 and 6.4 of, and the Appendices to, Schedule 15 (Federal and State Requirements) of the Project Agreement;
- (c) require the lower-tier Subcontractor to:
 - (i) participate in meetings between Developer and Enterprises where requested in writing by either Developer or the Enterprises; and
 - (ii) cooperate with any reasonable requests for information or assistance provided to them through the Dispute Resolution Procedures, except to the extent that such cooperation would require such Subcontractor to assume any legal liability;
- (d) contain all provisions necessary to ensure Developer shall comply with its obligations under Section 34.2 of the Project Agreement as they relate to such Subcontract;
- (e) not otherwise contain terms that are contrary to or inconsistent with the Project Agreement; and
- (f) provide that any amendment or waiver of any such Subcontract's provisions that would result in a violation of this Part A of this Schedule 16 shall be null and void unless Approved by the Enterprises.

2. **Mandatory Terms for Subcontracts**

In addition to complying with Section 1 of Part A of this Schedule 16, subject to any exemptions that may be Approved by the Enterprises, each Subcontract shall:

- (a) not require from a Subcontractor the delivery to Developer or the higher-tier Subcontractor, as applicable, of any construction, payment or performance bond or letter of credit for an amount (in aggregate with all other such bonds and letters of credit) exceeding the aggregate value of the relevant Subcontract, provided that, if separate payment and performance bonds are required, each type of bond may separately be in an amount not to exceed such aggregate value;
- (b) specify an alternative dispute resolution mechanism ("ADR") of referral for binding arbitration (which may be preceded by voluntary mediation) for payment disputes that complies with the following requirements:
 - (i) save to the extent expressly required otherwise by this Section 2(b), the ADR shall be conducted in accordance with the American Arbitration Association's Construction Industry Arbitration Rules and Mediation Procedures in effect from time to time;
 - (ii) the arbitrator(s) shall be mutually agreed by the parties to Subcontract at the time of, or prior to, referral;
 - (iii) either party to the Subcontract may require referral to ADR provided that, if the recipient of the invoice has not required referral within 90 Calendar Days after delivery of the invoice not paid or partially paid, the recipient shall irrevocably waive its rights to dispute the relevant invoice. Delivery shall be deemed made when deposited in the U.S. mail postage prepaid or hand delivered;

Central 70 Project: Design and Construction Contract
Schedule 16 (Mandatory Terms)

- (iv) the ADR shall provide for completion of the ADR process within 180 Calendar Days of delivery of the disputed invoice; and
- (v) the prevailing party shall be awarded its costs provided that the arbitrator has discretion to require an equal split of the costs if there is no clearly prevailing party; and
- (c) subject to Section 17.5.3 of the Project Agreement, provide that the relevant Subcontractor as payee submit monthly invoices in respect of any amount claimed as determined pursuant to Section 17.5.1.a through 17.5.1.d of the Project Agreement.

3. **Intentionally Omitted**

Part B: Intentionally Omitted

Schedule 17
Environmental Requirements

“This Agreement contains a number of references to Schedule 17 (*Environmental Requirements*). The Developer and the Construction Contractor hereby acknowledge and agree that Schedule 17 (*Environmental Requirements*) to the Project Agreement, as amended by to the Project Agreement Amendment, is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 17 (*Environmental Requirements*) to the Project Agreement, as amended by the Project Agreement Amendment, shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the Construction Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the Construction Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer’s obligations and liabilities under Schedule 17 (*Environmental Requirements*) to the Project Agreement, as amended by the Project Agreement Amendment, to the extent such obligations and liabilities relate to the CC Work (as if the same were expressly referred to herein as obligations and liabilities of the Construction Contractor *mutatis mutandis*).”

Schedule 18
Right-of-Way

This Agreement contains a number of references to Schedule 18 (*Right-of-Way*). The Developer and the Construction Contractor hereby acknowledge and agree that Schedule 18 (*Right-of-Way*) to the Project Agreement is incorporated herein by reference, provided, however, that for the purposes of this Agreement, Schedule 18 (*Right-of-Way*) to the Project Agreement shall be read, construed, and interpreted such that (1) references to the Developer therein shall be references to the Construction Contractor, (2) references to the Enterprises, the Department or CDOT therein shall be references to the Developer, the Enterprises, the Department or CDOT, as appropriate, and (3) the Construction Contractor shall observe, perform, comply with and assume as part of its obligations under this Agreement all of the Developer's obligations and liabilities under Schedule 18 (*Right-of-Way*) to the Project Agreement to the extent such obligations and liabilities relate to the CC Work (as if the same were expressly referred to herein as obligations and liabilities of the Construction Contractor *mutatis mutandis*).

Schedule 19
Intentionally Omitted

**Schedule 20
Forms of Contractor Bond**

Part A: Form of Payment and Performance Surety Bond

PAYMENT AND PERFORMANCE BOND NO.: []

SURETY:¹ [name], a [legal status]
[address]

PRINCIPAL: Kiewit Infrastructure Co., a Delaware corporation
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

OBLIGEE[S]: Kiewit Meridiam Partners LLC, a Delaware limited liability company
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

**BOND
AMOUNT:** \$[]

DATE: [date]

**APPLICABLE
AGREEMENT[S]:** Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware ("Developer"), has entered into the Project Agreement for the Central 70 Project dated as of November 21, 2017 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Project Agreement") with Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"), and Colorado Bridge Enterprise ("BE"), a government-owned business within CDOT, (HPTE and BE, together, the "Enterprises") for the design, construction, financing, operation and maintenance of a portion of the I-70 East Corridor in Greater Denver (the "Project").

Principal has entered into the Design and Construction Contract with Developer, dated as of [date] (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Subcontract"), for [description of the work performed] in regards to the Project.

It is a requirement under Section 9.3.1.a.i of the Project Agreement and under the terms of the Subcontract that this payment and performance bond (this "Bond") be delivered.

TERMS:

Section 1. The Subcontract is incorporated herein by reference. All terms that are not defined in this Bond shall have the meaning ascribed to them in the Subcontract.

Section 2. Principal and Surety, jointly and severally, bind themselves and their successors and assigns to the Obligee[s]:

¹ The surety must be an Eligible Surety as defined under the Construction Contract.

- (a) to pay for labor, laborers, materials, rental machinery, tools and equipment, and all other items that are described in C.R.S. §§ 38-26-101 through and including 38-26-110 (the "Contractor's Bonds Statute") furnished for use in the performance of the Subcontract; and
- (b) to perform the Subcontract.

Section 3. Surety's liability under this Bond shall not exceed:

- (a) the Bond Amount specified above; and
 - (b) any costs or expenses payable under Section 8 below and any interest payable under the Contractor's Bonds Statute,
- the aggregate amounts referred to in this Section 3(a) and (b) are referred to as the "Maximum Amount".

Section 4. No change, alteration, addition, omission, modification, supplement or extension of time to the Project Agreement or to the Subcontract, or to the nature of the work to be performed thereunder including, without limitation, any extension of time for performance or any change of any terms of or extension of time for any payment pertaining or relating to the Subcontract or to the Project Agreement, nor any fraud practiced by any other Person (other than any Obligee or any Additional Obligee), shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any change, alteration, addition, omission, modification, supplement or extension of time.

Section 5. This Bond is intended for the benefit of all Persons named in the Contractor's Bond Statute including, without limitation, all direct and indirect Subcontractors of the Principal.

Section 6.

- (a) Whenever Principal and Surety are notified by the Obligee[s] that Principal is in default in the performance of the Subcontract (other than with respect to payment obligations), Surety shall as soon as reasonably practicable in light of then-prevailing circumstances ("promptly"):
 - (i) remedy such default;
 - (ii) arrange for Principal, with the prior written consent of the Obligee[s], to perform and complete the work in accordance with the Subcontract;
 - (iii) itself, through its agents or through independent contractors, perform and complete the work in accordance with the Subcontract; or
 - (iv) select a subcontractor or subcontractors to complete all applicable portions of the work for which a notice to proceed has been issued in accordance with the Subcontract and, using a procurement methodology provided by the Obligee[s], arrange for a contract between such subcontractor or subcontractors and the Obligee[s], and make available as work progresses (even if there is a default or a succession of defaults under such contract or contracts of completion arranged under this Section 6(a)(iv)) sufficient funds to pay the cost of completion, such funds not to exceed in aggregate, including, without limitation, other costs and damages for which Surety is liable hereunder, the Maximum Amount. Any new contract(s) entered into in fulfillment of this Section 6(a)(iv) may provide for a new bond for each new subcontractor, provided that the amount of any such bond (in aggregate with the amount of any other such bonds) will be the Maximum Amount under this Bond, less

amounts paid under this Bond and less amounts paid under any successive bonds for substitute contractors authorized by the Enterprises. Each new subcontractor shall be required to tender its bond to the Enterprises in accordance with Section 9.3.1 of the Project Agreement for such amount.

- (b) Whenever Principal and Surety are notified by the Oblige[e]s that Principal or any Subcontractor (of any tier) of Principal is in breach of its payment obligations under any Subcontract, which notice shall be given only for undisputed amounts, Surety shall promptly pay for the same in an amount not exceeding the Maximum Amount.

Section 7. Correspondence or claims relating to this Bond shall be sent to Surety at the address listed above for Surety. Surety shall promptly notify the Oblige[e]s of any claims relating to this Bond at the address[es] listed above for the Oblige[e]s.

Section 8. Surety agrees to indemnify, defend and hold the Oblige[e]s harmless from and against all loss, damage, cost, or expense incurred by the Oblige[e]s as a result of any claims made against or related to this Bond arising out of the bad faith actions of the Surety. If Surety is in breach of its obligations under this Bond, the Oblige[e]s shall be entitled to all remedies available at law or in equity. Should the Oblige[e]s commence litigation to enforce Surety's obligations under this Bond, Surety agrees that, in addition to paying its own costs and expenses of litigation, if it acted in bad faith or breached its obligations under this Bond, it shall also pay the Oblige[e]s' costs and expenses, including, without limitation, the Oblige[e]s' reasonable attorneys' fees (including those of the Colorado Attorney General's Office). Surety agrees that venue and jurisdiction for any litigation relating to this Bond shall be in the federal or state courts in the City and County of Denver, Colorado.

Section 9. This Bond has been furnished by Surety on behalf of Principal to comply with the Contractor's Bond Statute and any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory requirements shall be deemed incorporated herein. Principal and Surety acknowledge and agree that the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Section 10. The Additional Oblige[e] Rider attached hereto is incorporated fully herein.

[remainder of page left intentionally blank; signature page follows]

Central 70 Project: Design and Construction Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

ADDITIONAL OBLIGEE RIDER

ADDITIONAL OBLIGEE[S]:² [name], a [legal status]
[address]

DATE: [date]

RELATED BOND: This additional obligee rider is executed concurrently with and shall be attached to and form a part of the Payment and Performance Bond No. [] dated as of [date] (the “Bond”) by and among Kiewit Infrastructure Co., a Delaware corporation, as Principal and [name] a [legal status] as Surety in the Bond Amount of \$[amount].

TERMS:

- Section 1.** All terms that are not defined herein shall have the meaning ascribed to them in the Bond.
- Section 2.** The undersigned agree and stipulate that the above named “Additional Obligees” shall be added to the Bond as named obligee[s], subject to the terms herein.
- Section 3.** The Additional Obligees shall have the right to notify Surety and Principal, as applicable, that Principal is in default under the Subcontract, and/or that Principal or any Subcontractor (of any tier) of Principal is in breach of its payment obligations under any Subcontract, which notice with respect to any such breach of payment obligations shall be given only for undisputed amounts. Upon such notice by an Additional Obligee, Surety shall promptly act as if such notice was provided by the Obligees and shall act in accordance with Section 6 of the Bond. Surety shall promptly notify the Obligees of any claims by Additional Obligees relating to this Bond at the address listed in the Bond for the Obligees.
- Section 4.** The aggregate liability of Surety under this Bond, to any or all of the obligees, as their interests may appear, is limited to the Maximum Amount of said Bond.
- Section 5.** Additional Obligees’ rights hereunder are subject to the same defenses Principal and/or Surety have against the Obligees.
- Section 6.** Except as modified herein, the Bond shall be and remains in full force and effect.

[remainder of page left intentionally blank; signature page follows]

² The Additional Obligees will be (i) the Enterprises and (ii) the Collateral Agent.

Central 70 Project: Design and Construction Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

Part B: Form of Payment Bond

PAYMENT BOND NO.: []

SURETY:³ [name], a [legal status]
[address]

PRINCIPAL: Kiewit Infrastructure Co., a Delaware corporation
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

OBLIGEE[S]: Kiewit Meridiam Partners LLC, a Delaware limited liability company
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

**BOND
AMOUNT:** \$[]

DATE: [date]

APPLICABLE

AGREEMENT[S]: Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware ("Developer"), has entered into the Project Agreement for the Central 70 Project dated as of November 21, 2017 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Project Agreement") with Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"), and Colorado Bridge Enterprise ("BE"), a government-owned business within CDOT, (HPTE and BE, together, the "Enterprises") for the design, construction, financing, operation and maintenance of a portion of the I-70 East Corridor in Greater Denver [(the "Project")].

Principal has entered into the Design and Construction Contract with Developer, dated as of [date] (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Subcontract"), for [description of the work performed] in regards to the Project.

It is a requirement under Section 9.3.1.a.i of the Project Agreement and under the terms of the Subcontract that this payment bond (this "Bond") be delivered.

TERMS:

- Section 1.** The Subcontract is incorporated herein by reference. All terms that are not defined in this Bond shall have the meaning ascribed to them in the Subcontract.
- Section 2.** Principal and Surety, jointly and severally, bind themselves and their successors and assigns to the Obligee[s] to pay for labor, laborers, materials, rental machinery, tools and equipment, and all other items that are described in C.R.S. §§ 38-26-101 through and including 38-26-110 (the "Contractor's Bonds Statute") furnished for use in the performance of the Subcontract.
- Section 3.** Surety's liability under this Bond shall not exceed:

³ The surety must be an Eligible Surety as defined under the Construction Contract.

- (a) the Bond Amount specified above; and
- (b) any costs or expenses payable under Section 8 below and any interest payable under the Contractor's Bonds Statute,

the aggregate amounts referred to in this Section 3(a) and (b) are referred to as the "Maximum Amount".

- Section 4.** No change, alteration, addition, omission, modification, supplement or extension of time to the Project Agreement or to the Subcontract, or to the nature of the work to be performed thereunder including, without limitation, any extension of time for performance or any change of any terms of the Subcontract or to the Project Agreement, nor any fraud practiced by any other Person (other than any Obligee or any Additional Obligee), shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any change, alteration, addition, omission, modification, supplement or extension of time.
- Section 5.** This Bond is intended for the benefit of all Persons named in the Contractor's Bond Statute including, without limitation, all direct and indirect Subcontractors of the Principal.
- Section 6.** Whenever Principal and Surety are notified by the Obligee[s] that Principal or any Subcontractor (of any tier) of Principal is in breach of its payment obligations under any Subcontract, which notice shall be given only for undisputed amounts, Surety shall promptly pay for the same in an amount not exceeding the Maximum Amount.
- Section 7.** Correspondence or claims relating to this Bond shall be sent to Surety at the address listed above for Surety. Surety shall promptly notify the Obligee[s] of any claims relating to this Bond at the address[es] listed above for the Obligee[s].
- Section 8.** Surety agrees to indemnify, defend and hold the Obligee[s] harmless from and against all loss, damage, cost, or expense incurred by the Obligee[s] as a result of any claims made against or related to this Bond arising out of the bad faith actions of the Surety. If Surety is in breach of its obligations under this Bond, the Obligee[s] shall be entitled to all remedies available at law or in equity. Should the Obligee[s] commence litigation to enforce Surety's obligations under this Bond, Surety agrees that, in addition to paying its own costs and expenses of litigation, if it acted in bad faith or breached its obligations under this Bond, it shall also pay all the Obligee['s][s'] costs and expenses, including, without limitation, the Obligee['s][s'] reasonable attorneys' fees (including those of the Colorado Attorney General's Office). Surety agrees that venue and jurisdiction for any litigation relating to this Bond shall be in the federal or state courts in the City and County of Denver, Colorado.
- Section 9.** This Bond has been furnished by Surety on behalf of Principal to comply with the Contractor's Bond Statute and any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory requirements shall be deemed incorporated herein. Principal and Surety acknowledge and agree that the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- Section 10.** The Additional Obligee Rider attached hereto is incorporated fully herein.

[remainder of page left intentionally blank; signature page follows]

Central 70 Project: Design and Construction Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

ADDITIONAL OBLIGEE RIDER

ADDITIONAL OBLIGEE[S]:⁴ [name], a [legal status]
[address]

DATE: [date]

RELATED BOND: This additional obligee rider is executed concurrently with and shall be attached to and form a part of the Payment Bond No. [] dated as of [date] (the “Bond”) by and among Kiewit Infrastructure Co., a Delaware corporation, as Principal and [name] a [legal status] as Surety in the Bond Amount of \$[amount].

TERMS:

- Section 1.** All terms that are not defined herein shall have the meaning ascribed to them in the Bond.
- Section 2.** The undersigned agree and stipulate that the above named “Additional Obligees[s]” shall be added to the Bond as named obligee[s], subject to the terms herein.
- Section 3.** The Additional Obligees[s] shall have the right to notify Surety and Principal that Principal or any Subcontractor (of any tier) of Principal is in breach of its payment obligations under any Subcontract, which notice shall be given only for undisputed amounts. Upon such notice by an Additional Obligee, Surety shall promptly act as if such notice was provided by the Obligee[s] and shall act in accordance with Section 6 of the Bond. Surety shall promptly notify the Obligee[s] of any claims by Additional Obligees relating to this Bond at the address listed in the Bond for the Obligee[s].
- Section 4.** The aggregate liability of Surety under this Bond, to any or all of the obligees, as their interests may appear, is limited to the Maximum Amount of said Bond.
- Section 5.** Additional Obligees’ rights hereunder are subject to the same defenses Principal and/or Surety have against the Obligee[s].
- Section 6.** Except as modified herein, the Bond shall be and remains in full force and effect.

[remainder of page left intentionally blank; signature page follows]

⁴ The Additional Obligees will be (i) the Enterprises and (ii) the Collateral Agent.

Central 70 Project: Design and Construction Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

Part C: Form of Performance Surety Bond

PERFORMANCE BOND NO.: []

SURETY:⁵ [name], a [legal status]
[address]

PRINCIPAL: Kiewit Infrastructure Co., a Delaware corporation
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

OBLIGEE[S]: Kiewit Meridiam Partners LLC, a Delaware limited liability company
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

**BOND
AMOUNT:** \$[]

DATE: [date]

APPLICABLE

AGREEMENT[S]: Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware ("Developer"), has entered into the Project Agreement for the Central 70 Project dated as of November 21, 2017 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Project Agreement") with Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT"), and Colorado Bridge Enterprise ("BE"), a government-owned business within CDOT, (HPTE and BE, together, the "Enterprises") for the design, construction, financing, operation and maintenance of a portion of the I-70 East Corridor in Greater Denver [(the "Project")].

Principal has entered into the Design and Construction Contract with Developer, dated as of [date] (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Subcontract"), for [description of the work performed] in regards to the Project.

It is a requirement under Section 9.3.1.a.i of the Project Agreement and under the terms of the Subcontract that this performance bond (this "Bond") be delivered.

TERMS:

Section 1. The Subcontract is incorporated herein by reference. All terms that are not defined in this Bond shall have the meaning ascribed to them in the Subcontract.

Section 2. Principal and Surety, jointly and severally, bind themselves and their successors and assigns to the Obligee[s] to perform the Subcontract.

Section 3. Surety's liability under this Bond shall not exceed:

- (a) the Bond Amount specified above; and
- (b) any costs or expenses payable under Section 8 below and any interest payable under the Contractor's Bonds Statute,

⁵ The surety must be an Eligible Surety as defined under the Construction Contract.

the aggregate amounts referred to in this Section 3(a) and (b) are referred to as the "Maximum Amount".

Section 4. No change, alteration, addition, omission, modification, supplement or extension of time to the Project Agreement or to the Subcontract, or to the nature of the work to be performed thereunder including, without limitation, any extension of time for performance or any change of any terms of or extension of time for any payment pertaining or relating to the Subcontract or to the Project Agreement, nor any fraud practiced by any other Person (other than any Obligee or any Additional Obligee), shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any change, alteration, addition, omission, modification, supplement or extension of time.

Section 5. Whenever Principal and Surety are notified by the Obligee[s] that Principal is in default in the performance of the Subcontract (other than with respect to payment obligations), Surety shall as soon as reasonably practicable in light of then-prevailing circumstances ("promptly"):

- (a) remedy such default;
- (b) arrange for Principal, with the prior written consent of the Obligee[s], to perform and complete the work in accordance with the Subcontract;
- (c) itself, through its agents or through independent contractors, perform and complete the work in accordance with the Subcontract; or
- (d) select a subcontractor or subcontractors to complete all applicable portions of the work for which a notice to proceed has been issued in accordance with the Subcontract and, using a procurement methodology provided by the Obligee[s], arrange for a contract between such subcontractor or subcontractors and the Obligee[s], and make available as work progresses (even if there is a default or a succession of defaults under such contract or contracts of completion arranged under this Section 5(d)) sufficient funds to pay the cost of completion, such funds not to exceed in aggregate, including, without limitation, other costs and damages for which Surety is liable hereunder, the Maximum Amount. Any new contract(s) entered into in fulfillment of this Section 5(d) may provide for a new bond for each new subcontractor, provided that the amount of any such bond (in aggregate with the amount of any other such bonds) will be the Maximum Amount under this Bond, less amounts paid under this Bond and less amounts paid under any successive bonds for substitute contractors authorized by the Enterprises. Each new subcontractor shall be required to tender its bond to the Enterprises in accordance with Section 9.3.1 of the Project Agreement for such amount.

Section 6. Correspondence or claims relating to this Bond shall be sent to Surety at the address listed above for Surety. Surety shall promptly notify the Obligee[s] of any claims relating to this Bond at the address[es] listed above for the Obligee[s].

Section 7. Surety agrees to indemnify, defend and hold the Obligee[s] harmless from and against all loss, damage, cost, or expense incurred by the Obligee[s] as a result of any claims made against or related to this Bond arising out of the bad faith actions of the Surety. If Surety is in breach of its obligations under this Bond, the Obligee[s] shall be entitled to all remedies available at law or in equity. Should the Obligee[s] commence litigation to enforce Surety's obligations under this Bond, Surety agrees that, in addition to paying its own costs and expenses of litigation, if it acted in bad faith or breached its obligations under this Bond, it shall also pay all the Obligee['s][s]' costs and expenses, including, without limitation, the Obligee['s][s]' reasonable attorneys' fees (including those of the Colorado Attorney General's Office). Surety

agrees that venue and jurisdiction for any litigation relating to this Bond shall be in the federal or state courts in the City and County of Denver, Colorado.

Section 8. This Bond has been furnished by Surety on behalf of Principal to comply with the Contractor's Bond Statute and any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory requirements shall be deemed incorporated herein. Principal and Surety acknowledge and agree that the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Section 9. The Additional Obligees Rider attached hereto is incorporated fully herein.

[remainder of page left intentionally blank; signature page follows]

Central 70 Project: Design and Construction Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

ADDITIONAL OBLIGEE RIDER

ADDITIONAL OBLIGEE[S]:⁶ [name], a [legal status]
[address]

DATE: [date]

RELATED BOND: This additional obligee rider is executed concurrently with and shall be attached to and form a part of the Performance Bond No. [] dated as of [date] (the “Bond”) by and among Kiewit Infrastructure Co., a Delaware corporation, as Principal and [name] a [legal status] as Surety in the Bond Amount of \$[amount].

TERMS:

- Section 1.** All terms that are not defined herein shall have the meaning ascribed to them in the Bond.
- Section 2.** The undersigned agree and stipulate that the above named “Additional Obligees[s]” shall be added to the Bond as named obligee[s], subject to the terms herein.
- Section 3.** The Additional Obligees[s] shall have the right to notify Surety and Principal that Principal is in default under the Subcontract. Upon such notice by an Additional Obligee, Surety shall promptly act as if such notice was provided by the Obligee[s] and shall act in accordance with Section 5 of the Bond. Surety shall promptly notify the Obligee[s] of any claims by Additional Obligees relating to this Bond at the address listed in the Bond for the Obligee[s].
- Section 4.** The aggregate liability of Surety under this Bond, to any or all of the obligees, as their interests may appear, is limited to the Maximum Amount of said Bond.
- Section 5.** Additional Obligees’ rights hereunder are subject to the same defenses Principal and/or Surety have against the Obligee[s].
- Section 6.** Except as modified herein, the Bond shall be and remains in full force and effect.

[remainder of page left intentionally blank; signature page follows]

⁶ The Additional Obligees will be the (i) Enterprises and (ii) the Collateral Agent.

Central 70 Project: Design and Construction Contract
Schedule 20 (Forms of Contractor Bond)

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of
[*date*].

[*To insert signature blocks.*]

Schedule 21
Forms of Supervening Event Notices and Submissions

Instructions

Please generally see Part 2, Section 15 of the Construction Contract and the italicized and footnoted instructions in the forms that follow.¹ In addition:

- (1) The Construction Contractor shall submit:
 - (a) each Supervening Event Notice in the form of Part A to this Schedule 21; and
 - (b) each Supervening Event Submission in the form of Part B to this Schedule 21.
- (2) Each Supervening Event Notice and each Supervening Event Submission shall relate to an individual Supervening Event, although references can be made (as necessary) to other Supervening Events (e.g. to differentiate the effect of multiple events on the Critical Path).
- (3) Bracketed items in Parts A and B to this Schedule 21 include instructions (*in italics*) and drafting alternatives (with multiple options separated by forward slashes “/”). The Construction Contractor shall modify or delete such bracketed items as the context and any additional instruction notes may require.
- (4) Each Supervening Event Notice and each Supervening Event Submission shall include a “SE Tracking Number” in the format of “X.Y” as follows:
 - (a) “X” shall be the sequential number of the Supervening Event for which a notice or submission (of any type) is submitted by the Construction Contractor; and
 - (b) “Y” shall be the number of the submission made with respect to a particular Supervening Event, where:
 - (i) “0” shall be reserved to refer to the initial Supervening Event Notice; and
 - (ii) each Supervening Event Submission, including any update or amendment to a previously made submission, shall be numbered in sequence “1”, “2”, “3” etc.
- (5) The Construction Contractor may attach supporting materials to any Supervening Event Notice or Supervening Event Submission, provided that the relevance and nature of such attachments are described in the main body of the submission.

¹ For certainty, the Construction Contractor shall delete this instruction box and any instructional footnotes in the relevant form prior to submission.

Part A: Form of Supervening Event Notice

[on Construction Contractor letterhead]

[date]

From: Kiewit Infrastructure Co.
To: Developer Representative
Re: Central 70 Project: Supervening Event Notice
SE Tracking No: [].0

I am submitting this Supervening Event Notice on behalf of the Construction Contract pursuant to Part 2, Section 15.1.2.a of the Construction Contract for the Central 70 Project (the "Agreement") dated as of November 21, 2017 [(as amended)]. For ease of reference, all capitalized terms used in this notice have the same meaning given to them in the Agreement.

Please be advised of the following:

1. Type of Supervening Event

This notice relates to [a / an]:²

- Force Majeure Event³ (as defined in paragraph [] of the definition of Force Majeure Event)
- Delay Relief Event⁴ (as defined in paragraph a.[] of the definition of Relief Event)
- Relief Event (as defined in paragraph [] of the definition of Relief Event)
- Compensation Event (as defined in paragraph [] of the definition of Compensation Event)
- Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)

2. Occurrence and Duration

The [Force Majeure Event / Delay Relief Event / Relief Event / Compensation Event / Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)] occurred on [or about] [date]. This event [concluded on [or about] [date] / is continuing].⁵

3. Description

[Insert narrative description of Supervening Event].⁶

4. Mitigation

[Insert narrative description of steps taken, or expected to be taken, by the Construction Contractor to avoid and/or mitigate the effects of the Supervening Event.]

5. Next Steps

[Identify any proposed next steps, such as requests for calls, meetings etc., or otherwise indicate "None proposed at this time."]

² References to the relevant paragraph within a definition should identify the specific relevant subparagraph.

³ For a "Force Majeure Event", check both "Force Majeure Event" and "Relief Event".

⁴ For a "Delay Relief Event", check "Delay Relief Event" but not "Relief Event".

⁵ The Construction Contractor may modify this statement to account for particular circumstances. In addition, if a Supervening Event is anticipated in advance, replace this form of statement with the following (or the equivalent): "[Construction Contractor] has determined that a [Force Majeure Event / Delay Relief Event / Relief Event / Compensation Event / Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)] is [likely imminent]. The Construction Contractor first made this determination on [or about] [date] based on [explanation]."

⁶ The narrative description should, to the extent reasonably possible and in addition to any other information that the Construction Contractor deems relevant, describe or identify: (a) the event; (b) such event's source/origin/cause; (c) affected location(s); and (d) such event's anticipated or actual effect on the CC Work.

Central 70 Project: Design and Construction Contract
Schedule 21 (Forms of Supervening Event Notices and Submissions)

By: _____

[insert name]

Construction Contractor's Representative

Part B: Form of Supervening Event Submission

[on Construction Contractor letterhead]

[date]

From: Kiewit Infrastructure Co.

To: Developer Representative

Re: Central 70 Project: [Preliminary / Detailed] Supervening Event Submission

SE Tracking No: [].[]

I am submitting this [Preliminary / Detailed] Supervening Event Submission on behalf of the Construction Contractor pursuant to Part 2, Section 15.1.2.b of the Construction Contract for the Central 70 Project (the "Agreement") dated as of November 21, 2017 [(as amended)]. For ease of reference, all capitalized terms used in this submission shall have the same meaning given to them in the Agreement.

Please be advised of the following⁷:

A. Background Information

1. Type of Supervening Event

This submission relates to [a / an]:⁸

- Force Majeure Event⁹ (as defined in paragraph [] of the definition of Force Majeure Event)
- Delay Relief Event¹⁰ (as defined in paragraph a.[] of the definition of Relief Event)
- Relief Event (as defined in paragraph [] of the definition of Relief Event)
- Compensation Event (as defined in paragraph [] of the definition of Compensation Event)
- Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)

2. Occurrence and Duration

The [Force Majeure Event / Delay Relief Event / Relief Event / Compensation Event / Appendix B Parcel Unexpected Hazardous Substances Event (which is not a Compensation Event)] occurred on [or about] [date]. This event [concluded on [or about] [date] / is continuing].¹¹

3. Description

[Insert narrative description of Supervening Event.]¹²

4. Mitigation

[Insert narrative description of steps taken, or expected to be taken, by the Construction Contractor to avoid and/or mitigate the effects of the Supervening Event.]

⁷ In each Detailed Supervening Event Submission, and in any revised or amended Supervening Event Submission, the Construction Contractor shall include the following statement immediately under the relevant headings below and prior to any narrative text inserted by the Construction Contractor relating to the specific Supervening Event: "The following [has / has not] been amended since the prior related submission no. [X].[X]."

⁸ References to the relevant paragraph within a definition should identify the specific relevant subparagraph, if applicable.

⁹ For a "Force Majeure Event", check both "Force Majeure Event" and "Relief Event".

¹⁰ For a "Delay Relief Event", check "Delay Relief Event" but not "Relief Event".

¹¹ The Construction Contractor may modify this statement to account for particular circumstances.

¹² The narrative description should, to the extent reasonably possible and in addition to any other information that the Construction Contractor deems relevant (and that is not required to be provided in a separate part of this form), describe or identify: (a) the event; (b) such event's source/origin/cause; and (c) affected location(s).

B. Construction Contractor's Request¹³

5. Requested Resolution

[Insert summary description of relief, deadline extension and/or compensation sought with specific references to: (a) each relevant sub-Section within Part 2, Sections 15.3 and 15.7; and (b) the detailed supporting analysis below.]

6. Compliance Analysis

*[Insert analysis of the Supervening Event's effect (if any) on Construction Contractor's performance of its obligations.]*¹⁴

7. Time Impact Analysis¹⁵

*[Insert a time impact analysis*¹⁶ *of the effect (if any) of the Supervening Event on the Critical Path or, with respect to any such event affecting completion of a Payment Milestone, on the expected time for completion of such Payment Milestone.]*¹⁷

8. Change in Costs

*[Insert good faith estimate of compensable Change in Costs*¹⁸*, if any, together with the methodology for calculating such estimate in accordance with the terms of the Agreement.]*¹⁹

C. Supporting Information

9. Documentation and Communications

[Insert description of (and, if appropriate, attach) all materially relevant available documentation and / or communications, if any, related to the Supervening Event, or otherwise indicate "None."]

10. Additional Information

[Insert any additional information the Construction Contractor believes is relevant to the Developer's consideration of the Supervening Event, and / or which the Developer has previously requested in connection with such event, or otherwise indicate "None."]

¹³ Completion of B. is optional in a Preliminary Supervening Event Submission.

¹⁴ Identify any actual or potential Noncompliance Events and/or Closures that were, or are expected to be, directly attributable to the occurrence of such Supervening Event absent relief pursuant to Part 2, Section 15 of the Construction Contract.

¹⁵ Indicate "Not applicable." for any Supervening Event to the extent occurring after Final Acceptance.

¹⁶ This analysis should be made by reference to a Revised Baseline Schedule (or, in the case of a Preliminary Supervening Event Submission, the then current Project Schedule to the extent that a Revised Baseline Schedule reflecting the impact of the relevant Supervening Event is not yet available) and should:

- (a) include a fragmentary network demonstrating how the Construction Contractor proposes to incorporate the relevant delay into the Revised Baseline Schedule and the next monthly Progress Schedule;
- (b) demonstrate the time impact to each and every affected Activity;
- (c) reflect the details of the Supervening Event, including any added, changed or deleted data for Activities and logic; and
- (d) include a printed Gantt chart (together with an electronic version) including all impacted Activities, grouped and sorted by WBS and compared to the then current Revised Baseline Schedule and most recent monthly Progress Schedule.

¹⁷ The analysis should, to the extent applicable:

- (a) identify the impact on the achievement of Milestone Completion of any Payment Milestone and, given such impact, the basis for determining the resulting period of delay in achieving such Milestone Completion; and
- (b) identify the impact on the anticipated actual Substantial Completion Date or, if the Substantial Completion Date has already occurred, the Final Acceptance Date and, given such impact, the basis for determining the requested extension to the Baseline Substantial Completion Date, the Longstop Date or the Final Acceptance Deadline Date (as applicable).

¹⁸ Which, for certainty, may be calculated as applicable pursuant to paragraphs a., b. or c. of the definition thereof in Part A of Annex A (Definitions and Abbreviations) of the Construction Contract.

¹⁹ This should include: (a) information as to the type and amount of Available Insurance; (b) compensation exclusions (pursuant to Part 2, Section 15.7 of the Construction Contract); and (c) reference to accompanying supporting documentation (which is required for a Detailed Supervening Event Submission and optional for a Preliminary Supervening Event Submission).

Central 70 Project: Design and Construction Contract
Schedule 21 (Forms of Supervening Event Notices and Submissions)

Under penalty of perjury, the undersigned certifies on behalf of the Construction Contractor that, to the best of the Construction Contractor's knowledge (after due inquiry), the requests, claims, representations, statements, disclosures and information contained in this Supervening Event Submission are correct, complete (other than as expressly indicated herein) and not materially misleading.

By:

[insert name]

Construction Contractor's Representative

Schedule 22
Intentionally Omitted

Schedule 23
Intentionally Omitted

**Schedule 24
Change Procedure**

1. ENTERPRISE CHANGES, DEVELOPER CHANGES AND DIRECTIVE LETTERS

1.1. Delivery of and Response to Enterprise and Developer Change Notices

- a. The Construction Contractor acknowledges and accepts that:
 - i. the Enterprises shall be entitled to (and, when required to do so pursuant to Section 8.6.2.b of the Project Agreement, shall) submit Enterprise Change Notices to Developer pursuant to Section 14.1.a of the Project Agreement; and
 - ii. the Developer has the right to propose changes to the CC Work pursuant to a Developer Change Notice in accordance with Part 2, Section 14.1.1.c of the Construction Contract.
- b. Any Enterprise Change Notice or Developer Change Notice:
 - i. shall:
 - A. set out the Enterprises' requirements for the relevant Enterprise Change or the Developer's requirements for the relevant Developer Change, as applicable, in reasonably sufficient detail to enable the Construction Contractor to prepare and timely submit a Construction Contractor's Change Response; and
 - B. include any specific directions or requirements as to the contents of the Construction Contractor's Change Response (which may be in addition to the content requirements specified in Sections 1.1.c.i.A through K of this Schedule 24, or to the effect that any such content requirement is not relevant to the proposed Enterprise Change or Developer Change, as applicable); and
 - ii. may, in the Enterprise's discretion (with respect to an Enterprise Change Notice) or the Developer's discretion (with respect to a Developer Change Notice), require the Construction Contractor to:
 - A. participate in a preliminary meeting regarding the proposed Enterprise Change or Developer Change, as applicable, at such time and location as the Enterprises or the Developer may reasonably request; and
 - B. at or before such preliminary meeting, deliver to the Developer (for delivery to the Enterprises) a written preliminary, non-binding order of magnitude cost estimate for the proposed Enterprise Change or Developer Change, as applicable, which shall be prepared by the Construction Contractor on a Reasonable Efforts basis and shall include each of the following elements (or a statement to the effect that such element is not relevant to the proposed Enterprise Change or Developer Change, as applicable):
 - I. an introductory summary of the contents of such response;
 - II. a preliminary scope of work for such Enterprise Change or Developer Change, as applicable, together with:
 - a. a preliminary schedule for implementation of such scope of work; and
 - b. identification of any adjustments to the Baseline Schedule anticipated to be required to implement such Enterprise Change or Developer Change, as applicable;

- III. a preliminary analysis of any extension of time and/or relief to which the Construction Contractor may be entitled pursuant to Part 2, Section 15 of the Construction Contract as a result of such Enterprise Change or Developer Change, as applicable, including a preliminary time impact analysis (made by reference to the Revised Baseline Schedule subject to adjustment as indicated by the Construction Contractor pursuant to Section 1.1.b.ii.B.II.b of this Schedule 24, and otherwise that complies with the requirements for such an analysis set out in relation to paragraph B.7 of Part B of Schedule 21 (Forms of Supervening Event Notices and Submissions)) of the effect (if any) of such Enterprise Change or Developer Change, as applicable, on achievement of any Key Milestone;
 - IV. a preliminary estimate of any Change in Costs to which the Construction Contractor may be entitled pursuant to Part 2, Section 15 of the Construction Contract as a result of such Enterprise Change or Developer Change, as applicable; and
 - V. a preliminary identification and assessment of any other reasonably anticipated material impact on the CC Work of such Enterprise Change or Developer Change, as applicable.
- c. The Developer shall, promptly upon receipt of an Enterprise Change Notice, provide a copy of such Enterprise Change Notice to the Construction Contractor. Promptly after, and in any event within 15 Working Days after, the later of the Construction Contractor's receipt of an Enterprise Change Notice or a Developer Change Notice, as applicable, and any preliminary meeting held pursuant to Section 1.1.b.ii.A of this Schedule 24 (or, if later, 5 Working Days prior to the date specified in any Enterprise Change Notice or by the date specified in any Developer Change Notice, as applicable, or such date as is otherwise agreed at any such meeting), the Construction Contractor shall submit to the Developer either:
- i. the Construction Contractor's written response to the Enterprise Change Notice or the Developer's Change Notice, as applicable ("Construction Contractor's Change Response"), which response shall be signed by the Construction Contractor's Representative and include each of the following elements (or a statement to the effect that such element is not relevant to the proposed Enterprise Change):
 - A. an introductory summary of the contents of such response;
 - B. a detailed scope of work for such Enterprise Change or Developer Change, as applicable, together with:
 - I. a schedule for implementation of such scope of work; and
 - II. a Revised Baseline Schedule reflecting adjustments required to implement such Enterprise Change or Developer Change, as applicable;
 - C. the proposed method(s) for certification of completion of any aspects of the work required by such Enterprise Change or Developer Change, as applicable, where such methods shall, to the extent possible, follow procedures already set out in this Agreement;
 - D. any new Governmental Approvals, Permits or third-party consents, and/or any amendments to existing Governmental Approvals, Permits or third-party consents, required to implement such Enterprise Change or Developer Change, as applicable;

- E. any amendments to the Construction Contract or the Project Agreement required to implement such Enterprise Change or Developer Change, as applicable;
- F. an analysis of any extension of time and/or relief to which the Construction Contractor may be entitled pursuant to Part 2, Section 15 of the Construction Contract as a result of such Enterprise Change or Developer Change, as applicable, including a time impact analysis (made by reference to the Revised Baseline Schedule referred to in Section 1.1.c.i.B.II of this Schedule 24, and otherwise that complies with the requirements for such an analysis set out in relation to paragraph B.7 of Part B of Schedule 21 (Forms of Supervening Event Notices and Submissions) of the effect (if any) of such Enterprise Change or Developer Change, as applicable, on achievement of any Key Milestone;
- G. the estimated Change in Costs to which the Construction Contractor may be entitled, pursuant to Part 2, Section 15 of the Construction Contract, as a result of such Enterprise Change or Developer Change, as applicable, including a detailed breakdown of each element of the same (which detailed breakdown shall include all proposed contingencies with respect to estimated Change in Costs);
- H. identification and analysis of any reasonably anticipated impact of such Enterprise Change or Developer Change, as applicable, on the Environmental Requirements, or an express confirmation that there will be no such impact, in each case as certified by the “Environmental Manager”, initially as identified in Schedule 27 (Key Personnel), subject to replacement pursuant to Part 2, Section 16.2 of the Construction Contract;
- I. identification and analysis of any other reasonably anticipated impact on the CC Work of such Enterprise Change or Developer Change, as applicable;
- J. such supporting information and documentation as the Enterprises may reasonably require in such Enterprise Change Notice or Developer Change Notice, as applicable; and
- K. the following certification: “Under penalty of perjury, the undersigned certifies on behalf of the Construction Contractor that, to the best of the Construction Contractor’s knowledge (after due inquiry), as of the date hereof, the requests, claims, representations, statements, disclosures and information contained in this Construction Contractor’s Change Response are correct, complete (other than as expressly indicated herein) and not materially misleading.”; or
 - ii. the Construction Contractor’s written rejection of the proposed Enterprise Change (or any part thereof) or Developer Change (or any part thereof) on the basis that it is a Restricted Change, including a supporting analysis.

1.2. Processing of Enterprise Change Notices and Developer Change Notices

- a. The Parties shall arrange to meet, at such time and location as the Enterprises or the Developer may reasonably request, to review and discuss Construction Contractor’s Change Response or the Construction Contractor’s written rejection submitted pursuant to Section 1.1.c of this Schedule 24.
- b. At any meeting arranged pursuant to Section 1.2.a of this Schedule 24, or otherwise upon written notice, the Developer may meet with the Enterprises and the Developer may request or require modifications to the Construction Contractor’s Change Response, including to require the Construction Contractor to solicit competitive bids for all or part of

Central 70 Project: Design and Construction Contract
Schedule 24 (Change Procedure)

the work that would result from the proposed Enterprise Change or Developer Change, as applicable, provided that such modifications shall not result in a Restricted Change.

- c. The Construction Contractor shall promptly after, and in any event within 15 Working Days after, the Construction Contractor's receipt of any notice from the Developer pursuant to Section 1.2.b of this Schedule 24, notify the Developer of any consequential changes to its prior Construction Contractor's Change Response.
- d. With respect to:
 - i. a Construction Contractor's Change Response to an Enterprise Change Notice, promptly following receipt of a corresponding notice from the Enterprises pursuant to Section 1.2.d of Schedule 24 to the Project Agreement, the Developer shall:
 - A. Accept the Construction Contractor's Change Response (as updated pursuant to Section 1.2.c of this Schedule 24);
 - B. without prejudice to the Enterprises' right to issue a Directive Letter pursuant to Section 1.4.a of Schedule 24 to the Project Agreement, request or require additional modifications (including modifications as to estimated Change in Costs (including any such modifications made to the methodology for calculating Change in Costs pursuant to Section 3 of Appendix A of this Schedule 24) to the Construction Contractor's Change Response (if applicable, as previously updated pursuant to Section 1.2.c of this Schedule 24), in which case the procedures set out in Sections 1.2.b and 1.2.c and this Section 1.2.d of this Schedule 24 shall be repeated; or
 - C. other than with respect to an Enterprise Change Notice that the Enterprises are required to issue pursuant to Section 8.6.2.b of the Project Agreement, withdraw the Enterprise Change Notice and thereafter, the Construction Contractor shall issue an Equivalent Claim Notice seeking from the Enterprises the reasonable and documented external professional costs and expenses (and for any equivalent internal costs and expenses, but only to the extent the Construction Contractor demonstrates to the Developer's reasonable satisfaction that such costs and expenses were incurred in lieu of and at a savings relative to external professional costs and expenses) incurred by it in preparing the Construction Contractor's Change Response pursuant to Section 1.1.c.i of this Schedule 24 (or any update thereto pursuant to Sections 1.2.c and 1.2.d.i of this Schedule 24), and Equivalent Project Relief and Pay-if-Paid Provisions shall apply; and
 - ii. a Construction Contractor's Change Response to a Developer Change Notice, promptly, and in any event within 15 Working Days after the latest of:
 - A. the Developer's receipt of the Construction Contractor's Change Response;
 - B. any meeting referenced in in Section 1.2.a of this Schedule 24; and
 - C. any Construction Contractor response to the Developer pursuant to Section 1.2.c of this Schedule 24,the Developer shall:
 - D. Accept the Construction Contractor's Change Response (as updated pursuant to Section 1.2.c of this Schedule 24);
 - E. request or require additional modifications (including modifications as to estimated Change in Costs (including any such modifications made to

the methodology for calculating Change in Costs pursuant to Section 3 of Appendix A of this Schedule 24) to the Construction Contractor's Change Response (if applicable, as previously updated pursuant to Section 1.2.c of this Schedule 24), in which case the procedures set out in Sections 1.2.b and 1.2.c and this Section 1.2.d of this Schedule 24 shall be repeated; or

- F. withdraw the Developer Change Notice and thereafter promptly reimburse the Construction Contractor for all reasonable and documented external professional costs and expenses (and for any equivalent internal costs and expenses, but only to the extent the Construction Contractor demonstrates to the Developer's reasonable satisfaction that such costs and expenses were incurred in lieu of and at a savings relative to external professional costs and expenses) incurred by it in preparing the Construction Contractor's Change Response pursuant to Section 1.1.c.i of this Schedule 24 (or any update thereto pursuant to Sections 1.2.c and 1.2.d of this Schedule 24).
- e. With respect to any Construction Contractor's Change Response given in response to an Enterprise Change Notice or a Developer Change Notice requiring a corresponding Change under the Project Agreement, following the Developer's Acceptance of the Construction Contractor's Change Response and, with respect to a Developer Change, the Enterprises' Approval of the applicable Developer Change Notice pursuant to Section 2.2(d) of Schedule 24 (*Change Procedure*) to the Project Agreement, the Developer and the Enterprises shall promptly execute a written memorandum (a "PA Change Order") setting forth all details of the relevant Enterprise Change or Developer Change. The Developer shall promptly deliver a copy of each executed PA Change Order to the Construction Contractor.
- f. With respect to any Construction Contractor's Change Response given in response to a Developer Change Notice which does not require any Change under the Project Agreement, following the Developer's Acceptance of the Construction Contractor's Change Response, the Developer and the Construction Contractor shall promptly execute a written memorandum (a "CC Change Order") setting forth all details of the relevant Developer Change. Developer shall promptly deliver a copy of each executed CC Change Order to the Construction Contractor.
- g. An Enterprise Change or a Developer Change, as applicable, will only come into effect upon issue by the Developer to the Construction Contractor of a copy of a Change Order in respect of such Enterprise Change or Developer Change, as applicable. The Construction Contractor shall not proceed with an Enterprise Change or a Developer Change prior to receiving such Change Order. A Change Order issued in accordance with Section 1.2.e of this Schedule 24 will be binding upon the Construction Contractor and the Developer. To the extent any Change Order includes any modification to the Construction Standards, the Project Schedule, or any other right or obligation of the Developer pursuant to the Project Agreement that has been delegated pursuant to this Agreement to the Construction Contractor, a corresponding modification shall be deemed to have been made to the Construction Standards, the Project Schedule, or any other right or obligation of the Construction Contractor hereunder, respectively. Upon receipt of a copy of the Change Order from the Developer, the Construction Contractor will implement the Change in accordance with Section 1.3 of this Schedule 24.

1.3. Implementation of Enterprise Changes and Developer Changes

- a. The Construction Contractor shall begin to implement the relevant Enterprise Change or Developer Change, as applicable, on the commencement date set out in the relevant Change Order.

Central 70 Project: Design and Construction Contract
Schedule 24 (Change Procedure)

- b. Subject to the terms of the relevant Change Order, from the date on which a Change Order implementing an Enterprise Change or Developer Change, as applicable, is effective (or, with respect to an Enterprise Change initiated pursuant to Section 8.6.2 of the Project Agreement, such earlier date as is specified in the relevant Change Order):
 - i. the relevant Enterprise Change or Developer Change, as applicable, shall constitute a Compensation Event;
 - ii. the Change Order shall constitute an agreed memorandum for purposes of Part 2, Section 15.3.2 of the Construction Contract, for certainty without any obligation for the Construction Contractor to submit a Supervening Event Notice or Supervening Event Claim pursuant to Part 2, Section 15.1 of the Construction Contract;
 - iii. the Construction Contractor shall be entitled to extensions of time, relief and/or compensation pursuant to Sections 15.3 through 15.4 of the Construction Contract, for certainty without Section 15.7 of the Construction Contract applying to the calculation of any such compensation, provided that the Construction Contractor's entitlement pursuant to this clause (iii) shall be subject to Equivalent Project Relief to the extent such entitlement arises in connection with an Enterprise Change; and
 - iv. the Enterprises, the Developer and the Construction Contractor shall be entitled to share in any savings resulting from the implementation of the relevant Enterprise Change pursuant to Section 3 of this Schedule 24.

1.4. Enterprise Directive Letters

- a. The Construction Contractor acknowledges and accepts that:
 - i. pursuant to the Project Agreement, the Enterprises may at any time after the Enterprises' submission of an Enterprise Change Notice, and for so long as the Enterprises and the Developer have not reached a final agreement and executed a PA Change Order in relation thereto, deliver to Developer a notice (an "Enterprise Directive Letter") directing Developer to implement and perform the work as set out in such Enterprise Change Notice (as may be modified by such Enterprise Directive Letter). The Developer shall promptly provide to the Construction Contractor all Enterprise Directive Letters it receives from the Enterprises, and the Construction Contractor shall proceed promptly as directed in the Enterprise Directive Letter. Subject to the terms of any agreed Change Order that supersedes such Enterprise Directive Letter, the Developer's delivery of an Enterprise Directive Letter shall constitute a Compensation Event in respect of which the Construction Contractor shall be entitled to submit a Supervening Event Submission pursuant to Section 15.1.2.b of the Construction Contract and all relevant provisions of Section 15 of the Construction Contract shall apply (except that, for certainty, Section 15.7 of the Construction Contract shall not apply to the calculation of any resulting compensation).
- b. Any Enterprise Directive Letter shall:
 - i. state that it is issued pursuant to Section 1.4.a of Schedule 24 to the Project Agreement;
 - ii. describe the work in question and any limits thereon to the extent not otherwise provided in the relevant Enterprise Change Notice; and
 - iii. specify the required commencement date of the relevant work together with any other implementation schedule and completion requirements.
- c. Promptly upon receipt of any Enterprise Directive Letter, Construction Contractor shall implement and perform the work in question as directed, provided that the Construction Contractor shall be entitled to give notice to the Developer (including a supporting

analysis) if it refuses to perform any part of such work on the basis that it constitutes a Restricted Change.

1.5. Developer Directive Letters

- a. At any time after the Developer's submission of a Developer Change Notice, and for so long as the Parties have not reached a final agreement and executed a CC Change Order in relation thereto, deliver to the Construction Contractor a notice (a "Developer Directive Letter") directing the Construction Contractor to implement and perform the work as set out in such Developer Change Notice (as may be modified by such Developer Directive Letter), and the Construction Contractor shall proceed promptly as directed in the Developer Directive Letter. Subject to the terms of any agreed Change Order that supersedes such Developer Directive Letter, the Developer's delivery of a Developer Directive Letter shall constitute a Compensation Event in respect of which the Construction Contractor shall be entitled to submit a Supervening Event Submission pursuant to Section 15.1.2.b of the Construction Contract and all relevant provisions of Section 15 of the Construction Contract shall apply (except that, for certainty, Section 15.7 of the Construction Contract shall not apply to the calculation of any resulting compensation).
- b. Any Enterprise Directive Letter shall:
 - i. state that it is issued pursuant to Section 1.5.a of Schedule 24 to the Construction Contract;
 - ii. describe the work in question and any limits thereon to the extent not otherwise provided in the relevant Developer Change Notice; and
 - iii. specify the required commencement date of the relevant work together with any other implementation schedule and completion requirements.
- c. Promptly upon receipt of any Developer Directive Letter, the Construction Contractor shall implement and perform the work in question as directed, provided that the Construction Contractor shall be entitled to give notice to the Developer (including a supporting analysis) if it refuses to perform any part of such work on the basis that it constitutes a Restricted Change.

2. CONSTRUCTION CONTRACTOR CHANGES

2.1. Delivery of Construction Contractor Change Notices

- a. The Construction Contractor shall be entitled to submit Construction Contractor Change Notices to the Developer for Approval pursuant to Part 2, Section 14.1.2 of the Construction Contract.
- b. Any Construction Contractor Change Notice shall be signed by the Construction Contractor's Representative and include each of the following elements (or a statement to the effect that such element is not relevant to the proposed Construction Contractor Change):
 - i. an introductory summary of the contents of such notice;
 - ii. a statement as to the Construction Contractor's reasons for proposing the Construction Contractor Change, including as to whether such Construction Contractor Change is being proposed by the Construction Contractor as an alternative to a Nonconforming Work Remedy (a "Nonconforming Work Change");
 - iii. reasonably sufficient detail regarding the proposed Construction Contractor Change to enable the Developer to evaluate the Construction Contractor's proposal in full, including:
 - A. other than with respect to a Nonconforming Work Change:

Central 70 Project: Design and Construction Contract
Schedule 24 (Change Procedure)

- I. a detailed scope of work for such proposed Construction Contractor Change, together with:
 - a. a schedule for implementation of such scope of work; and
 - b. a Revised Baseline Schedule reflecting adjustments required to implement such Construction Contractor Change; and
- II. the proposed method(s) for certification of completion of any aspects of the work required by such Construction Contractor Change, where such methods shall, to the extent possible, follow procedures already set out in this Agreement;
- B. any new Governmental Approvals, Permits or third-party consents, and any amendments to existing Governmental Approvals, Permits or third-party consents, required to implement such Construction Contractor Change;
- C. any amendments to this Agreement and the Project Agreement required to implement such Construction Contractor Change;
- D. identification and analysis of any reasonably anticipated impact of such Construction Contractor Change on the Environmental Requirements, or express confirmation that there will be no such impact, in each case as certified by the Environmental Manager; and
- E. identification and analysis of any other reasonably anticipated impact on the O&M Work After Construction of such Construction Contractor Change;
- iv. the estimated Change in Costs (which, for certainty, may be positive (other than with respect to any Nonconforming Work Change) or negative) that may result from such Construction Contractor Change, including a detailed breakdown of each element of the same (which detailed breakdown shall include all proposed contingencies with respect to estimated Change in Costs), provided that, with respect to any Nonconforming Work Change, the Construction Contractor shall, to the extent such methodology is applicable to the relevant Nonconforming Work Change, calculate relevant elements of the estimated Change in Costs (including the resulting reduction in the value of the Work performed) by reference to the methodology set out in the provisions of the CDOT Standard Specifications relating to price adjustments relating to Nonconforming Work;
- v. the Construction Contractor's proposed methods of financing or funding any such positive Change in Costs and/or details regarding proposed payments by or to the Enterprises under the Project Agreement or by or to the Developer under this Agreement if any, being requested or proposed by the Construction Contractor (including as a result of the application of Section 3 of this Schedule 24), provided that no payments may be proposed to be made by the Developer to the Construction Contractor in connection with any Nonconforming Work Change;
- vi. any dates by which a response by the Developer to such notice is critical;
- vii. such supporting information and documentation as the Developer may reasonably require; and
- viii. the following certification: "Under penalty of perjury, the undersigned certifies on behalf of the Construction Contractor that, to the best of the Construction Contractor's knowledge (after due inquiry), as of the date hereof, the requests, claims, representations, statements, disclosures and information contained in this

Construction Contractor Change Notice are correct, complete (other than as expressly indicated herein) and not materially misleading.”

2.2. Processing of Construction Contractor Change Notices

- a. Any Construction Contractor Change Notice shall be subject to the Developer’s Approval, provided that the Developer agrees to evaluate any Construction Contractor Change Notice in good faith, taking into account all issues that are relevant to the Developer, including whether, with respect to the proposed Construction Contractor Change:
 - i. a change in any payments under this Agreement or the Project Agreement has been proposed by the Construction Contractor;
 - ii. such Construction Contractor Change would or may affect the quality of the O&M Work After Construction or the likelihood of successful or timely delivery of the O&M Work After Construction;
 - iii. such Construction Contractor Change would or may interfere with the relationship of the Developer with the Enterprises and/or CDOT or any other third parties (including any Governmental Authority);
 - iv. the financial strength of the Construction Contractor is sufficient to perform the O&M Work After Construction (as modified by such Construction Contractor Change);
 - v. the value of the O&M Work After Construction and/or the residual value of the Project would or may be affected, including as a result of a Nonconforming Work Change; and
 - vi. such Construction Contractor Change would or may materially affect the risk, costs or liabilities to which the Developer will or may be exposed.
- b. As part of the Developer’s evaluation of an Construction Contractor Change Notice, the Parties shall, at the Developer’s discretion, arrange to meet at such time and location as the Developer may reasonably request to review and discuss the proposed Construction Contractor Change.
- c. Following the Developer’s Approval of any Construction Contractor Change Notice (including with such conditions or modifications (including modifications as to estimated Change in Costs) as may be required by the terms of such Approval), the Developer shall promptly submit the same to the Enterprises as a Developer Change Notice (as defined in the Project Agreement). Notwithstanding any potential cost savings associated with an Construction Contractor Change Notice, the Construction Contractor acknowledges and accepts that:
 - i. the Developer shall be entitled to reject any Construction Contractor Change Notice which, in the Developer’s reasonable judgment, would materially and adversely affect the risk allocation and payment regime under the Project Agreement;
 - ii. to the extent that the Developer agrees to submit an Construction Contractor Change Notice to the Enterprises (as a Developer Change Notice (as defined in the Project Agreement) under Section 14.1.b of the Project Agreement), the Enterprises are under no obligation to accept a Developer Change Notice submitted by the Developer on behalf of the Construction Contractor and may, in their sole discretion, accept or reject such Developer Change Notice; and
 - iii. if the Enterprises accepts the corresponding Developer Change Notice, Enterprises and the Developer shall promptly execute a written Change Order pursuant to Section 2.2.d of Schedule 24 to the Project Agreement, and the Developer shall promptly deliver a copy of each executed Change Order to the Construction Contractor.

Central 70 Project: Design and Construction Contract
Schedule 24 (Change Procedure)

- d. The Construction Contractor shall begin to implement the relevant Construction Contractor Change on the commencement date set out in the agreed Change Order (or such other date as may be agreed by the Parties).
- e. Subject to the terms of the relevant Change Order, from the date on which a Change Order implementing an Construction Contractor Change is effective:
 - i. the Construction Contractor shall be, and shall only be, entitled to such extensions of time, relief and/or compensation in connection with such Construction Contractor Change as may be set out in the relevant Change Order;
 - ii. the Enterprises shall be entitled to:
 - A. share, pursuant to Section 3 of this Schedule 24, in any savings resulting from the implementation of the relevant Construction Contractor Change; and
 - B. reimbursement by Developer for any external fees and expenses incurred by the Enterprises and/or CDOT in connection with reviewing and Approval of the Developer Change Notice corresponding to such Construction Contractor Change Notice and associated Change Order; and
 - C. the Developer shall be entitled to reimbursement by the Construction Contractor for any fees and expenses incurred by the Developer in connection with reviewing and Approval of the Construction Contractor Change Notice and associated Change Order, including such amounts as the Developer is required to reimburse the Enterprises pursuant to Section 2.2.e.ii.B of Schedule 24 to the Project Agreement..

3. Cost Savings

- 3.1. The Construction Contractor acknowledges and accepts that pursuant to Section 3 of Schedule 24 to the Project Agreement, if, in connection with any Change documented in a Change Order or a Directive Letter:
 - a. Developer's Change in Costs reflects a net saving to Developer; and/or
 - b. with respect to any Nonconforming Work Change, the value of the Work performed, or of the Project, has been reduced,then, subject to the terms of any relevant Change Order and, with respect to a Directive Letter, any written memorandum executed pursuant to Section 15.3.2 of the Project Agreement:
 - c. with respect to any Enterprise Change (whether documented in a Change Order or a Directive Letter) or any Nonconforming Work Change, the Enterprises shall be entitled to 100% of such net saving and/or such reduction in value;
 - d. with respect to any Developer Change (other than any Nonconforming Work Change), the Enterprises shall be entitled to 50% of any such net saving, the Developer shall be entitled to 25% of any such net savings and the Construction Contractor shall be entitled to 25% of any such net savings; and
 - e. with respect to any Construction Contractor Change (other than any Nonconforming Work Change), the Enterprises shall be entitled to 50% of any such net saving, the Developer shall be entitled to 10% of any such net savings and the Construction Contractor shall be entitled to 40% of any such net savings.
- 3.2. The Construction Contractor acknowledges and accepts that the Enterprises shall be entitled, at their discretion, to elect to receive their share of any saving and/or reduction in value pursuant to Section 3.1 of Schedule 24 to the Project Agreement:

Central 70 Project: Design and Construction Contract
Schedule 24 (Change Procedure)

- a. as a lump sum payment (or series of payments) from Developer within 30 Calendar Days after;
 - i. such saving (or a portion thereof) is realized; or
 - ii. with respect to any reduction in value as a result of a Nonconforming Work Change, the date of the relevant Change Order;
- b. by way of an adjustment to the Performance Payment ; or
- c. by way of set-off against amounts otherwise payable by them to Developer,

as determined by the Enterprises in their sole discretion. The Developer shall provide to the Construction Contractor the Enterprises' demand for payment of any cost savings pursuant to Section 3 of Schedule 24 of the Project Agreement promptly upon receipt from the Enterprises, which shall include the method and timing of payment required by the Enterprises. The Developer and the Construction Contractor shall meet and discuss the method and timing of the payment required by the Enterprises in respect of such costs savings. The Developer shall use reasonable efforts to negotiate with the Enterprises the method and timing for payment of the costs savings which it has agreed with the Construction Contractor. To the extent that the Developer is unable to agree with the Enterprises on a method and timing for payment as agreed with the Construction Contractor, or the Construction Contractor does not agree with the assessment by the Enterprises of the cost savings, the Construction Contractor shall provide such details to the Developer and the Developer shall initiate an Equivalent Claim. To the extent that the payment of any such cost savings requires a refund of any portion of the Contract Price, then the Construction Contractor shall be responsible for paying to the Developer the amount of such cost savings as soon as practicable upon receipt of a copy of such demand, and in any event prior to the date such payment is due from the Developer to the Enterprises under the Project Agreement. If the Construction Contractor does not make any such payment when due, it shall thereafter bear interest in accordance with Part 1, Section 12.9, until the amount due from the Construction Contractor is paid.

Appendix A Change in Cost Calculation Methodology

1. Calculating Change in Cost

Subject to:

- a. the exceptions set out in the definitions of Change in Costs, Excess Costs and Excess Groundwater Costs in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement; and
- b. Section 3 of this Appendix A to this Schedule 24,

the methodology set out in Section 2 of this Appendix A to this Schedule 24 shall be used for calculating Change in Costs, Excess Costs and Excess Groundwater Costs in accordance with the definitions thereof.

2. Calculation Methodology

2.1. Labor Costs

- a. General

The cost of labor shall be separately calculated with respect to construction labor and non-construction labor (such categories to be applied without reference to whether the relevant work is performed during the Construction Period or the Operating Period) pursuant to Sections 2.1.b and 2.1.c of this Appendix A to this Schedule 24. The cost of labor shall in all cases be calculated based on straight time for all hours worked, unless the Developer Approves overtime in advance. The use of a labor classification that would increase the resulting Change in Cost shall not be permitted without the Developer's Approval.

- b. Construction labor

The cost of construction labor shall equal the sum of the following in respect of each relevant worker:

- i. actual wages (i.e. the base wage paid to the worker exclusive of any non-cash fringe benefits) for every hour that the relevant worker is actually engaged in the relevant work, as documented by certified payrolls; *plus*
- ii. actual costs paid to, or on behalf of, such worker by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits, or other benefits, but only when such amounts are required to be paid by a collective bargaining agreement; *plus*
- iii. a labor surcharge of 67% of the wages referred to in Section 2.1.b.i of this Appendix A to this Schedule 24, which shall constitute full compensation for all state and Federal payroll, unemployment and other Taxes, insurance, non-cash fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and overhead to the extent not included in the costs falling within Section 2.1.b.ii of this Appendix A to this Schedule 24.

- c. Non-construction labor

The cost of non-construction labor shall equal the sum of the following in respect of each relevant worker:

- i. actual wages (i.e. the base wage paid to the worker exclusive of any non-cash fringe benefits) paid for every hour that the relevant worker is actually engaged in the relevant work as documented by a method agreed by the Developer and the Construction Contractor (or, absent agreement, determined by the Developer (acting reasonably)); *plus*

Central 70 Project: Design and Construction Contract
Schedule 24 (Change Procedure)

- ii. a labor surcharge of 140% of the wages referred to in Section 2.1.c.i of this Appendix A to this Schedule 24, which shall constitute full compensation for all state and Federal payroll, unemployment and other Taxes, insurance, non-cash fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and overhead.
- d. Design labor
The cost of design labor shall equal the sum of the following in respect of each relevant worker:
 - i. actual wages (i.e. the base wage paid to the worker exclusive of any non-cash fringe benefits) paid for every hour that the relevant worker is actually engaged in the relevant work, as documented by a method agreed by the Developer and the Construction Contractor (or, absent agreement, by the Developer (acting reasonably)); *plus*
 - ii. a labor surcharge of 140% of the wages referred to in Section 2.1.d.i of this Appendix A to this Schedule 24, which shall constitute full compensation for all state and Federal payroll, unemployment and other Taxes, insurance, non-cash fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and overhead; *plus*
 - iii. an allocation for profit of 10% applied to the aggregate of actual wages (calculated pursuant to Section 2.1.d.i of this Appendix A to this Schedule 24) plus labor surcharge (calculated pursuant to Section 2.1.d.ii of this Appendix A to this Schedule 24).

2.2. Materials Costs

- a. General
 - i. Material costs shall be the actual cost (supported by valid quotes and invoices from Suppliers) of all materials to be used in the performance of the relevant work including normal wastage allowance as determined by reference to Good Industry Practice, subject to the requirements set out in this Section 2.2 of this Appendix A to this Schedule 24. The cost may include applicable local (within the State) sales and use taxes (but not State Sales Tax or any other Taxes), freight and delivery charges and any allowable discounts (exclusive of machinery rentals).
 - ii. The resulting price allowed for materials as determined pursuant to Section 2.2.a.i of this Appendix A to this Schedule 24 shall be subject to adjustment pursuant to Sections 2.2.b and 2.2.c of this Appendix A to this Schedule 24.
- b. Affiliated Source of Supply
If materials are obtained from a supply or source owned in whole or in part by the Construction Contractor or any other Construction Contractor-Related Entity:
 - i. the cost of such materials shall not exceed the lowest of (A) the lowest price charged by the Construction Contractor or any such Construction Contractor-Related Entity, as applicable, for similar materials furnished to other projects, (B) the lowest price charged by the Construction Contractor or any such Construction Contractor-Related Entity, as applicable, for similar materials otherwise furnished to the Project and (C) the current available wholesale price for such materials; and
 - ii. to the extent such materials were not specifically purchased for the relevant work, the Construction Contractor shall furnish an affidavit from itself, or from such other Construction Contractor-Related Entity that owns the supply or source

of such materials, in either case certifying that such materials were taken from the Construction Contractor or such other Construction Contractor-Related Entity's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the Construction Contractor.

c. Excessive and Undocumented Materials Cost

If:

- i. the cost of materials as otherwise determined pursuant to Section 2.2.a of this Appendix A to this Schedule 24 is, in the Developer's reasonable opinion, excessive relative to what the Developer consider to be the lowest current available wholesale price, in the quantities needed and delivered to the Site; or
- ii. the Construction Contractor does not furnish to the Developer reasonably satisfactory evidence of the actual cost of materials from the Supplier thereof within 60 Calendar Days after the date of delivery of the materials,

for the purposes of calculating the Change in Costs, the cost of such materials shall be deemed to be the lowest current wholesale price, as determined by the Developer (acting reasonably), at which such materials are available, in the quantities needed and delivered to the Site.

2.3. **Equipment**

a. Blue Book

The cost of the use of equipment owned or rented by the Construction Contractor or any Subcontractor for use in the relevant work shall be equal to the lesser of (x) the actual cost charged for use of such equipment and (y) an amount calculated, pursuant to this Section 2.3 of this Appendix A to this Schedule 24, at an hourly rate derived from the most recent Rental Rate Blue Book of Rental Rates for Construction Equipment (the "Blue Book") (or any equivalent successor publication as reasonably determined by the Developer), which is in effect at the time of commencement of the relevant work resulting in a Change in Costs. The total hourly rates (comprised of the Operating Rate and the Standby Rate, as calculated in accordance with Section 2.3.b of this Appendix A to this Schedule 24) derived from the Blue Book:

- i. shall be computed from equipment costs currently in effect;
- ii. shall not include costs for operating personnel; and
- iii. shall be adjusted by each applicable "Regional Factor" and "Depreciation Factor" found in the front of each chapter in the Blue Book.

Notwithstanding the foregoing, in no circumstances shall the equipment costs for pickup trucks used solely for transportation of people and small tools (as described in Section 2.3.e of this Appendix A) be considered eligible for inclusion as a Change in Costs.

b. Rate Categories

Subject to Section 2.3.a of this Appendix A to this Schedule 24, equipment use rates shall be comprised of the following two categories (in each case where "BBMR" equals the relevant Blue Book monthly rate adjusted for year of manufacture):

- i. Operating Rate: This rate applies to those hours equipment is actually in use, includes ownership and operating costs, and shall equal:

$((BBMR / 176) \text{ times } 1.06) + \text{Estimated Hourly Operating Costs from the Blue Book}$

Central 70 Project: Design and Construction Contract
Schedule 24 (Change Procedure)

- ii. Standby Rate: This rate applies to equipment required to be at the Site but not operating, includes ownership costs only, and shall equal

$$((BBMR / 176) \text{ times } 1.06) \times 0.5$$

The duration of allowable standby time is subject to Acceptance by the Enterprises with a maximum of eight hours per day or 40 hours in a normal week.

When the "manufacturer's rated capacity" falls between those shown in the Blue Book, the closest rated capacity will be used, without interpolation, for purposes of determining the BBMR.

c. Specialized Equipment

- i. In cases where the equipment to be used is specialized in nature, is not available in the Construction Contractor's or any other Construction Contractor-Related Entity's inventory and is rented or leased from an outside agency, a 10% allowance will be added on the first \$5,000 (indexed with respect to any such cost incurred in connection with a Compensation Event or an Construction Contractor Change that occurs during the Operating Period) *plus* 5% of the balance in excess of such first amount for overhead for all rented or leased equipment paid for by invoices.
- ii. Where the rate charged for equipment that is specialized in nature by such outside agency exceeds the rate determined by the Blue Book, the rental or lease agreement shall be subject to the Developer's Acceptance.
- iii. The operating costs from the Blue Book shall be paid for rented or leased equipment that is specialized in nature for each hour the equipment was actually used.

d. Rented Equipment

- i. In those cases where the required equipment is in the Construction Contractor's or any other Construction Contractor-Related Entity's available inventory but not on the Site, the equipment may be rented from a local source.
- ii. The Developer may Accept rental rates for such equipment obtained from local sources when such rates are within 10% of rates in the Blue Book.
- iii. When such equipment use is of short duration (i.e., less than a calendar week) "move-in" and "move-out" costs for equipment owned by the Construction Contractor or any other Construction Contractor-Related Entity may be considered when comparing rental costs of equipment obtained from local sources. This option will only be allowed when the cost of locally rented equipment would be less than using owned equipment, including such "move-in" and "move-out" charges, and supported by a cost analysis indicating the method used was the least expensive.
- iv. Should equipment be rented even though it is of a type that is in the Construction Contractor's or any other Construction Contractor-Related Entity's inventory and the rental costs exceed that allowed by this provision, the Construction Contractor will be reimbursed for such equipment based on the rates in the Blue Book.

e. Small Tools

The rates paid pursuant to this Section 2.3 of Appendix A to this Schedule 24 shall be deemed in all cases to include compensation for the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance and all incidentals. Individual pieces of equipment or tools not listed in the Blue Book and having an individual replacement value of \$1,000 (indexed with respect to any such cost incurred in connection with a Compensation Event or a

Construction Contractor Change that occurs during the Operating Period) or less, whether or not consumed by use, shall be considered to be "small tools". Equipment rental rates for such pieces of equipment or tools not listed in the Blue Book must be Accepted by the Developer before the relevant work is begun.

f. Equipment Operators

Costs in respect of equipment operators shall be calculated pursuant to Section 2.1 of this Appendix A to this Schedule 24.

g. Classification of Equipment

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

h. Computation of Time

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

2.4. Governmental Approval and Permit Fees

Developer shall be entitled to reimbursement for the cost of any additional Governmental Approval and Permit fees payable as the result of the Change in Costs.

2.5. Other Direct Costs

For certainty, the Construction Contractor shall be reimbursed for any direct costs not otherwise included in Sections 2.1 through 2.4 of this Appendix A to this Schedule 24 to the extent such direct costs are included in paragraphs a.iv. and a.v. of the definition of Change in Costs in Part A of Annex A (*Definitions and Abbreviations*) to the Project Agreement.

2.6. Mark-Ups

a. Mark-Ups Generally

In addition to any element of any Change in Costs as otherwise calculated pursuant to this Appendix A to Schedule 24, pursuant to Section 2.6.c of this Appendix A to this Schedule 24 the following mark-ups ("Permitted Mark-Ups") shall apply:

- i. 15% for labor costs calculated in accordance with Section 2.1.b of this Appendix A to this Schedule 24;
- ii. 10% for labor costs calculated in accordance with Section 2.1.c of this Appendix A to this Schedule 24;
- iii. 15% for material costs calculated in accordance with Section 2.2 of this Appendix A to this Schedule 24 (provided that no mark-up shall be permitted on any materials or equipment furnished by the Enterprises);
- iv. 10% for equipment use costs calculated in accordance with Section 2.3 of this Appendix A to this Schedule 24;

Central 70 Project: Design and Construction Contract
Schedule 24 (Change Procedure)

- v. 5% for Governmental Approval and Permit fees calculated in accordance with Section 2.4 of this Appendix A to this Schedule 24;
 - vi. 5% for other direct costs calculated in accordance with Section 2.5 of this Appendix A to this Schedule 24; and
 - vii. 5% for the Construction Contractor's subcontracting of the relevant work as calculated in accordance with Section 2.6.c.ii of this Appendix A to this Schedule 24.
- b. Items Included in Mark-Ups
- i. Permitted Mark-Ups are full and complete compensation for:
 - A. all overhead;
 - B. small tools (as described in Section 2.3.e of this Appendix A to this Schedule 24);
 - C. consumables (items which are consumed in the performance of the work which are not a part of the finished product); and
 - D. other indirect costs of the relevant work,in each case, including (x) profit and (y) any and all costs and expenses incurred due to any delay in connection with the relevant work (to the extent not expressly included in paragraphs a.vii. and a.viii. of the definition of Change in Costs in Part A of Annex A (*Definitions and Abbreviations*) to the Project Agreement or as Delay Financing Costs or Milestone Payment Delay Costs).
 - ii. Permitted Mark-Ups shall be considered to include:
 - A. bond premiums;
 - B. incidental job burdens;
 - C. bonuses not otherwise covered;
 - D. field, jobsite and general home office expenses of all types (e.g. timekeepers, bookkeepers and other general office help);
 - E. supervisory expenses of all types (excluding only direct supervision of force account work); and
 - F. all other overhead, general condition and indirect costs and expenses,provided that, with respect to non-construction work related labor costs (as determined pursuant to Section 2.1.c of this Appendix A to this Schedule 24), overhead is included as part of the labor surcharge calculated pursuant to Section 2.1.c of this Appendix A to this Schedule 24, and includes accessories such as computer-assisted drafting and design (CADD) systems, computers, facsimile transmission machines, scanners, paper, etc.
- c. Payment of Mark-Ups
- i. With respect to any relevant work that the Construction Contractor self-performs, the Permitted Mark-Ups shall apply to any Change in Costs incurred by the Construction Contractor itself and not by any Subcontractor (excluding, for certainty, the mark-up referred to in Section 2.6.a.vii of this Appendix A to this Schedule 24).
 - ii. With respect to any relevant work that the Construction Contractor subcontracts, the Permitted Mark-Ups shall apply to any Change in Costs incurred by the Subcontractor that performs the relevant work (excluding, for certainty, the mark-

up referred to in Section 2.6.a.vii of this Appendix A to this Schedule 24, which shall apply to Developer).

2.7. Savings

When in connection with any Change documented in a Change Order or a Directive Letter, the resulting Change in Costs involves results in a net aggregate saving to the Construction Contractor or a net aggregate reduction in value of the work performed or of the Project (or any individual element of the calculation of the Change in Costs, whatever the net aggregate result, involves such a saving or such a reduction in value), Change in Costs shall be calculated to take into account all the Construction Contractor's (and, without double-counting, each relevant Subcontractor's) (a) otherwise increased profits and (b) avoided or avoidable overhead.

3. Unit Price Change Orders

- a. The Developer may, in its discretion, in connection with an Enterprise Change Notice, require the Construction Contractor to calculate Change in Costs (other than such costs as are described in paragraph a.viii. of the definition of Change in Costs in Part A of Annex A (*Definitions and Abbreviations*) to the Project Agreement) both by reference to the methodology set out in Section 2 of this Appendix A to this Schedule 24 and on an alternative "unit price" basis, on which basis the "unit price":
 - i. shall be the sum of:
 - A. a "base unit price", which shall be deemed to include (and be limited to) all Construction Contractor and Subcontractor costs for labor, material, overhead, and profit; *plus*
 - B. a "risk mark-up", which shall be deemed to include all Construction Contractor and Subcontractor contingencies (provided that such risk adjustment shall not exceed 5% of the "base unit price"); and
 - ii. shall not be subject to subsequent adjustment regardless of any change in the estimated quantities.
- b. Subject to the specific directions or requirements set out in the relevant Enterprise Change Notice, the Construction Contractor shall use both methodologies to calculate Change in Costs in any preliminary cost estimate delivered pursuant to Section 1.1.b.ii.B of this Appendix A to this Schedule 24 and in the Construction Contractor's Change Response.
- c. The Developer and the Construction Contractor may thereafter agree to calculate Change in Costs in any resulting Change Order on a unit price basis, with measurement of unit-priced quantities to be as specified in the Change Order. Absent agreement as to the method of calculation, the Developer may in its discretion require any resulting Change Order to calculate Change in Costs on a unit price basis instead of the methodology set out in Section 2 of this Appendix A to this Schedule 24, provided that the calculation of such basis has itself been previously agreed with the Construction Contractor.

Schedule 25 Dispute Resolution Procedure

1. General

The Parties agree to use Reasonable Efforts to resolve promptly any Dispute pursuant to the terms of this Schedule 25 (*Dispute Resolution Procedure*). Any Dispute with respect to matters relating to the Project Agreement shall be resolved pursuant to Sections 2 and 4 of this Schedule 25. Any Dispute with respect to matters relating to this Agreement shall be resolved pursuant to Section 2 and 3 of this Schedule 25. For the avoidance of doubt, the Parties have the right to refer any Dispute to the Dispute Resolution Procedure and the absence of any specific reference in the foregoing provisions of this Agreement to a right to refer such matter to the Dispute Resolution Procedure shall not be construed to preclude any Party from referring such matter to the Dispute Resolution Procedure.

2. Informal Resolution

The parties will attempt to resolve any Disputes arising out of this Agreement through a meeting of Designated Senior Representatives. Each party shall attend such meeting within seven (7) days of receipt of notice from the other party requesting such meeting, which notice shall set of the location, time and date of such meeting.

3. Arbitration

- a. If the Dispute cannot be resolved in accordance with Section 3 above within ten (10) days of the initiation of good faith negotiations between the Designated Senior Representatives, then either Party will have the right to submit the Dispute or Claim involving any claim or controversy between the Developer and the Construction Contractor to binding arbitration in accordance with this Section 3 upon written notice of either Party delivered to the other of such Party's intention to arbitrate, the nature of the Dispute, the amount claimed and the decision sought. Arbitration under this Section 3 shall be conducted by JAMS or its successor in accordance with its Streamlined Arbitration Rules and the Federal Arbitration Act, 9 USC Section 1 et seq. The notice of intent to arbitrate also shall specify the name and address of an arbitrator selected by the Party requesting arbitration. The other Party shall within five (5) Working Days of receipt of the arbitration notice select its arbitrator; provided that if it fails to do so, the arbitrator appointed by the Party requesting arbitration shall serve as the sole arbitrator of the Dispute. However, if both Parties name an arbitrator, the two arbitrators thus selected shall within five (5) Working Days of the selection of the second arbitrator select the third arbitrator. All arbitrators shall be qualified, independent and neutral. The decision of any two of the three arbitrators on any issue shall be final. Unless the Parties otherwise agree, all arbitration proceedings shall be held in the County of Denver, Colorado. The Developer and the Construction Contractor shall proceed with any arbitration expeditiously. All conclusions and decisions of the arbitration shall be made consistent with applicable legal principles and the arbitrators' good faith interpretation of the terms and provisions of this Agreement. The award of the arbitrators will be final and binding on both Parties and may be enforced in any court having jurisdiction over the Party against which enforcement is sought. Each Party shall bear its own expenses, including but not limited to counsel fees and witness fees. If the arbitrators determine that the claim or defense of either Party was frivolous (i.e., without justifiable merit), they may require that the Party at fault pay or reimburse the other Party for costs of the arbitration in whole or in part, except that all expenses of the arbitration shall be apportioned in the award of the arbitrators based upon the respective merit of the positions of the Parties.
- b. NOTWITHSTANDING THE FOREGOING, EQUITABLE REMEDIES, INCLUDING INJUNCTION AND SPECIFIC PERFORMANCE, SHALL BE AVAILABLE TO THE PARTIES BY JUDICIAL PROCEEDINGS AT ANY TIME AND, FOR THIS PURPOSE AND FOR THE PURPOSE OF ENFORCING ANY ARBITRAL AWARD OR DECISIONS, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE

OF THE FEDERAL AND STATE COURTS IN THE COUNTY OF DENVER, COLORADO. EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING UNDER THIS AGREEMENT AND FOR ANY COUNTERCLAIM IN SUCH AN ACTION OR PROCEEDING. THE PROVISIONS OF THIS SECTION 3b SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

4. Requested Dispute Procedures

The procedures, rights, obligations and indemnities set forth in this Section 4 are hereinafter referred to as the "Requested Dispute Procedures".

- a. With respect to any disputes relating to (1) any granting or provision by the Enterprises of relief with respect to a Developer Right resulting from a request for relief by the Construction Contractor pursuant to Part 1, Section 6 of this Agreement or (2) any obligation of the Construction Contractor under this Agreement which is an obligation of Developer under the Project Agreement, the satisfactory performance of which requires the approval of, consent to or a determination by, the Enterprises pursuant to the Project Agreement with respect to which the terms of this Agreement expressly permit the Construction Contractor to invoke these Requested Dispute Procedures, Developer agrees to pursue against the Enterprises a Project Agreement Dispute in accordance with the reasonable request of Construction Contractor and to seek to enforce the Developer's rights and remedies under the Project Agreement that relate to the Construction Contractor's rights and obligations with respect to the Construction Work and the O&M Work During Construction under this Agreement, in the same manner and with the same diligence as the Developer would assert its own Project Agreement Claims and defenses, including without limitation, to submit Project Agreement Disputes to the Project Agreement Dispute Resolution Procedure, so long as (i) prior to the Developer initiating the Project Agreement Dispute Resolution Procedure, the Parties have discussed the consequences of taking such action on the interests of the Developer and the Project as a whole and any other alternatives available to the Parties and (ii) such Dispute is not, in the Developer's reasonable discretion, frivolous or an abuse of process. The Construction Contractor shall assist, at its expense, the Developer as requested by Developer with respect to the negotiation of any Project Agreement Requested Dispute with the Enterprises.
- b. To the extent permitted under the Project Agreement or by the Enterprises, the Developer shall allow the Construction Contractor (i) to reasonably participate in the Developer's assertion of the Project Agreement Requested Dispute and defenses under the corresponding Project Agreement Dispute Resolution Procedure, and (ii) to reasonably request that certain steps be taken by the Developer with respect to the advancement of such Project Agreement Requested Dispute or assertion of such defenses in the resolution of such Project Agreement Requested Dispute (and the Developer shall take such reasonably requested steps).
- c. The Construction Contractor shall indemnify, defend and hold harmless the Developer from and against all Claims, Losses, and reasonable costs and expenses incurred or suffered in connection with or as a result of the Developer's initiating, at the request of the Construction Contractor, a Project Agreement Requested Dispute against the Enterprises and the participation by the Construction Contractor in the Project Agreement Dispute Resolution Procedure pursuant to Section 4b, including any for which the Developer is liable to the Enterprises or any other Person.
- d. The Construction Contractor shall not be entitled to any further relief under this Agreement in respect of any Project Agreement Requested Dispute if (A) the Developer obtains the relief requested by the Construction Contractor and provides such relief to the Construction Contractor, (B) the Developer (with the written consent of the Construction Contractor, which shall not be unreasonably withheld, conditioned or delayed) agrees to a compromise with the Enterprises, or (C) the matter is finally resolved in accordance

Central 70 Project: Design and Construction Contract
Schedule 25 (Dispute Resolution Procedure)

with the Project Agreement. This provision of this Section 4d shall not affect any other provision of this Agreement specifying that the Developer's obligation to provide the Construction Contractor with relief under this Agreement shall be dependent upon and to no greater extent than any relief the Developer actually receives from Enterprises under the Project Agreement, including without limitation Equivalent Project Relief and the Pay-if-Paid Provisions.

- e. To the extent that the Enterprises commences a Project Agreement Dispute against the Developer under the Project Agreement Dispute Resolution Procedure relating to any obligation of the Developer under the Project Agreement the fulfillment of which is an obligation of the Construction Contractor under this Agreement, the Construction Work or the O&M Work During Construction under this Agreement or any matter relating thereto, the Construction Contractor shall, at its own expense, provide such assistance to the Developer in resolving such Project Agreement Dispute as Developer may request.
- f. The Construction Contractor shall cooperate with any reasonable requests for information or assistance provided to it through the Project Agreement Dispute Resolution Procedure, except to the extent that such cooperation shall require the Construction Contractor to assume any legal liability.

5. **Intentionally Omitted**

6. **No Joinder**

No proceedings to resolve any Dispute arising out of or relating to the Project Agreement shall include, by consolidation or joinder or in any other manner, any additional Person, including the Construction Contractor or any Subcontractor, not a Party to the Project Agreement, except with the written consent of each Party to the Project Agreement and any other Person sought to be so joined.

7. **Intentionally Omitted**

8. **Continuation of Work**

During the course of resolving any Dispute pursuant to this Schedule 25 and this Agreement, the Construction Contractor will continue with the Construction Work and the O&M Work During Construction (including any Construction Work or O&M Work During Construction that is the subject of the Dispute) in accordance with this Agreement.

9. **Costs of Dispute Resolution**

Each Party shall bear its own costs and expenses, including attorneys' fees, in any Dispute arising out of this Agreement, except as expressly provided therein or pursuant to the terms of any binding Dispute resolution.

Schedule 26
Intentionally Omitted

Schedule 27
Key Personnel

Construction Manager

Position Description: Responsible for ensuring that the Project is constructed in accordance with all requirements of this Agreement. Responsible for managing Construction Contractor's construction personnel, scheduling of the construction quality assurance personnel, and administering compliance with all Technical Requirements applicable to the Construction Work. The Construction Manager shall have the authority to suspend Construction Work.

Qualifications: The Construction Manager shall have a minimum of 15 years' experience in construction and management of construction on highway projects similar in scope, value, nature, and complexity to the Project, with an emphasis on design-build experience and experience with interstate highways and interstate bridges.

Minimum Period of Availability: From Agreement Date to Final Acceptance.

To be seconded to/employed by: Construction Contractor

Name: Barry Thoendel

Design-Build Manager

Position Description: Responsible for the overall design and construction of the Project and for managing Developer's design-build team. The Design-Build Manager shall: (i) ensure that the Project is designed and constructed in accordance with the Technical Requirements; and (ii) have authority to suspend Construction Work.

Qualifications: The Design-Build Manager shall have a minimum of 20 years' experience, including a minimum of 15 years' design-build experience, in construction and management of design and construction on highway projects that included work of a similar scope, value, nature, and complexity as included in the Project.

Minimum Period of Availability: From Agreement Date to Final Acceptance.

To be seconded to/employed by: Construction Contractor

Name: Tom Howell

Design Manager

Position Description: Responsible for: (i) ensuring that the overall Project design is

completed and design criteria requirements are met; (ii) managing the design team's personnel; and (iii) administering all design requirements in this Agreement. The Design Manager shall have authority to suspend design Work.

Qualifications: The Design Manager shall be a professional engineer licensed in the State no later than the date of issuance of NTP1. The Design Manager shall have a minimum of 15 years' experience in managing design for multidisciplinary highway projects with similar scope, value, nature, and complexity to the Project, with emphasis on design-build experience and experience with interstate highway, interstate bridges, and projects of similar scope, value, nature, and complexity to the Project.

Minimum Period of Availability: From Agreement Date to Final Acceptance.

To be seconded to/employed by: Principal Design Work Subcontractor to the Construction Contractor

Name: Doug Andrew, PE

Project Quality Manager

Position Description: Responsible for overall quality management of the Project. The Project Quality Manager shall have the authority to suspend CC Work and shall provide monthly certification that CC Work is being performed in compliance with Law and the Project design.

Qualifications: The Project Quality Manager shall be a professional engineer licensed in the State no later than the date of issuance of NTP1, and shall have a minimum of eight years' experience in infrastructure transportation project design and construction, including at least five years' experience in quality assurance activities, including the preparation and implementation of quality plans and procedures for design, construction, and operations on transportation projects that included work of a similar scope, value, nature, and complexity to the Project.

Minimum Period of Availability: From Agreement Date to the second anniversary of Final Acceptance.

To be seconded to Developer: The Project Quality Manager shall be seconded by the Construction Contractor to the Developer. The Project Quality Manager can hold only this Key Personnel position.

Name: Gordon Peterson, PE

Construction Process Control Manager

Position Description: Responsible for ensuring all methods and procedures contained in the approved Stage 2 QMP are carried out on the Project, the Construction Process Control Manager shall have authority to suspend Work.

Qualifications: The Construction Process Control Manager shall be a professional engineer licensed in the State or possess a National Institute for Certification of Engineering Technologies (NICET) Level III Certificate in Highway Materials or Construction Materials with the soil, concrete, and asphalt sub-fields, as well as have or obtain the American Society for Quality (ASQ) certification as a quality inspector, quality engineer, or manager of quality, in each case prior to the date of issuance of NTP2. The Construction Process Control Manager shall have a minimum of eight years' highway construction experience on projects that included work of a similar scope, value, nature, and complexity to the Project.

Minimum Period of Availability: From Agreement Date to the second anniversary of Final Acceptance.

To be seconded to/employed by: Construction Contractor

Name: Sean McAfee

Environmental Manager

Position Description: The Environmental Manager is responsible for ensuring compliance with all Environmental Requirements and commitments. The Environmental Manager shall have authority to suspend Work.

Qualifications: The Environmental Manager shall have a minimum of seven years' progressive experience working on projects of similar scope, value, nature, and complexity to the Project. The Environmental Manager shall also demonstrate the ability to work effectively with both design and construction staff.

Minimum Period of Availability: From Agreement Date to the second anniversary of Final Acceptance.

To be seconded to Developer. The Environmental Manager shall be seconded by the Construction Contractor to the Developer.

Name: Jenn Bradmueller, PE

Utilities Manager

Position Description: Responsible for managing all required Utility Work and coordinating the same with Utility Owners.

Qualifications: The Utilities Manager is a management role with a minimum of five years' relevant experience on major infrastructure projects of similar scope, value, nature and complexity to the Project.

Minimum Period of Availability: From Agreement Date to Final Acceptance.

To be seconded to/employed by: Construction Contractor

Name: Kevin Custy

Project Communications Manager

Position Description: Responsible for overseeing all Developer communications efforts during construction, operations, and maintenance.

Qualifications: The Project Communications Manager shall have: (i) a minimum of seven years' professional experience working on design-build construction projects and a practical understanding of construction schedules, MOT plans, and work performance processes; (ii) experience with, and understanding of, complexities and importance of maintaining good relationships between the Project and government, businesses, residents, the general public, and other stakeholders; and (iii) experience with implementing communication and public involvement plans on projects of similar scope, value, nature, and complexity to the Project.

Minimum Period of Availability: From Agreement Date to the second anniversary of Final Acceptance.

To be seconded to Developer. The Project Communications Manager shall be seconded by the Construction Contractor to the Developer.

Name: Hunter Sydnor

Schedule 28
Proposal Extracts
Part A: Proposal Extracts

[Intentionally not used.]

Part B: ATC Modifications

1. Subject to, and with effect from the date of, the Construction Contractor's satisfaction and compliance with the applicable conditions set forth in Section 2 of this Part B of this Schedule 28 (*Proposal Extracts*), the Construction Contract shall be modified as follows (each of the following (a) through (i), an "ATC Modification"):
 - (a) as the "ATC 11.2 Modifications", Contract Drawing 10B.10.13.01 of Schedule 10B (*Contract Drawings*) of the Construction Contract shall be modified as shown in Exhibit A to this Part B of this Schedule 28 (*Proposal Extracts*);
 - (b) as the "ATC 12.2 Modifications":
 - (i) Section 8.4.9.f of Schedule 10 (*Design and Construction Requirements*) shall be modified by deleting the words "with a structure over the Lowered Section"; and
 - (ii) Contract Drawing 10B.10.13.01 shall be modified as shown in Exhibit B to this Part B of this Schedule 28 (*Proposal Extracts*);
 - (c) as the "ATC 14.2 Modifications":
 - (i) Contract Drawing 10B.10.9.01 shall be modified as shown in Exhibit C to this Part B of this Schedule 28 (*Proposal Extracts*); and
 - (ii) Contract Drawing 10B.10.13.01 shall be modified as shown in Exhibit D to this Part B of this Schedule 28 (*Proposal Extracts*);
 - (d) as the "ATC 17.1 Modifications":
 - (i) Section 10.1.2.b.i of Schedule 10 (*Design and Construction Requirements*) shall be modified by replacing such Section in its entirety with the following:

"100% temporary and permanent trackwork design and construction phasing for the UPRR Crossing (100% UPRR Trackwork Plans and Specifications) which the Construction Contractor shall not be permitted to amend without the UPRR's prior written approval"; and
 - (ii) Section 10.1.2.e of Schedule 10 (*Design and Construction Requirements*) shall be modified by replacing such Section in its entirety with the following:

"The Department shall pay UPRR directly for their trackwork, ballast and Railroad signalization work, except that the Construction Contractor shall reimburse the Developer (for reimbursement of the Department) for any increase in the costs and expenses of all such work that the Department is required to pay to UPRR pursuant to the terms of the UPRR RRA to the extent that the increase is attributable to any changes in the 100% Trackwork Plans and Specifications referred to in Section 10.1.2.b.i as attached to the UPRR RRA as at the execution date thereof. The Construction Contractor shall pay for all other costs of the UPRR Work (including associated flagging costs) directly to UPRR. Cost responsibilities of the Department to UPRR are further identified in the UPRR RRA included in the Reference Documents.";
 - (e) as the "ATC 18.1 Modifications":
 - (i) Appendix A (*Roadway Design Criteria*) to Section 9 of Schedule 10 (*Design and Construction Requirements*) shall be modified as indicated by the notes to such Appendix that reference the ATC 18.1 Modifications;
 - (ii) Contract Drawing 10B.10.9.01 shall be modified as shown in Exhibit E to this Part B of this Schedule 28 (*Proposal Extracts*); and
 - (iii) Contract Drawing 10B.10.13.01 shall be modified as shown in Exhibit F to this Part B of this Schedule 28 (*Proposal Extracts*);

Central 70 Project: Design and Construction Contract
Schedule 28 (Proposal Extracts)

- (f) as the “ATC 28.1 Modifications”:
- (i) Appendix A (Roadway Design Criteria) to Section 9 of Schedule 10 (Design and Construction Requirements) shall be modified as indicated by the notes to such Appendix that reference the ATC 18.1 Modifications;
 - (ii) Contract Drawing 10B.10.9.01 shall be modified as shown in Exhibit G to this Part B of this Schedule 28 (Proposal Extracts); and
 - (iii) Contract Drawing 10B.10.13.01 shall be modified as shown in Exhibit H to this Part B of this Schedule 28 (Proposal Extracts);
- (g) as the “ATC 37.2 Modifications”:
- (i) Section 12.18.2.c of Schedule 10 (Design and Construction Requirements) shall be modified by replacing such Section in its entirety with the following:

“The main electrical distribution shall be configured, interconnected, and controlled to allow all services to the Cover to remain operational in the event of a utility power supply transformer failure at the end of the Cover.”, and
 - (ii) Section 12.18.3.e of Schedule 10 (Design and Construction Requirements) shall be modified by replacing such Section in its entirety with the following:
 - “e. Emergency Power UPS System
 - i. Single UPS system shall be provided within the emergency electrical room. UPS system shall jointly serve the lighting system and the remaining safety critical plant.
 - ii. The UPS system specification shall be developed and submitted to the Developer for submission to the Department for Acceptance, based on the following:
 - A. Three-phase, on-line, double-conversion, static-type, UPS units with battery autonomy at least long enough to safely shut down the tunnel in the event that the generator does not start;
 - B. 20% Spare capacity;
 - C. N+1 parallel redundant configuration; and
 - D. External wraparound bypass unit.”;
- (h) as the “ATC 66.0 Modifications”, Section 12.13.10 of Schedule 10 (Design and Construction Requirements) shall be modified by replacing such Section in its entirety with the following:
- “Monitoring equipment shall be provided for the continuous monitoring of air quality, in the Cover and:
- a. At a minimum, sensors shall be provided to measure CO, visibility, and NO₂ within the Cover in each direction of travel, and there shall be a back-up sensor for each quantity being measured (i.e. minimum of four sensors, assuming one self-contained sensor can measure CO, visibility, and NO₂).
 - b. Sensors to measure airspeed, air flow direction and temperature (in each case, both inside and outside of the Cover) shall be provided.
 - c. For pollution monitoring, a logical method for control shall be developed for normal, maintenance and congested operations and to safeguard the fans from frequent switching;

Central 70 Project: Design and Construction Contract
Schedule 28 (Proposal Extracts)

- d. Pollutant and visibility monitors shall be located adjacent to the traffic lanes in the Cover, at locations where the worst level is anticipated. The location of sampling points shall avoid dilution by air circulation from the Portals;
 - e. All monitoring equipment shall be calibrated to represent the average air quality for a 15-minute rolling average within the Cover;
 - f. Monitoring system shall be provided to facilitate operational data to be recorded and stored for analysis. Data to be recorded shall include pollution levels (at least CO, visibility and NO₂), Cover air speed, fan operations, alarm states, air speed director and temperature;
 - g. Monitoring stations shall be located and configured so as to provide data to drive the VCS for the management of pollutants in the Cover to acceptable limits;
 - h. Monitoring equipment shall not be installed near to jet fan inlets and outlets so as to affect the performance of the CVS; and
 - i. The Construction Contractor shall provide analysis of anticipated air quality quantities in the Cover (CO, visibility, NO₂, air speed, air flow direction, temperature) under peak hour flowing traffic, fully congested conditions (stopped traffic) with and without an external wind blowing. For each scenario the Construction Contractor shall use the analysis to compute the worst pollution level likely and to demonstrate that the monitoring equipment will provide adequate notification to prevent air quality criteria being violated.”;
- (i) as the “ATC 68.0 Modifications”:
- (i) Section 8.4.9.b.ii of Schedule 10 (Design and Construction Requirements) shall be modified by replacing such Section in its entirety with the following:

“Without prejudice to the generality of any other provision of the Construction Contract (including this Schedule 10), and subject to the rights of the Construction Contractor arising as a result of the occurrence of any Construction Contractor Change documented in a Change Order or any Supervening Event, the Construction Contractor shall bear all risk of delay and/or all risk of cost and expense for any work related to any Utility (whether or not such work constitutes Utility Work and/or is work performed by the Construction Contractor) that is required to enable it to comply with its obligations under this Section 8.4.9.b.”;
 - (ii) the references in Table 8-5 in Section 8 of Schedule 10 (Design and Construction Requirements) with respect to the “Onsite North” pond to “Race Court and Brighton Boulevard” in the “I-70 Mainline Station” column and to the “Water Quality and Detention Pond” in the “Facility Type” column shall be modified by replacing such references in their entirety with, respectively, references to “46th Avenue North and York Street” in the “I-70 Mainline Station” column and to the “Water Quality Pond” in the “Facility Type” column; and
 - (iii) Contract Drawing 10B.10.18.02 of Schedule 10B (Contract Drawings) of the Construction Contract shall be deleted and treated as no longer used; and
- (j) as the “ATC 71.0 Modifications”, Section 12.20.3.b of Schedule 10 (Design and Construction Requirements) shall be modified by replacing such Section in its entirety with the following:
- “Isolation valves shall be provided between hose valve stations to enable sections of the system to be shut down for maintenance without shutting the entire system down. Standpipe hose connection stations shall be located along the center wall of each bore and at each cross bore door, in each bore, located adjacent to the door.”
2. As between the Developer and the Construction Contractor, and without limiting any other obligation of the Construction Contractor under the Construction Contract, the Construction

Central 70 Project: Design and Construction Contract
 Schedule 28 (Proposal Extracts)

Contractor shall perform all necessary actions and shall bear all risk of delay and/or all risk of cost and expense (including by way of reimbursement to the Developer) as necessary to satisfy all applicable conditions set out in "Column A" of the table below (each, an "ATC Condition") necessary to implement the ATC (as defined in the ITP) that is the subject of the corresponding ATC Modification(s) referenced in "Column B" of the table below.

Column A (ATC Conditions)	Column B (corresponding ATC Modification(s))
(a) In accordance with Part 2, <u>Sections 8.4.2.a</u> and <u>8.4.3.b</u> of the Construction Contract, obtaining, modifying, renewing or extending any and all necessary Governmental Approvals and Permits, including (i) from the UPRR with respect to the ATC 17.1 Modifications, (ii) from any AHJ with respect to the ATC 37.2 Modifications and the ATC 71.0 Modifications and (iii) from the City of Denver Department of Environmental Health with respect to the ATC 66.0 Modifications.	ATC 11.2 Modifications ATC 12.2 Modifications ATC 14.2 Modifications ATC 17.1 Modifications ATC 18.1 Modifications ATC 28.1 Modifications ATC 37.2 Modifications ATC 66.0 Modifications ATC 68.0 Modifications ATC 71.0 Modifications
(b) Acquiring and maintaining any Additional ROW Parcels, any Temporary Properties, and any Permit Areas.	ATC 11.2 Modifications ATC 17.1 Modifications ATC 12.2 Modifications
(c) Following completion of final design, applying for and obtaining a technical variance from the City of Denver.	ATC 18.1 Modifications

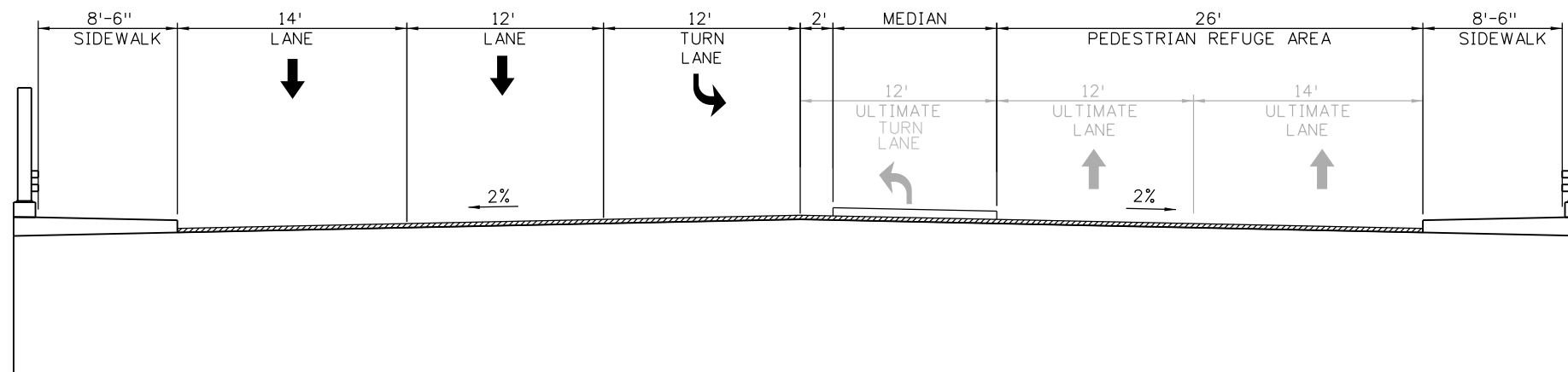
3. If at any time the Construction Contractor is unable to satisfy, or is no longer able to satisfy, any ATC Condition with respect to any applicable ATC Modification:
 - (a) the Construction Contractor shall notify the Developer of such inability within 10 Working Days of determining that it is unable to satisfy, or no longer able to satisfy, any such ATC Condition;
 - (b) pursuant to Part 2, Section 8.2.3 of the Construction Contract, the Construction Contractor shall thereafter comply with the requirements of the Construction Contract without giving effect to the applicable ATC Modification and without any resulting entitlement to an extension of time, relief and/or compensation; and
 - (c) the Construction Contractor shall continue to bear all risk of delay and/or all risk of cost and expense (including by way of reimbursement to the Developer) for having sought to satisfy any such ATC Condition or otherwise sought to proceed with such ATC Modification.

4. Upon and subject to delivery by the Construction Contractor of a notice pursuant to Section 3(a) of this Part B of this Schedule 28 (Proposal Extracts) with respect to an inability to satisfy any ATC Condition with respect to the ATC 68.0 Modifications, the parcels listed in Exhibit I to this Part B of this Schedule 28 (Proposal Extracts) shall be added as ROW Parcels to the table set out in Appendix A to Schedule 18 (Right-of-Way).

Exhibit A
ATC 11.2 Modifications

Attached.

G:\AIN\3162_9:37:09 AM S:\170Data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC_11.2\13599BRDG_TypSec01_ACT_11.2.dgn



YORK STREET OVER I-70 MAINLINE
(STR. NO. E-17-AEY)

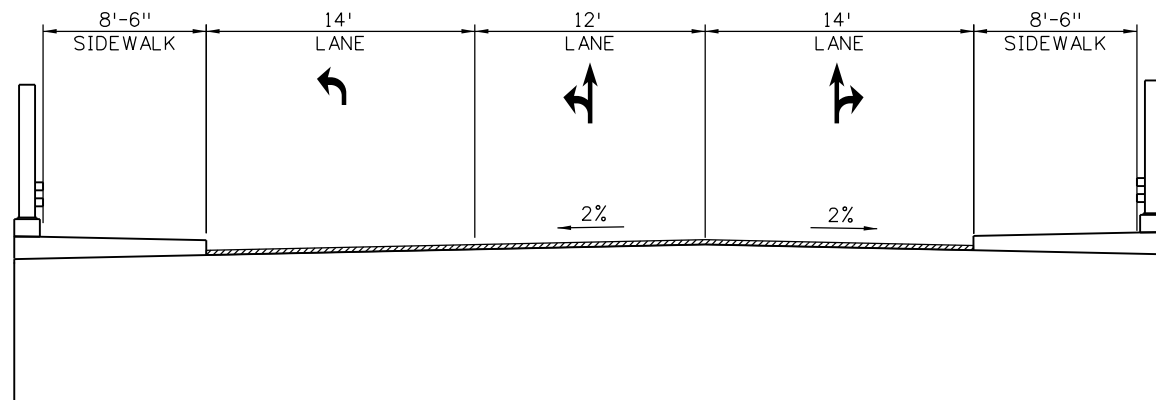
ATC 11.2

Print Date: 10/26/2017		Sheet Revisions			<p align="center">Colorado Department of Transportation 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1 KJS</p>	PRELIMINARY		STRUCTURE TYPICAL SECTIONS			Project No./Code	
File Name: 13599BRDG_TypSec01_ACT 11.2.dgn		Date:	Comments	Init.		No Revisions:					FBR 0704-234	
Horiz. Scale: NTS Vert. Scale: NTS						Revised:	Designer:	Structure Numbers			19631	
Unit Information Unit Leader Initials						Void:	Detailer:		Sheet Subset: 10B Struct	Subset Sheets: 02 of 12	Sheet Number 2	

Exhibit B
ATC 12.2 Modifications

Attached.

G:\IN\3162_9:36:25 AM S:\1700Data\13599\Design\Drawings\Procurement Plans\KMP ATC Updates\ATC 12.2\13599BRDG_TypSec01_ACT 12.2.dgn



JOSEPHINE STREET OVER I-70
(STR. NO. E-17-AEZ)

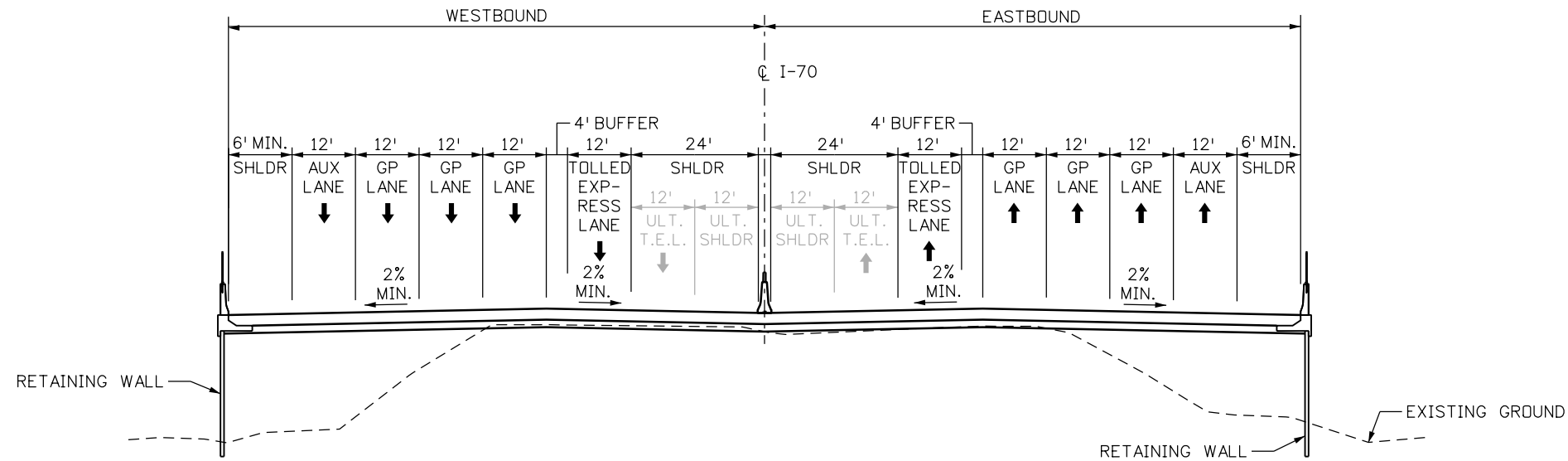
ATC 12.2

Print Date: 10/26/2017	0000	Sheet Revisions			 Colorado Department of Transportation 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1 KJS	PRELIMINARY		STRUCTURE TYPICAL SECTIONS		Project No./Code	
File Name: 13599BRDG_TypSec01_ACT 12.2.dgn		Date:	Comments:	Init.:		No Revisions:			FBR 0704-234		
Horiz. Scale: NTS Vert. Scale: NTS						Revised:	Designer:	Structure Numbers:	19631		
Unit Information Unit Leader Initials						Void:	Detailer:	Sheet Subset: 10B Struct	Subset Sheets: 03 of 12	Sheet Number	3
7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276											

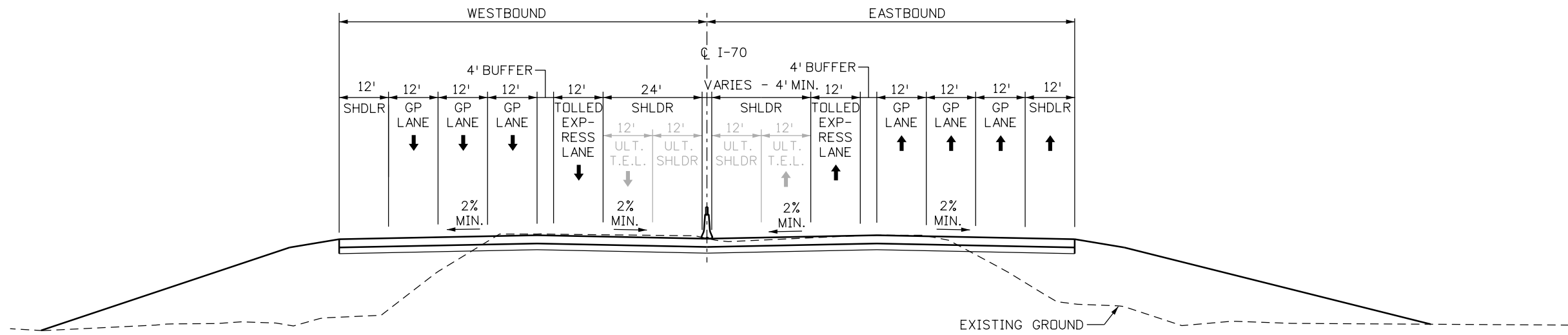
Exhibit C
ATC 14.2 Modifications

Attached.

C:\170Data\13599\Design\Drawings\Procurement Plans\KMP ATC Updates\ATC 14.2\13599DES_Procurement_TypicalSect-03-Section 10B_I-70 Mainline_ACT 14.2.dgn




I-70 MAINLINE
DAHLIA ST TO QUEBEC ST



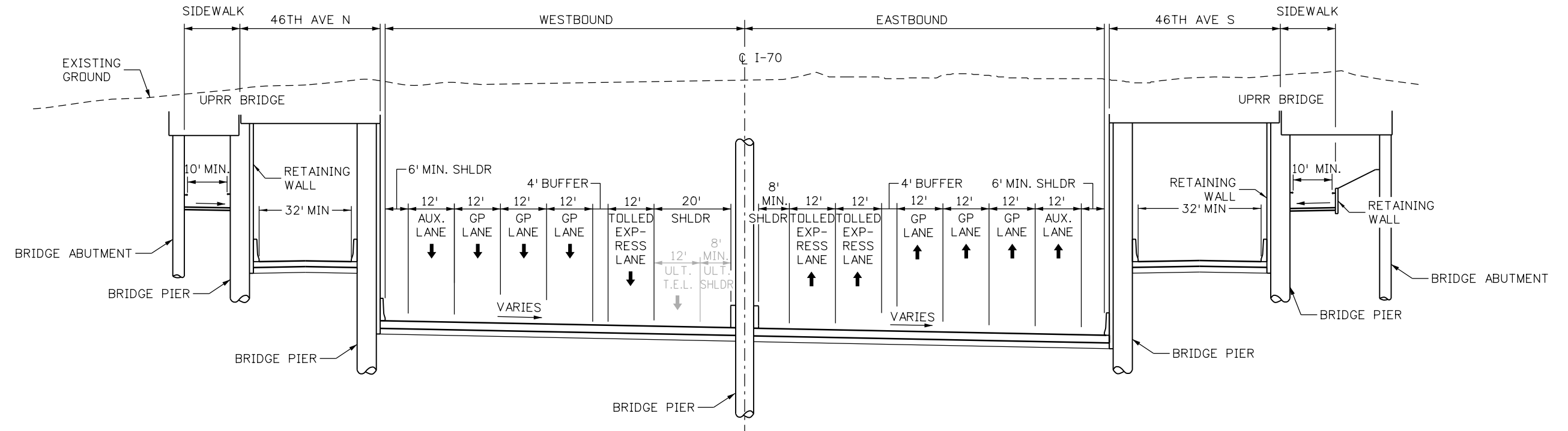
I-70 MAINLINE
QUEBEC ST TO SAND CREEK

- NOTES:**
- REFER TO SIGNING AND STRIPING CONCEPT DRAWINGS PROVIDED IN THE REFERENCE DOCUMENTS AS THE BASIS FOR THE DESIGN OF TEL INGRESS/EGRESS LOCATIONS.
 - AT LOCATIONS WHERE A CONTINUOUS AUXILIARY LANE IS NOT REQUIRED, PROVIDE A 12' OUTSIDE SHOULDER.
 - REFER TO SIGNING AND STRIPING CONCEPT DRAWINGS PROVIDED IN THE REFERENCE DOCUMENTS AS THE BASIS FOR THE DESIGN OF TEL INGRESS/EGRESS LOCATIONS.

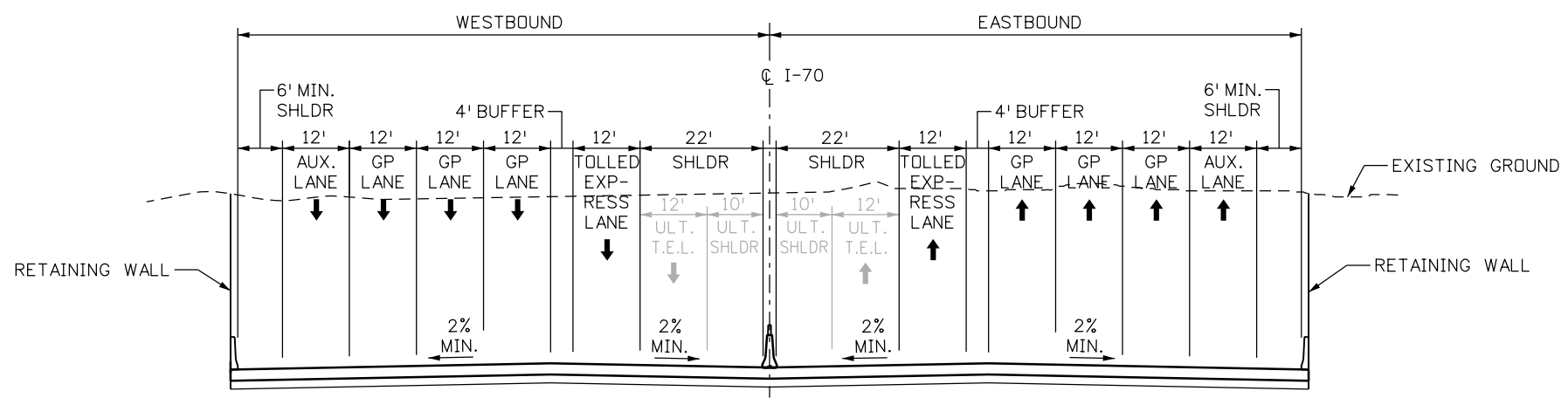
ATC 14.2

Print Date: 10/6/2017	Sheet Revisions			Colorado Department of Transportation  2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1	PRELIMINARY		I-70 MAINLINE TYPICAL SECTIONS		Project No./Code	
File Name: 13599DES_Procurement_TypicalSect-03-Section 10B_I-70 Mainline_ACT 14.2.dgn	Date:	Comments	Init.		No Revisions:	Designer:		Structure Numbers	FBR 0704-234	
Horiz. Scale: NTS	Unit Information			 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276	Revised:	Detailer:		19631		
Unit Leader Initials			Void:		Sheet Subset: Rdwy Typ1		Subset Sheets: 3 of 17		Sheet Number	
									3	

C:\AIN3162_2009\06 PM S:\170Data\13599\Drawings\Procurement Plans\KMP ATC Updates\ATC 14.2\13599DES_Procurement_TypicalSect-02-Section 10B_I-70 Mainline_ACT 14.2.dgn




I-70 MAINLINE
UNDER UPRR BRIDGE



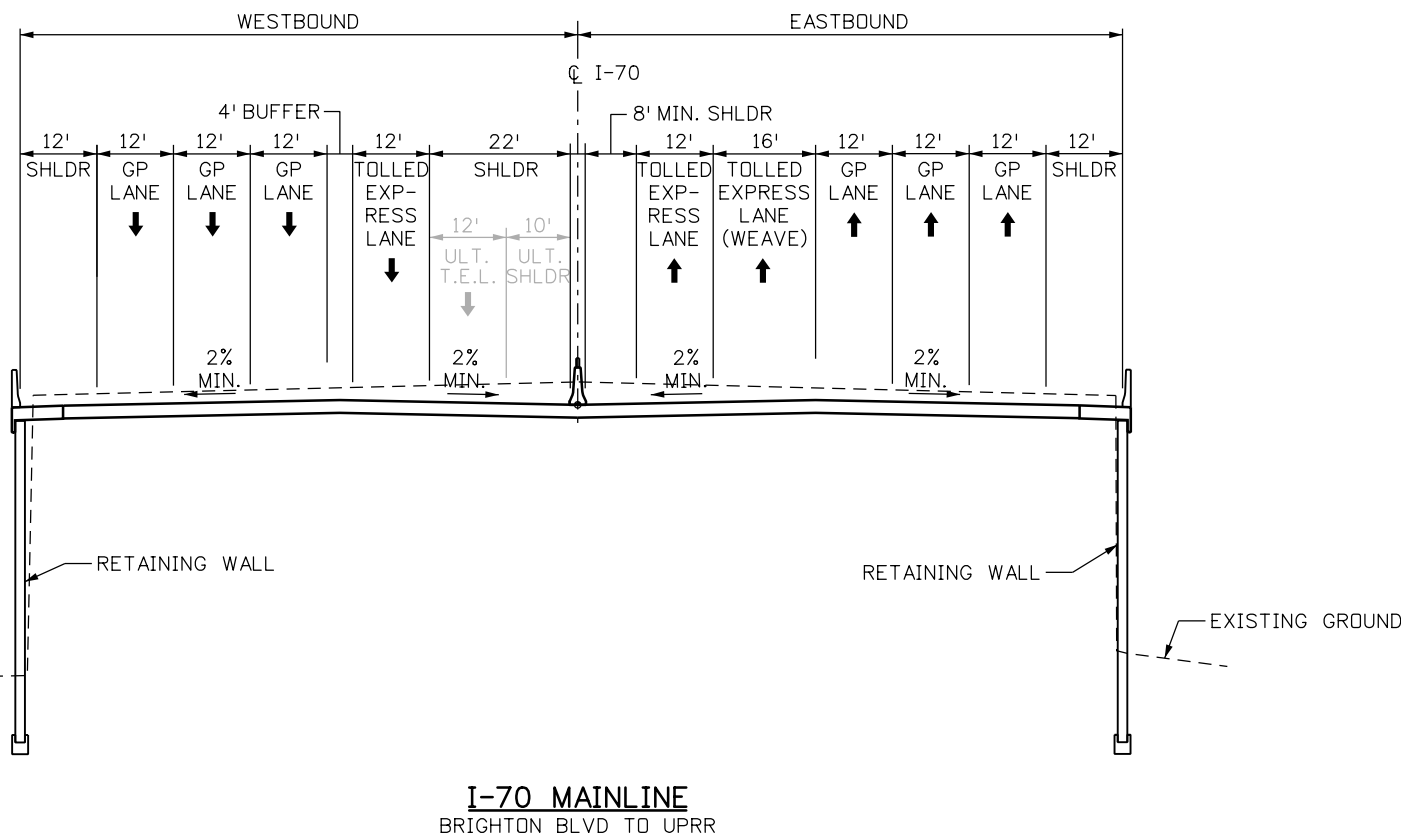
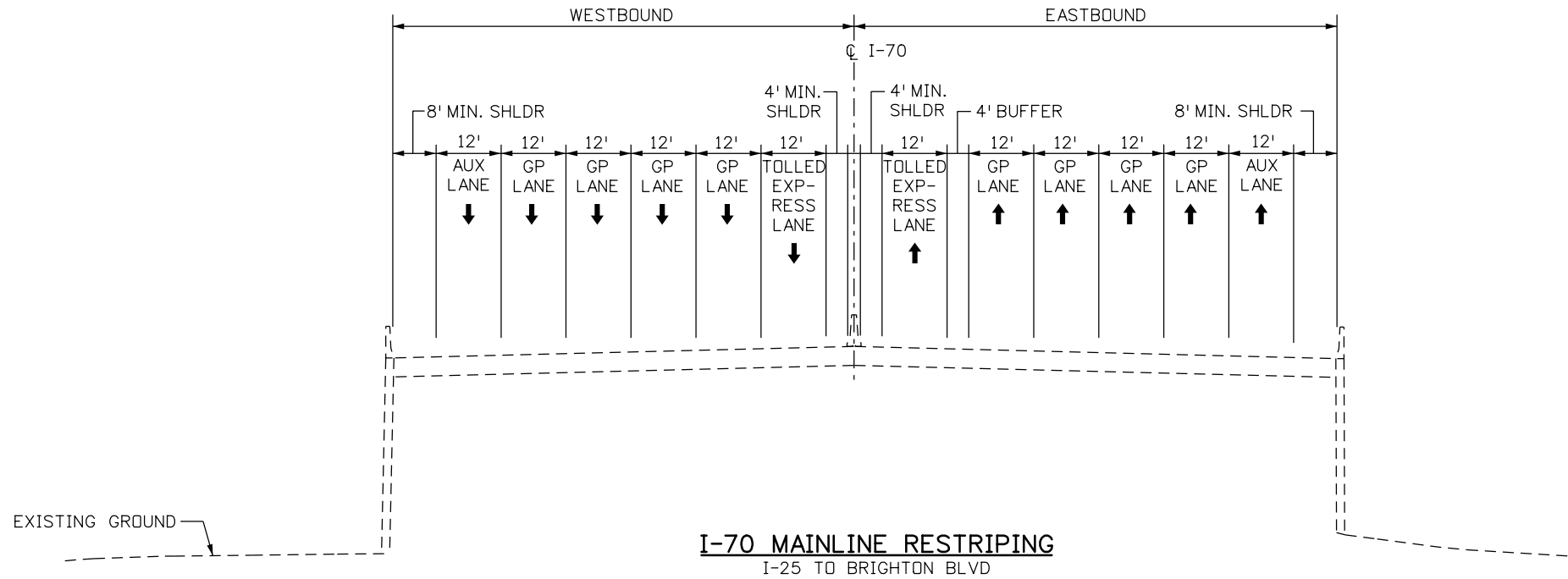
I-70 MAINLINE
UPRR TO DAHLIA ST

- NOTES:**
1. AT LOCATIONS WHERE A CONTINUOUS AUXILIARY LANE IS NOT REQUIRED, A 12' OUTSIDE SHOULDER.
 2. REFER TO SIGNING AND STRIPING CONCEPT DRAWINGS PROVIDED IN THE REFERENCE DOCUMENTS AS THE BASIS FOR THE DESIGN OF TEL INGRESS/EGRESS LOCATIONS.

ATC 14.2

Print Date: 10/6/2017	Sheet Revisions			Colorado Department of Transportation  2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1	PRELIMINARY No Revisions: Revised: Void:	I-70 MAINLINE TYPICAL SECTIONS		Project No./Code		
File Name: 13599DES_Procurement_TypicalSect-02-Section 10B_I-70 Mainline_ACT 14.2.dgn	Date:	Comments	Init.					FBR 0704-234		
Horiz. Scale: NTS	Unit Information			 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276	KJS	Designer:	Structure Numbers	19631		
Unit Leader Initials						Detailer:	Sheet Subset: Rdwy Typ1	Subset Sheets: 2 of 17	Sheet Number	
									2	

C:\AIN\3182_2:06:01 PM S:\1770Data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC 14.2\13599DES_Procurement_TypicalSect-01-Section 10B_I-70 Mainline_ACT 14.2.dgn



- NOTES:
1. IN LOCATIONS WHERE AN AUXILIARY LANE IS NOT PRESENT, PROVIDE A 12' OUTSIDE SHOULDER.
 2. WITHIN MAINLINE RESTRIPIING SECTION MATCH THE SAME NUMBER OF EXISTING GENERAL PURPOSE AND AUXILIARY LANES. ROADWAY STRIPING IS TO ACCOMMODATE ADDITIONAL TOLLED EXPRESS LANE.
 3. REFER TO SIGNING AND STRIPING CONCEPT DRAWINGS PROVIDED IN THE REFERENCE DOCUMENTS AS THE BASIS FOR THE DESIGN OF TEL INGRESS/EGRESS LOCATIONS.

ATC 14.2

Print Date: 10/6/2017	
File Name: I3599DES_Procurement_TypicalSect-01-Section 10B_I-70 Mainline_ACT 14.2.dgn	
Horiz. Scale: NTS Vert. Scale: NTS	
Unit Information Unit Leader Initials	
ATKINS 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276	

Sheet Revisions		
Date:	Comments	Init.

Colorado Department of Transportation

2000 South Holly Street
 Denver, CO 80222
 Phone: 303-757-9934 FAX: 303-757-9907

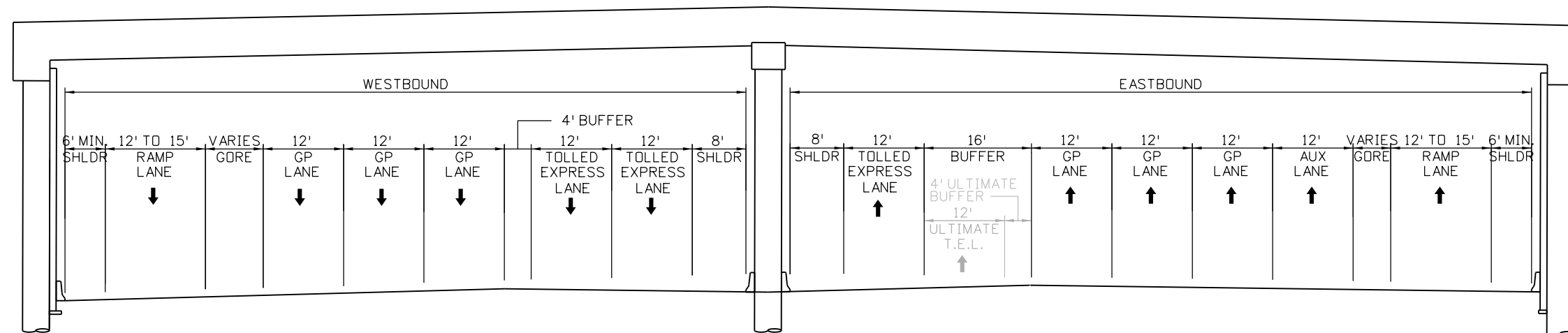
Region 1 **KJS**

PRELIMINARY
No Revisions:
Revised:
Void:

I-70 MAINLINE TYPICAL SECTIONS			
Designer:	Structure Numbers		
Detailer:			
Sheet Subset: 10B Rdwy	Subset Sheets: 1 of 17		

Project No./Code	FBR 0704-234
	19631
Sheet Number	1

C:\AIN\3162_1:56:25 PM S:\170Data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC_14.2\13599BRDG_TypSec01_ACT 14.2 - Sht 5.dgn

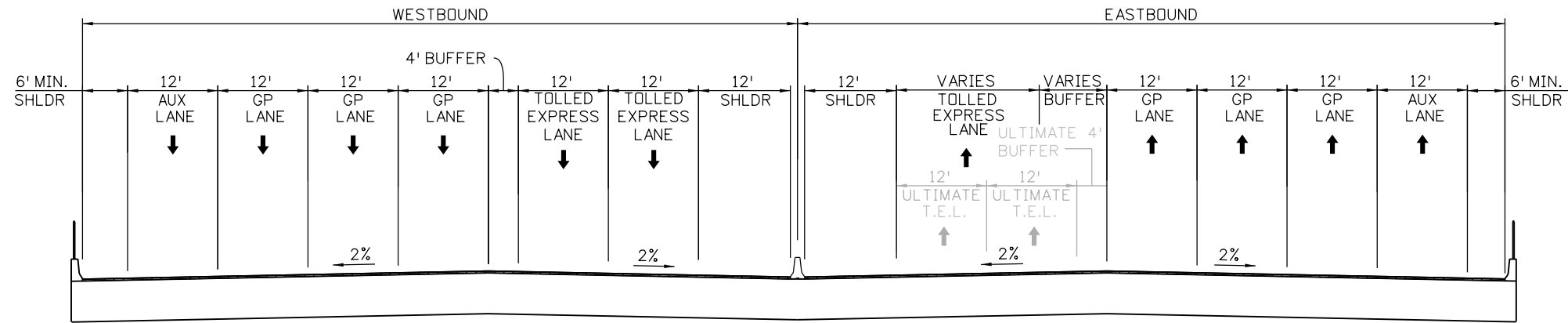


I-70 COVER
(STR. NO. E-17-AEL)

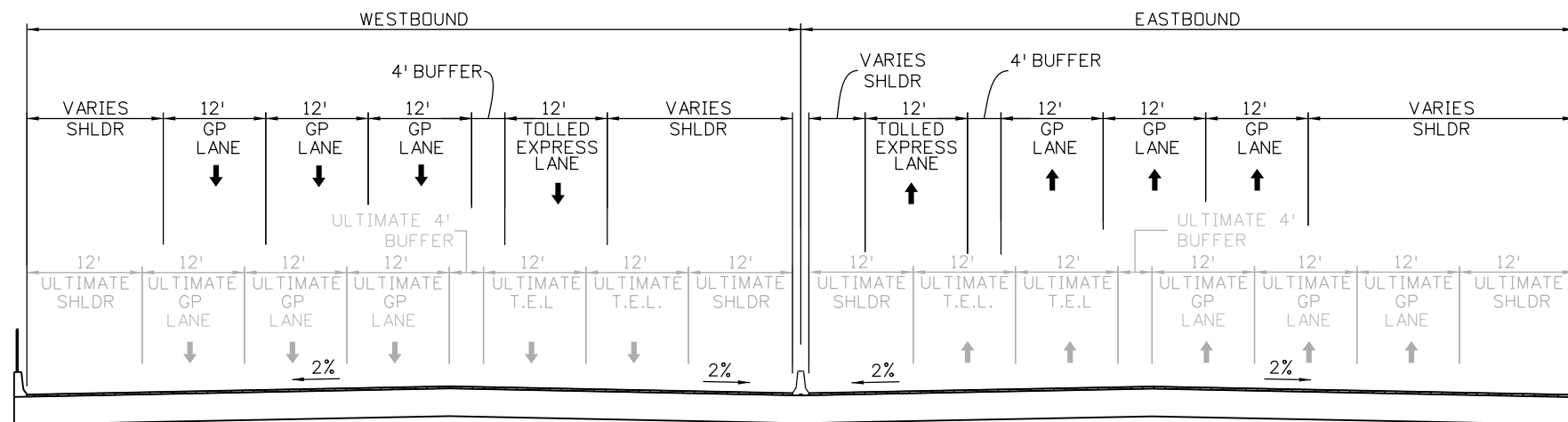
- NOTES:
1. STRUCTURAL DESIGN REQUIREMENTS, INCLUDING LOADING FOR COLUMBINE STREET AND CLAYTON STREET SHALL COMPLY WITH SCHEDULE 10, SECTION 13 STRUCTURES.

ATC 14.2

Print Date: 10/6/2017		Sheet Revisions				PRELIMINARY		STRUCTURE TYPICAL SECTIONS		Project No./Code	
File Name: 13599BRDG_TypSec01_ACT 14.2 - Sht 5.dgn		Date:	Comments	Init.		No Revisions:			FBR 0704-234		
Horiz. Scale: NTS Vert. Scale: NTS						Revised:	Designer:	Structure Numbers	19631		
Unit Information Unit Leader Initials						Void:	Detailer:	Sheet Subset: 10B Struct	Subset Sheets: 05 of 12	Sheet Number	5
ATKINS 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276					Colorado Department of Transportation 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1 KJS						



I-70 MAINLINE OVER MONACO
(STR. NO. E-17-AFJ WB, E-17-AFK EB)




I-70 MAINLINE OVER QUEBEC STREET
(STR. NO. E-17-AFQ WB, E-17-AFR EB)

ATC 14.2

Print Date: 10/6/2017	
File Name: I3599BRDG_TypSec01_ACT 14.2 - Sht 10.dgn	
Horiz. Scale: NTS	Vert. Scale: NTS
Unit Information	Unit Leader Initials
ATKINS	7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276

Sheet Revisions		
Date:	Comments	Init.

Colorado Department of Transportation



2000 South Holly Street
Denver, CO 80222
Phone: 303-757-9934 FAX: 303-757-9907

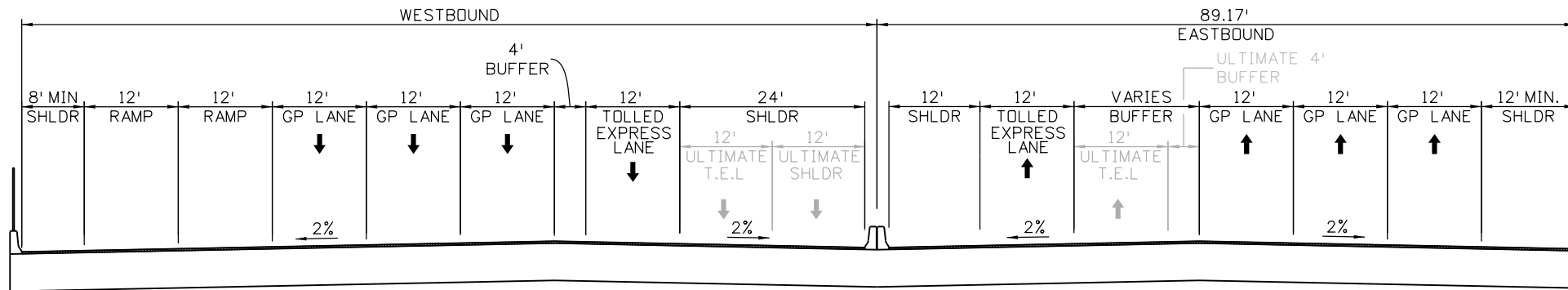
Region 1 KJS

PRELIMINARY
No Revisions:
Revised:
Void:

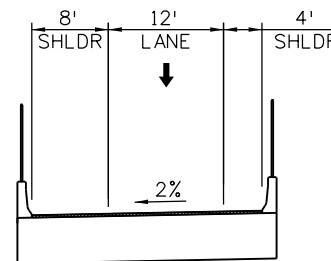
STRUCTURE TYPICAL SECTIONS	
Designer:	Structure Numbers
Detailer:	
Sheet Subset: 10B Struct	Subset Sheets: 10 of 12

Project No./Code	FBR 0704-234
	19631
Sheet Number	10

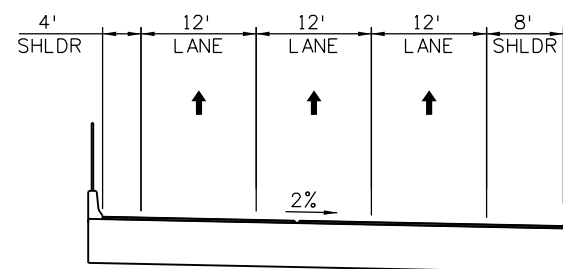
G:\AIN3162_2020206 PM S:\170Data\13599\Design\Drawings\Procurement Plans\KMP ATC Updates\ATC 14.2\13599BRDG_TypSec01_ACT 14.2 - Sht 10.dgn



I-70 OVER DENVER ROCK ISLAND RR
(STR. NO. E-17-AFN WB, E-17-AFD EB)



STAPLETON DR. N. OVER DENVER ROCK ISLAND RR
(STR. NO. E-17-ADT)



QUEBEC EASTBOUND EXIT RAMP OVER DENVER ROCK ISLAND RR
(STR. NO. E-17-ADU)

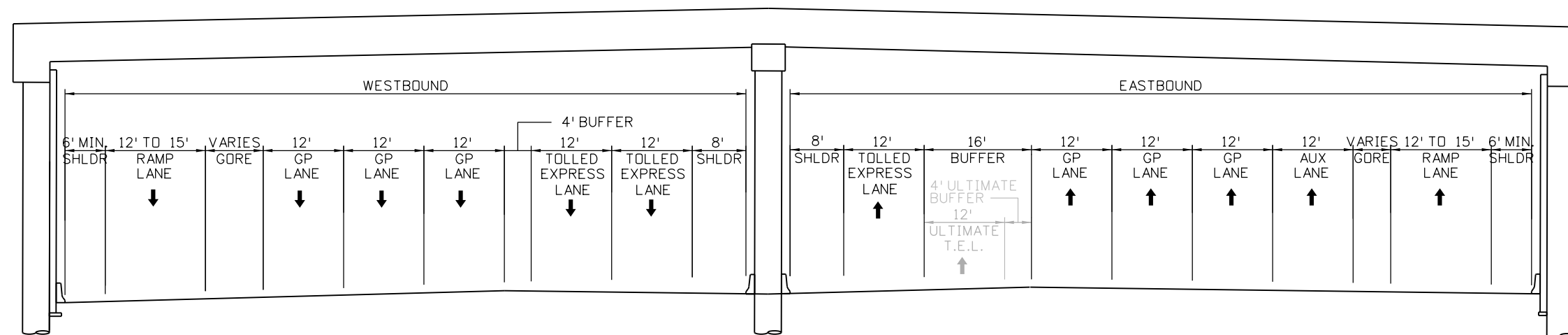
ATC 14.2

Print Date: 10/6/2017		Sheet Revisions			Colorado Department of Transportation 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1	PRELIMINARY	STRUCTURE TYPICAL SECTIONS		Project No./Code
File Name: I3599BRDG_TypSec01_ACT 14.2 - Sht 11.dgn		Date:	Comments	Init.		No Revisions:			FBR 0704-234
Horiz. Scale: NTS Vert. Scale: NTS						Revised:	Designer:	Structure Numbers	19631
Unit Information Unit Leader Initials						Void:	Detailer:	Sheet Subset: 10B Struct	Subset Sheets: 11 of 12
 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276									

Exhibit D
ATC 14.2 Modifications

Attached.

C:\AIN\3162_1:56:25 PM S:\170Data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC_14.2\13599BRDG_TypSec01_ACT 14.2 - Sht 5.dgn

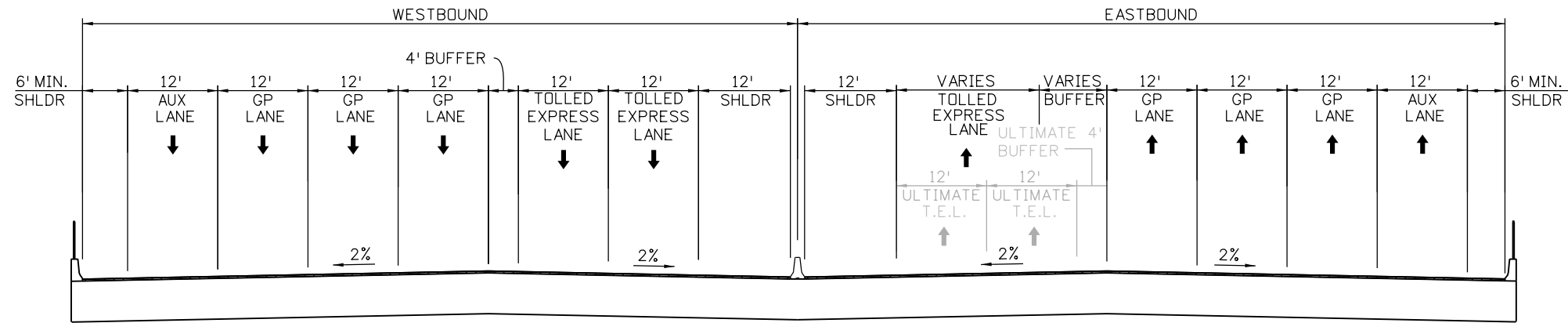


I-70 COVER
(STR. NO. E-17-AEL)

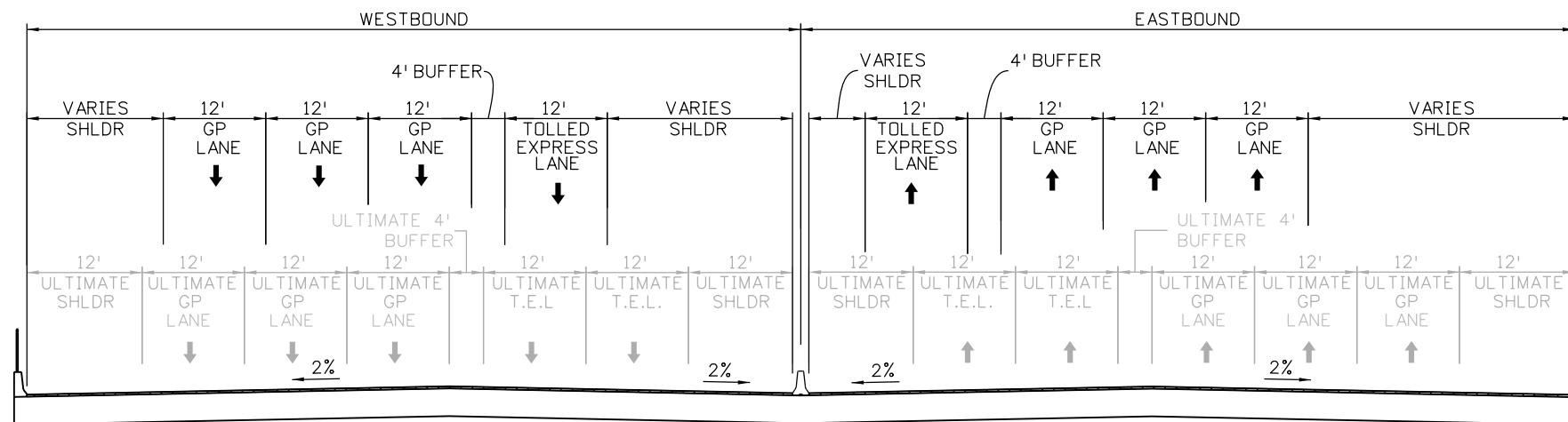
NOTES:
1. STRUCTURAL DESIGN REQUIREMENTS, INCLUDING LOADING FOR COLUMBINE STREET AND CLAYTON STREET SHALL COMPLY WITH SCHEDULE 10, SECTION 13 STRUCTURES.

ATC 14.2

Print Date: 10/6/2017		Sheet Revisions				PRELIMINARY No Revisions: Revised: Void:	STRUCTURE TYPICAL SECTIONS			Project No./Code	
File Name: 13599BRDG_TypSec01_ACT 14.2 - Sht 5.dgn		Date:	Comments	Init.						FBR 0704-234	
Horiz. Scale: NTS Vert. Scale: NTS							19631				
Unit Information Unit Leader Initials							Sheet Number 5				
7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276					2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1 KJS	Designer: Detailer: Sheet Subset: 10B Struct	Structure Numbers Subset Sheets: 05 of 12				



I-70 MAINLINE OVER MONACO
(STR. NO. E-17-AFJ WB, E-17-AFK EB)




I-70 MAINLINE OVER QUEBEC STREET
(STR. NO. E-17-AFQ WB, E-17-AFR EB)

ATC 14.2

Print Date: 10/6/2017	
File Name: I3599BRDG_TypSec01_ACT 14.2 - Sht 10.dgn	
Horiz. Scale: NTS	Vert. Scale: NTS
Unit Information	Unit Leader Initials
ATKINS	7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276

Sheet Revisions		
Date:	Comments	Init.

Colorado Department of Transportation



2000 South Holly Street
Denver, CO 80222
Phone: 303-757-9934 FAX: 303-757-9907

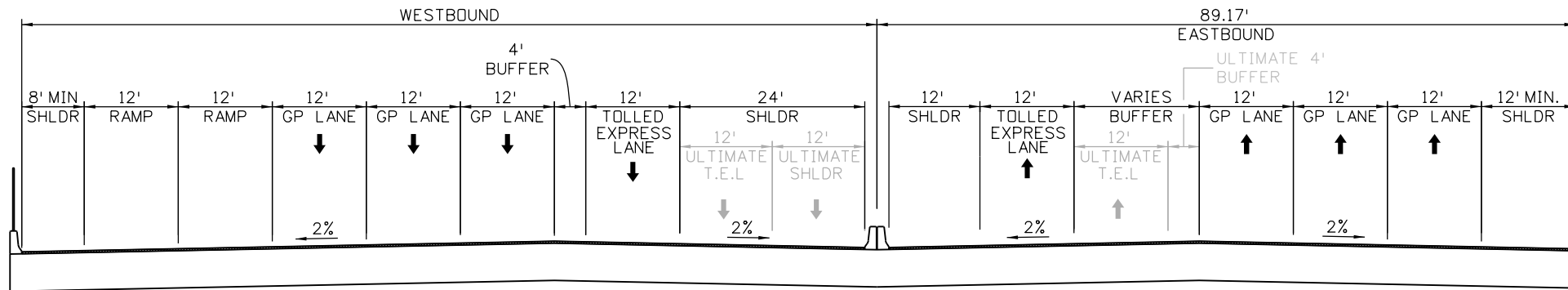
Region 1 KJS

PRELIMINARY	
No Revisions:	
Revised:	
Void:	

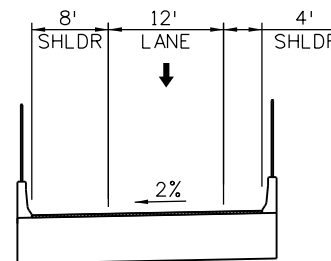
STRUCTURE TYPICAL SECTIONS			
Designer:	Structure Numbers		
Detailer:			
Sheet Subset: 10B Struct	Subset Sheets: 10 of 12		

Project No./Code	
FBR 0704-234	
19631	
Sheet Number	10

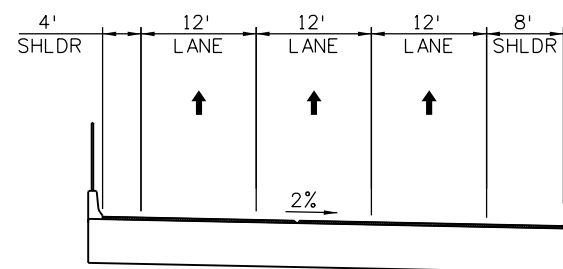
G:\AIN3162_2020206 PM S:\170Data\13599\Design\Drawings\Procurement Plans\KMP ATC Updates\ATC 14.2\13599BRDG_TypSec01_ACT 14.2 - Sht 10.dgn



I-70 OVER DENVER ROCK ISLAND RR
(STR. NO. E-17-AFN WB, E-17-AFD EB)



STAPLETON DR. N. OVER DENVER ROCK ISLAND RR
(STR. NO. E-17-ADT)



QUEBEC EASTBOUND EXIT RAMP OVER DENVER ROCK ISLAND RR
(STR. NO. E-17-ADU)

ATC 14.2

Print Date: 10/6/2017	
File Name: I3599BRDG_TypSec01_ACT 14.2 - Sht 11.dgn	
Horiz. Scale: NTS Vert. Scale: NTS	
Unit Information Unit Leader Initials	
ATKINS 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276	

Sheet Revisions		
Date:	Comments	Init.

Colorado Department of Transportation

2000 South Holly Street
Denver, CO 80222
Phone: 303-757-9934 FAX: 303-757-9907

Region 1 KJS

PRELIMINARY
No Revisions:
Revised:
Void:

STRUCTURE TYPICAL SECTIONS	
Designer:	Structure Numbers
Detailer:	
Sheet Subset: 10B Struct	Subset Sheets: 11 of 12

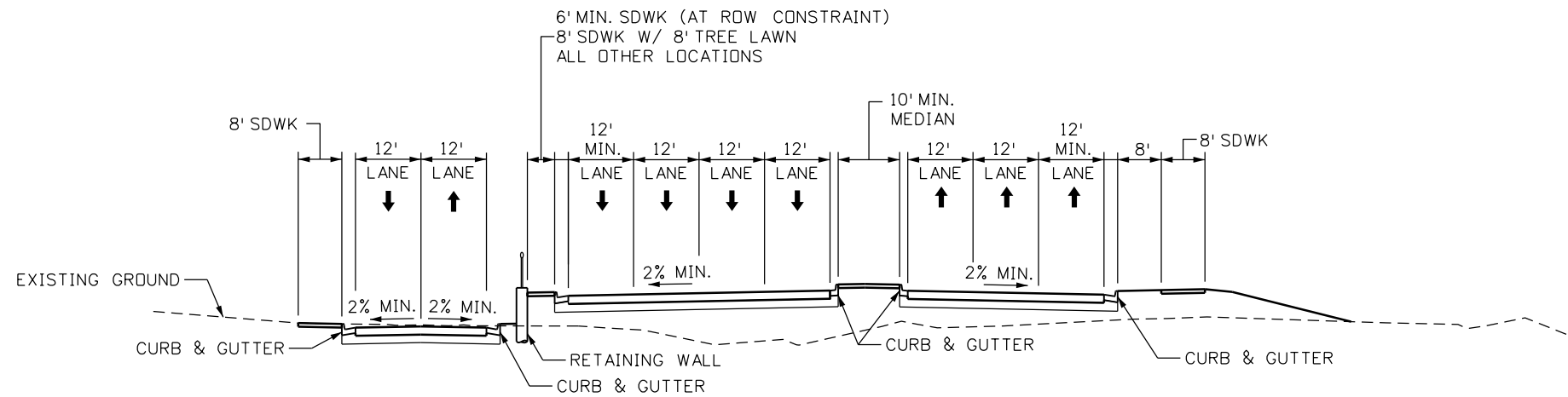
Project No./Code	FBR 0704-234
	19631
Sheet Number	11

G:\AIN\3162_2014\02 PM SA\1700data\13599\Design\Drawings\Procurement Plans\KMP ATC Updates\ATC 14.2\13599BRDG_TypSec01_ACT 14.2 - Sht 11.dgn

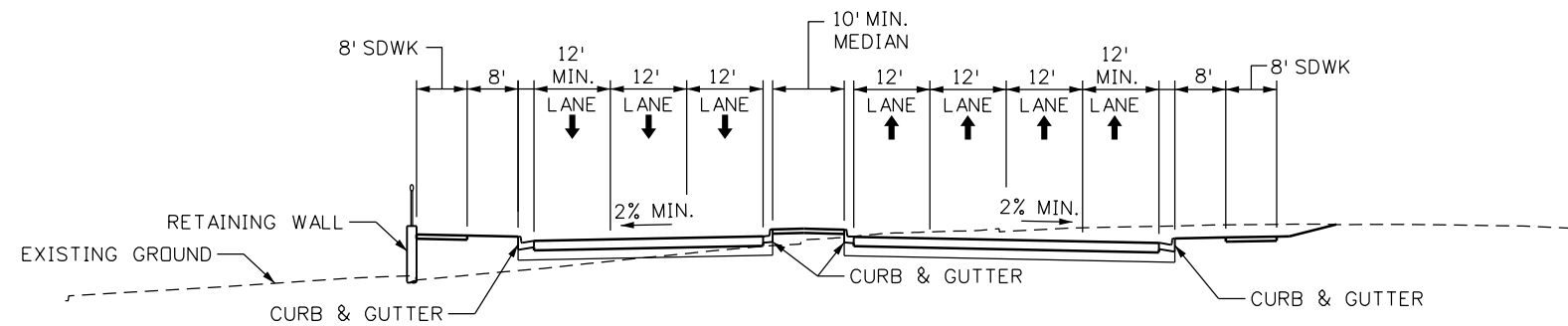
Exhibit E
ATC 18.1 Modifications

Attached.

G:\IN\3162_8:48:48 AM S:\1700data\13599_Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC 18.1\13599DES_Procurement_TypicalSect-11-Section 10B_Colorado_ACT 18.1 - Sht 11.dgn



COLORADO BLVD
NORTH OF I-70
(SEE NOTE 1)



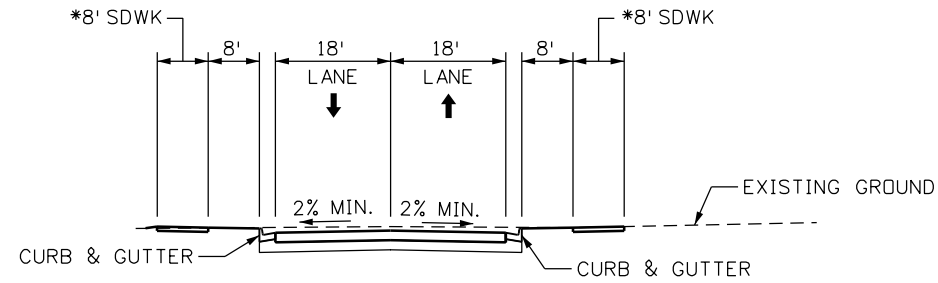
COLORADO BLVD
SOUTH OF I-70
(SEE NOTE 1)

- NOTES:
1. COMPOUND CROSS SLOPE (1% NORMAL CROWN FOR LEFT TURN LANES, 2% CROSS SLOPE FOR THROUGH LANES) AS APPROVED BETWEEN 46TH AVE NORTH AND 46TH AVE SOUTH.

ATC 18.1

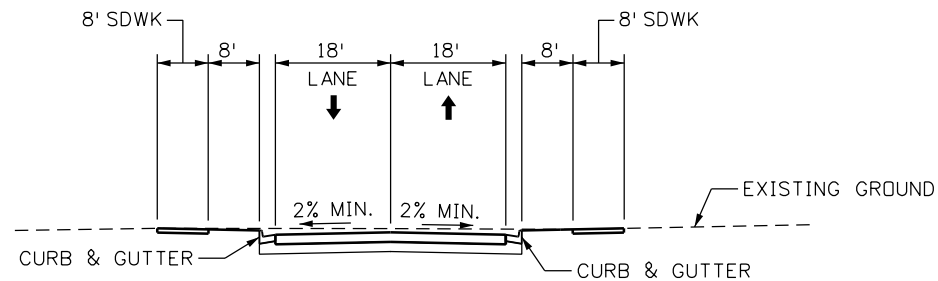
Print Date: 11/15/2017		Sheet Revisions				PRELIMINARY		COLORADO BLVD TYPICAL SECTIONS		Project No./Code	
File Name: 13599DES_Procurement_TypicalSect-11-Section 10B_Colorado_ACT		18.1 - Sht 11.dgn	Date:	Comments		Init.	No Revisions:			FBR 0704-234	
Horiz. Scale: NTS		Unit Information	Unit Leader Initials				Revised:	Designer:	Structure Numbers	19631	
7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276							Void:	Detailer:	Sheet Subset: Rdwy Typ	Subset Sheets: 11 of 17	Sheet Number
Colorado Department of Transportation 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1 KJS											

G:\IN\3162_8:4:2:07 AM S:\1700data\13599\Design\Drawings\Procurement Plans\KMP ATC Updates\ATC 18.1\13599DES_Procurement_TypicalSect-10-Section 10B_Cook-Monroe_ACT 18.1 - Sht 10.dgn



COOK ST

*PROVIDE SIDEWALK SOUTH OF I-70 ONLY
(SEE NOTE 1)




MONROE ST

(SEE NOTE 2)

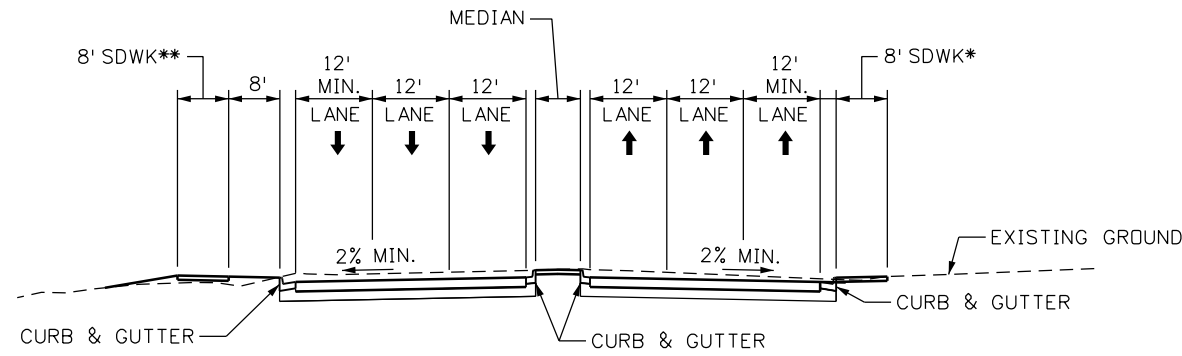
NOTES:

1. 1% NORMAL CROWN CROSS SLOPES AS APPROVED BETWEEN 46TH AVE SOUTH AND 46TH AVE NORTH.
2. 2% REVERSE CROWN CROSS SLOPE AS APPROVED BETWEEN 46TH AVE SOUTH AND 46TH AVE NORTH.

ATC 18.1

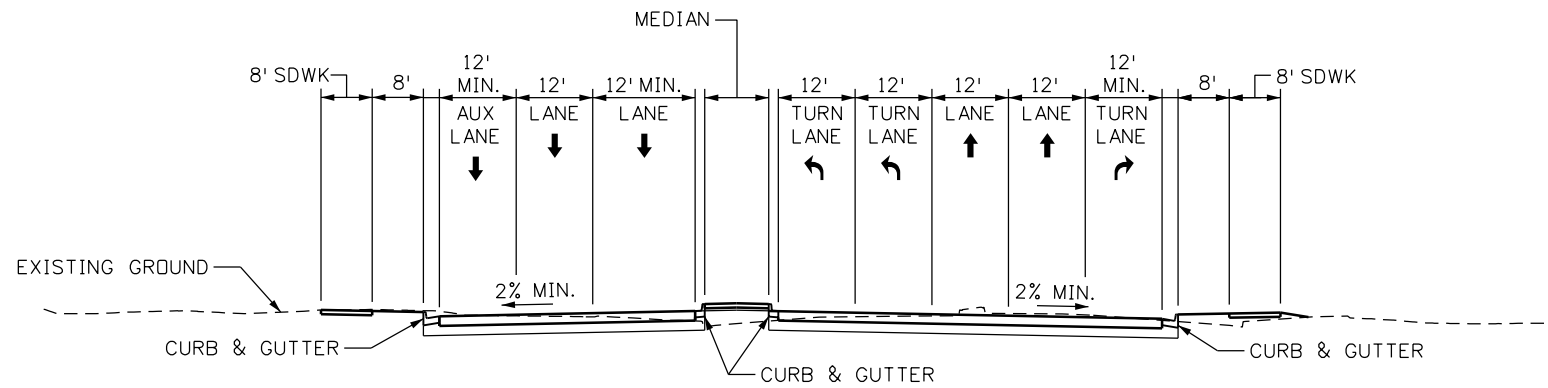
Print Date: 11/15/2017		Sheet Revisions	Colorado Department of Transportation	PRELIMINARY	COOK ST AND MONROE ST TYPICAL SECTIONS	Project No./Code	
File Name: 13599DES_Procurement_TypicalSect-10-Section 10B_Cook-Monroe_ACT 18.1 - Sht 10.dgn	Date:	Comments	 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1	No Revisions:	Designer: Detailer:	FBR 0704-234	
Horiz. Scale: NTS Vert. Scale: NTS				Revised:		Structure Numbers	19631
Unit Information Unit Leader Initials				Void:	Sheet Subset: Rdwy Typ	Subset Sheets: 10 of 17	Sheet Number
ATKINS 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276				KJS			10

G:\IN\3162_8:35:13 AM S:\170Data\13599\Design\Drawings\Procurement\Plans\KMP_ATC_Updates\ATC_18.1\13599DES_Procurement_TypicalSect-09-Section 10B_Steel_ACT 18.1 - Sht 9.dgn



VASQUEZ BLVD

*8' SDWK WITH 8' TREE LAWN WHERE ROW IS AVAILABLE
 **8' ATTACHED SDWK NORTH OF 47TH AVE
 (SEE NOTE 1)




STEELE ST

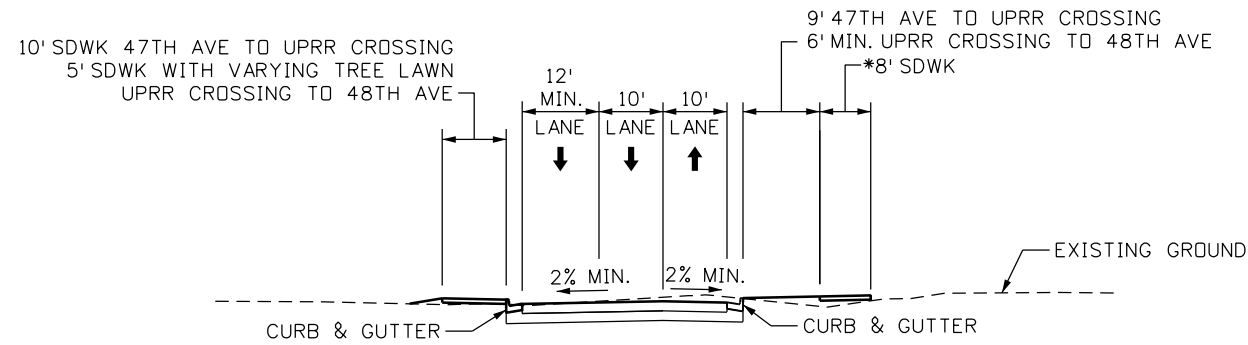
(SEE NOTE 1)

NOTE:
 1. 1% NORMAL CROWN CROSS SLOPES AS APPROVED
 BETWEEN 46TH AVE SOUTH AND 46TH AVE NORTH.

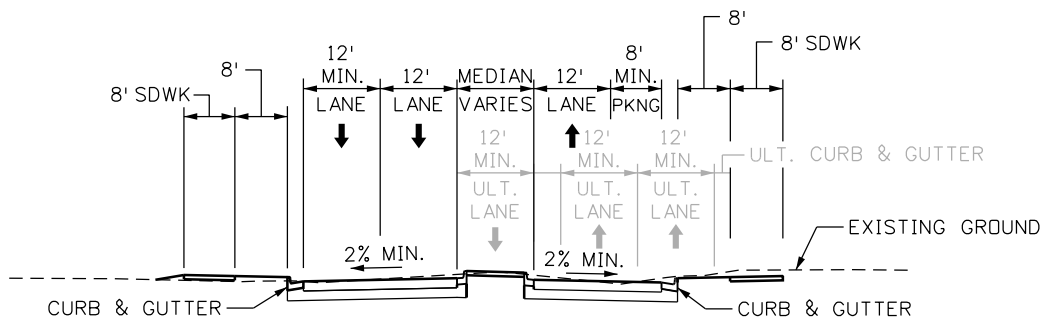
ATC 18.1

Print Date: 11/15/2017		Sheet Revisions			Colorado Department of Transportation		PRELIMINARY		STEELE ST/VASQUEZ BLVD TYPICAL SECTIONS		Project No./Code			
File Name: 13599DES_Procurement_TypicalSect-09-Section 10B_Steel_ACT 18.1 - Sht 9.dgn		Date:	Comments	Init.	 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907		No Revisions:		Designer:		Structure Numbers		FBR 0704-234	
Horiz. Scale: NTS Vert. Scale: NTS							Revised:							
Unit Information Unit Leader Initials							Void:		Sheet Subset: Rdwy Typ		Subset Sheets: 9 of 17		Sheet Number 9	
ATKINS		7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276			Region 1		KJS							

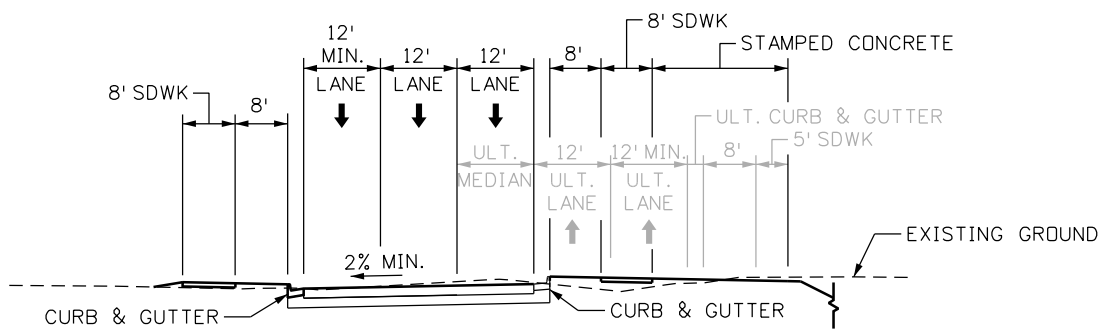
G:\IN\3162_8:36:54 AM S:\1700data\13599\Design\Drawings\Procurement Plans\KMP ATC Updates\ATC 18.1\13599DES_Procurement_TypicalSect-08-Section 10B_York_ACT 18.1 - Sht 8.dgn



YORK ST
47TH AVE TO 48TH AVE
*MAXIMIZE SIDEWALK WIDTH WITHIN ROW,
6' SDWK PERMISSIBLE WITHIN ROW CONSTRAINTS



YORK ST
NORTH OF I-70 MAINLINE TO 47TH AVE
(SEE NOTE 1)



YORK ST
SOUTH OF I-70 MAINLINE
(SEE NOTE 1)

- NOTES:
- 1% NORMAL CROWN CROSS SLOPES AS APPROVED BETWEEN 46TH AVE SOUTH AND 46TH AVE NORTH.
 - REFER TO REFERENCE DOCUMENT 29.10.10.09 UPRR YORK STREET CROSSING PLANS FOR YORK ST AT-GRADE CROSSING WARNING DEVICE AND SIGNAL DESIGN AT 47TH AVE.

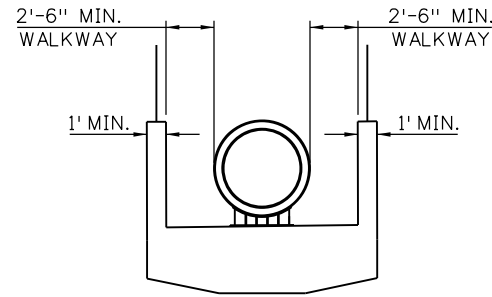
ATC 18.1

Print Date: 11/15/2017		Sheet Revisions	Colorado Department of Transportation	PRELIMINARY	YORK ST TYPICAL SECTIONS		Project No./Code
File Name: 13599DES_Procurement_TypicalSect-08-Section 10B_York_ACT 18.1 - Sht 8.dgn		Date: Comments Init.	 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907	No Revisions:			FBR 0704-234
Horiz. Scale: NTS Vert. Scale: NTS				Revised:	Designer:	Structure Numbers	19631
Unit Information Unit Leader Initials				Void:	Detailer:	Sheet Subset: Rdwy Typl	8 of 17
ATKINS 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276			Region 1				Sheet Number 8

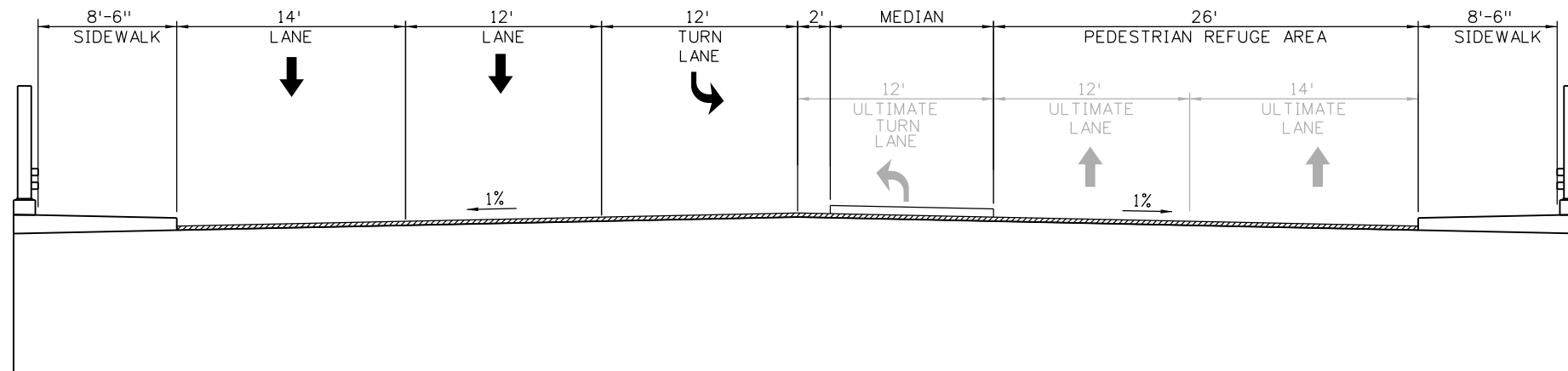
Exhibit F
ATC 18.1 Modifications

Attached.

G:\IN\3162_10:37:11 AM S:\170Data\13599\Design\Drawings\Procurement\Plans\KMP_ATC_Updates\ATC_18.1\13599BRDG_TypSec01_ACT 18.1 - Sht 2.dgn



SANITARY SEWER BRIDGE OVER I-70 MAINLINE
(STR. NO. MISC-E-17-IT)



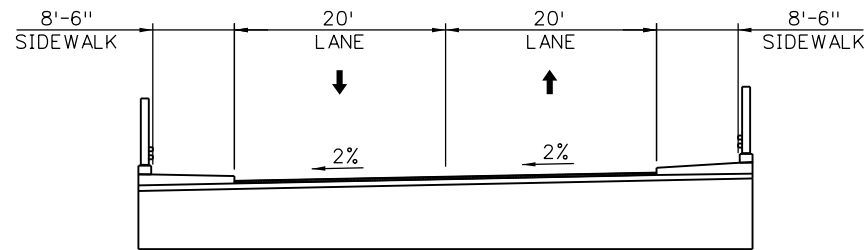
YORK STREET OVER I-70 MAINLINE
(STR. NO. E-17-AEY)

NOTES:
1. PROVIDE A MINIMUM CROSS SLOPE OF 1% FOR THE SANITARY SEWER BRIDGE OVER I-70 MAINLINE.

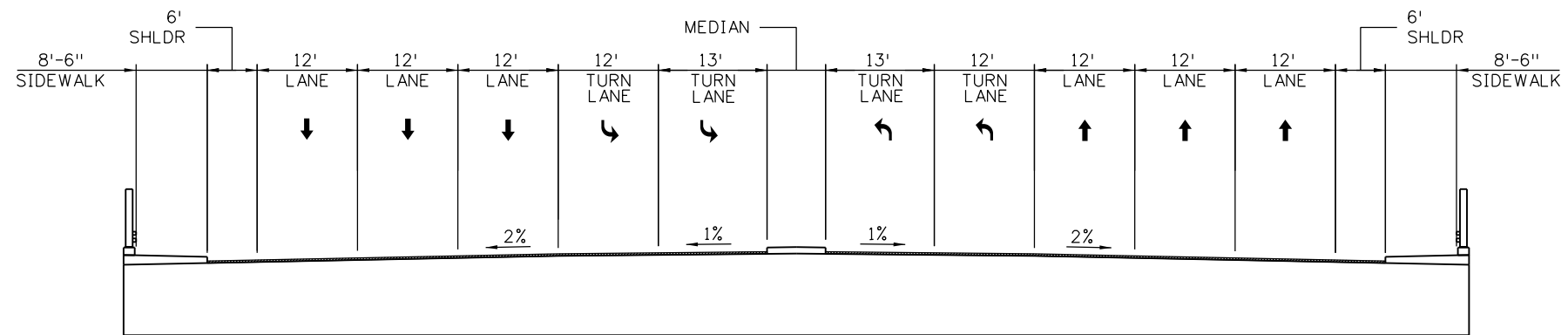
ATC 18.1

Print Date: 10/27/2017		Sheet Revisions	Colorado Department of Transportation	PRELIMINARY	STRUCTURE TYPICAL SECTIONS	Project No./Code																		
File Name: 13599BRDG_TypSec01_ACT 18.1 - Sht 2.dgn		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Date:</th> <th style="width: 55%;">Comments</th> <th style="width: 30%;">Init.</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	Date:	Comments	Init.										<p>2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907</p>	No Revisions:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Designer:</td> <td style="width: 70%;"> </td> </tr> <tr> <td>Detailer:</td> <td> </td> </tr> <tr> <td>Sheet Subset: 10B Struct</td> <td>Subset Sheets: 02 of 12</td> </tr> </table>	Designer:		Detailer:		Sheet Subset: 10B Struct	Subset Sheets: 02 of 12	FBR 0704-234
Date:	Comments	Init.																						
Designer:																								
Detailer:																								
Sheet Subset: 10B Struct	Subset Sheets: 02 of 12																							
Horiz. Scale: NTS Vert. Scale: NTS			<p>Region 1</p>	Revised:		19631																		
Unit Information Unit Leader Initials			KJS	Void:		Sheet Number 2																		
<p>7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276</p>																								

G:\IN\3162_10-29-13 AM_S:\1700data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC_18.1\13599BRDG_TypSec01_ACT 18.1 - Sht 8.dgn



MONROE STREET OVER I-70 MAINLINE
(STR. NO. E-17-AFC)

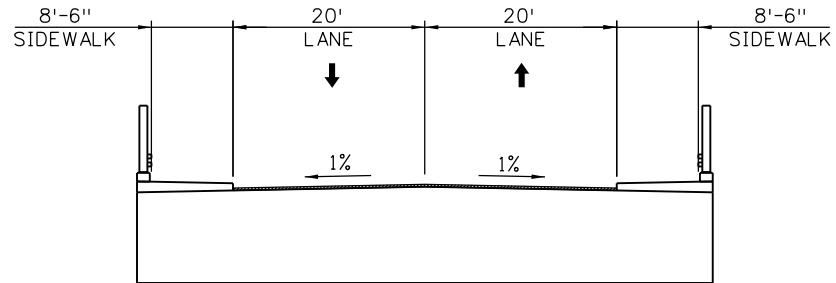


COLORADO BOULEVARD OVER I-70 MAINLINE
(STR. NO. E-17-AFD)

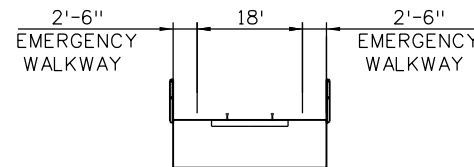
ATC 18.1

Print Date: 10/27/2017		Sheet Revisions			Colorado Department of Transportation 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1	PRELIMINARY		STRUCTURE TYPICAL SECTIONS			Project No./Code	
File Name: 13599BRDG_TypSec01_ACT 18.1 - Sht 8.dgn		Date:	Comments	Init.		No Revisions:					FBR 0704-234	
Horiz. Scale: NTS Vert. Scale: NTS						Revised:	Designer:	Structure Numbers			19631	
Unit Information Unit Leader Initials						Void:	Detailer:		Sheet Subset: 10B Struct	Subset Sheets: 08 of 12	Sheet Number 8	
7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276												

C:\AIN\3162_10:30:20 AM S:\1700data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC_18.1\13599BRDG_TypSec01_ACT 18.1 - Sht 7.dgn



COOK STREET OVER I-70 MAINLINE
(STR. NO. E-17-AEP)



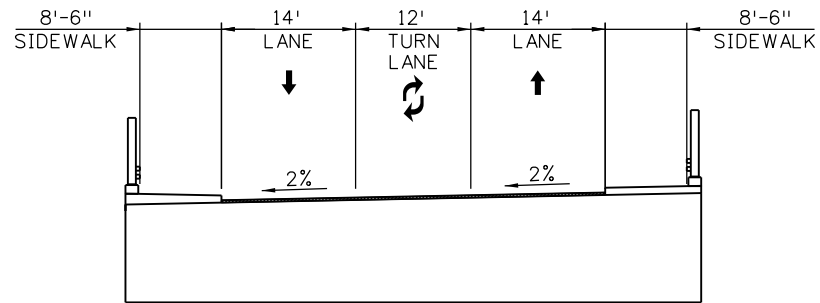
BNSF MARKET LEAD OVER I-70 MAINLINE
(STR. NO. E-17-AFA)

NOTE:
1. BNSF MARKET LEAD OVER I-70 MAINLINE BRIDGE SHALL CONFORM TO BNSF/UPRR GUIDELINES FOR GRADE SEPARATIONS.

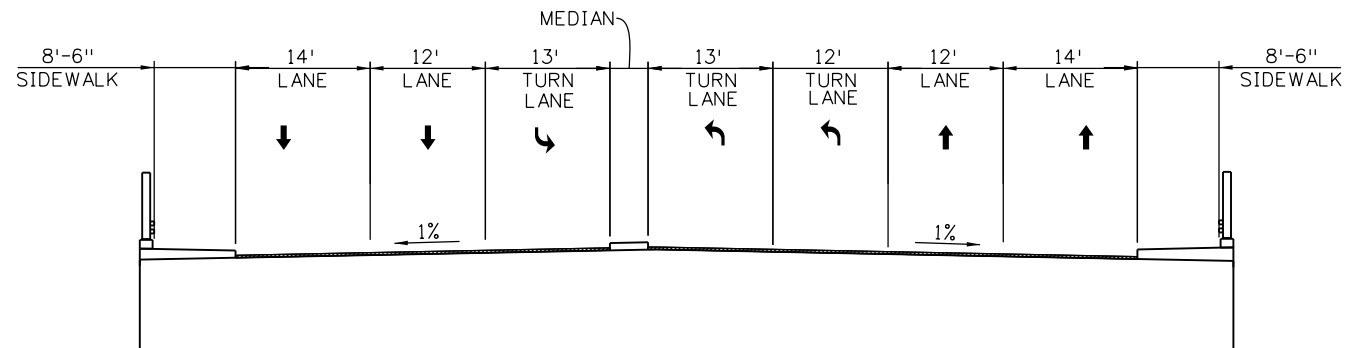
ATC 18.1

Print Date: 10/27/2017		Sheet Revisions			<p>Colorado Department of Transportation 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1 KJS</p>	PRELIMINARY		STRUCTURE TYPICAL SECTIONS		Project No./Code	
File Name: 13599BRDG_TypSec01_ACT 18.1 - Sht 7.dgn		Date:	Comments:	Init.:		No Revisions:			FBR 0704-234		
Horiz. Scale: NTS Vert. Scale: NTS						Revised:	Designer:	Structure Numbers:	19631		
Unit Information Unit Leader Initials						Void:	Detailer:	Sheet Subset: 10B Struct	Subset Sheets: 07 of 12	Sheet Number 7	
ATKINS 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276											

G:\IN\3162_10:30:48 AM S:\170Data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC 18.1\13599BRDG_TypSec01_ACT 18.1 - Sht 6.dgn



FILLMORE STREET OVER I-70 MAINLINE
(STR. NO. E-17-AEN)

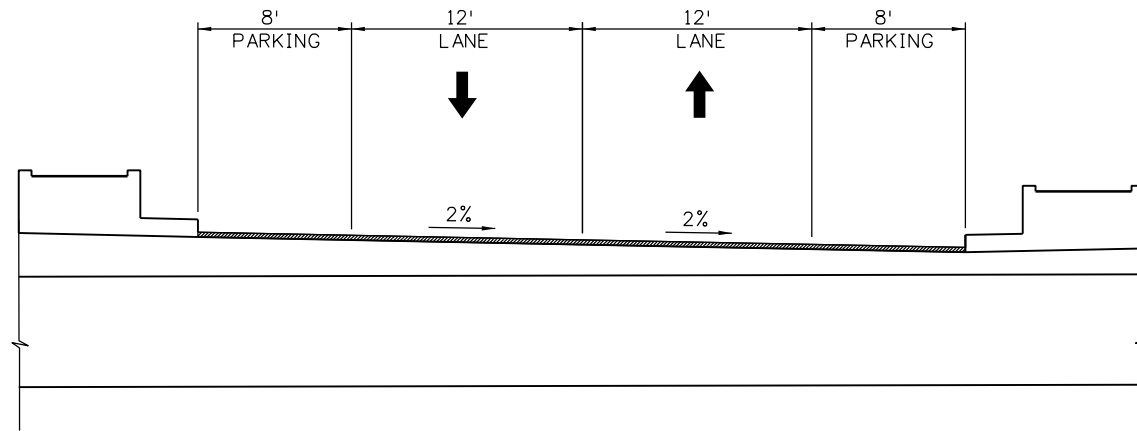


STEELE STREET OVER I-70 MAINLINE
(STR. NO. E-17-AEO)

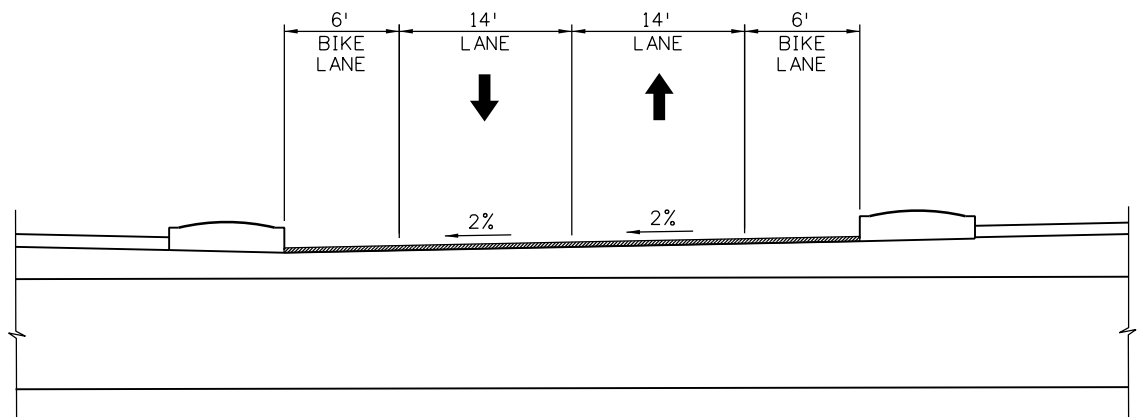
ATC 18.1

Print Date: 10/27/2017		Sheet Revisions			<p>Colorado Department of Transportation 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1 KJS</p>	PRELIMINARY		STRUCTURE TYPICAL SECTIONS			Project No./Code	
File Name: 13599BRDG_TypSec01_ACT 18.1 - Sht 6.dgn		Date:	Comments	Init.		No Revisions:					FBR 0704-234	
Horiz. Scale: NTS Vert. Scale: NTS						Revised:	Designer:	Structure Numbers			19631	
Unit Information Unit Leader Initials						Void:	Detailer:		Sheet Subset: 10B Struct	Subset Sheets: 06 of 12	Sheet Number 6	
ATKINS 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276												

G:\IN\3162_10:34:21 AM S:\1700Data\13599\Design\Drawings\Procurement Plans\KMP ATC Updates\ATC 18.1\13599BRDG_TypSec01_ACT 18.1 - Sht 4.dgn




COLUMBINE STREET ON COVER
(STR. NO. E-17-AEL)

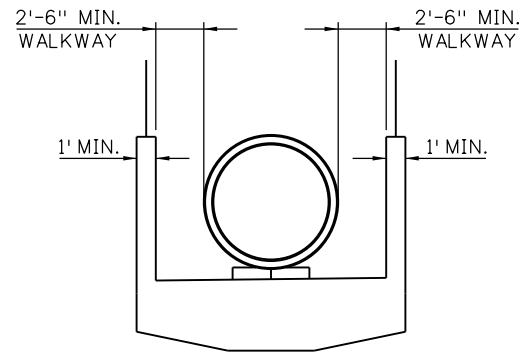


CLAYTON STREET ON COVER
(STR. NO. E-17-AEL)

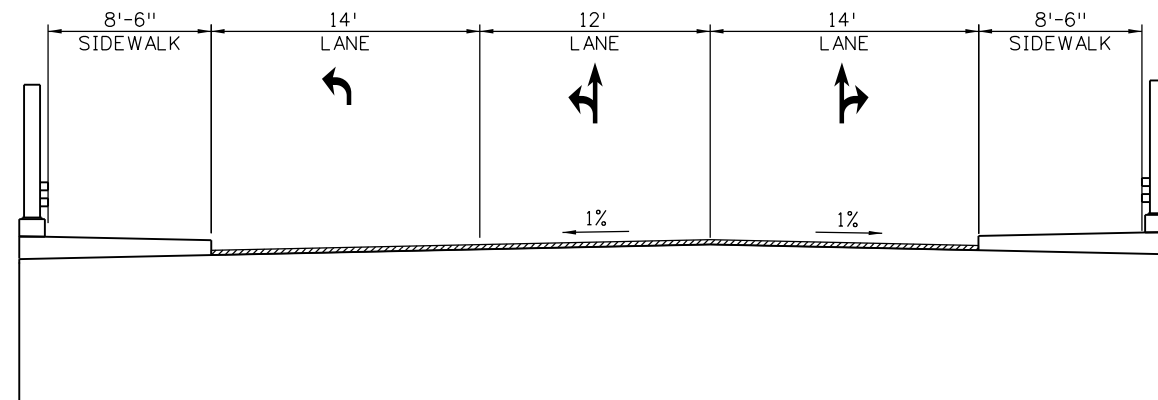
ATC 18.1

Print Date: 10/27/2017		<table border="1"> <thead> <tr> <th colspan="3">Sheet Revisions</th> </tr> <tr> <th>Date:</th> <th>Comments</th> <th>Init.</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>			Sheet Revisions			Date:	Comments	Init.													Colorado Department of Transportation  2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1		PRELIMINARY No Revisions: Revised: Void:		STRUCTURE TYPICAL SECTIONS Designer: Detailer: Sheet Subset: 10B Struct			Project No./Code FBR 0704-234 19631	
Sheet Revisions																															
Date:	Comments	Init.																													
File Name: 13599BRDG_TypSec01_ACT 18.1 - Sht 4.dgn		7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276 ATKINS		KJS		Structure Numbers Subset Sheets: 04 of 12			Sheet Number 4																						
Horiz. Scale: NTS Vert. Scale: NTS		Unit Information Unit Leader Initials																													

C:\AIN\3182_10:35:46 AM S:\1700data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC 18.1\13599BRDG_TypSec01_ACT 18.1 - Sht 3.dgn



STORM SEWER BRIDGE OVER I-70 MAINLINE
(STR. NO. MISC-E-17-IU)



JOSEPHINE STREET OVER I-70
(STR. NO. E-17-AEZ)

NOTES:
1. PROVIDE A MINIMUM CROSS SLOPE OF 1% FOR THE STORM SEWER BRIDGE OVER I-70 MAINLINE.

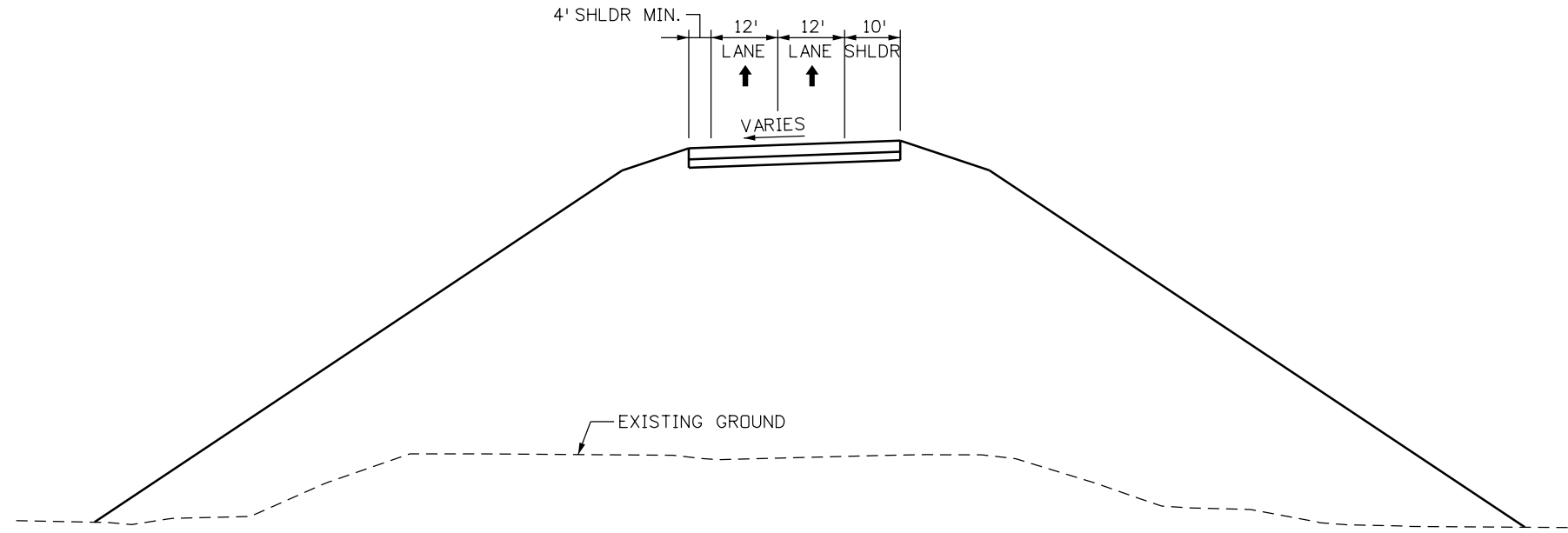
ATC 18.1

Print Date: 10/27/2017		Sheet Revisions			<p>Colorado Department of Transportation 2000 South Holly Street Denver, CO 80222 Phone: 303-757-9934 FAX: 303-757-9907 Region 1 KJS</p>	PRELIMINARY		STRUCTURE TYPICAL SECTIONS		Project No./Code	
File Name: 13599BRDG_TypSec01_ACT 18.1 - Sht 3.dgn		Date:	Comments	Init.		No Revisions:			FBR 0704-234		
Horiz. Scale: NTS Vert. Scale: NTS						Revised:	Designer:	Structure Numbers	19631		
Unit Information Unit Leader Initials						Void:	Detailer:	Sheet Subset: 10B Struct	Subset Sheets: 03 of 12	Sheet Number 3	
ATKINS 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276											

Exhibit G
ATC 28.1 Modifications

Attached.

G:\AIN\3162_21:7:56 PM S:\I70Data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC_28.1\13599DES_Procurement_TypicalSect-16-Section 10B_I-270 Ramp_ACT 28.1.dgn



I-270 EB CONNECTOR

ATC 28.1

Print Date: 10/6/2017
 File Name: 13599DES_Procurement_TypicalSect-16-Section 10B_I-270 Ramp_ACT 28.1.dgn
 Horiz. Scale: NTS Vert. Scale: NTS
 Unit Information Unit Leader Initials

ATKINS 7604 Technology Way, Suite 400
 Denver, CO 80237
 Phone: (303) 221-7275 Fax: (303) 221-7276

Sheet Revisions		
Date:	Comments	Init.

Colorado Department of Transportation



2000 South Holly Street
 Denver, CO 80222
 Phone: 303-757-9934 FAX: 303-757-9907

Region 1 KJS

PRELIMINARY
No Revisions:
Revised:
Void:

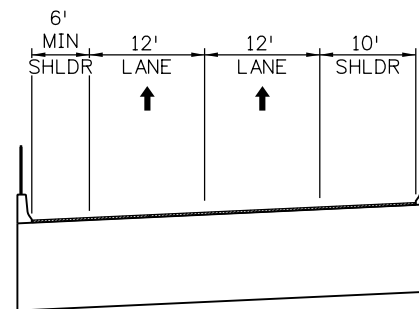
I-270 EB CONNECTOR TYPICAL SECTIONS		
Designer:	Structure Numbers	
Detailer:		
Sheet Subset: Rdwy Typ1	Subset Sheets: 16 of 17	

Project No./Code
FBR 0704-234
19631
Sheet Number 16

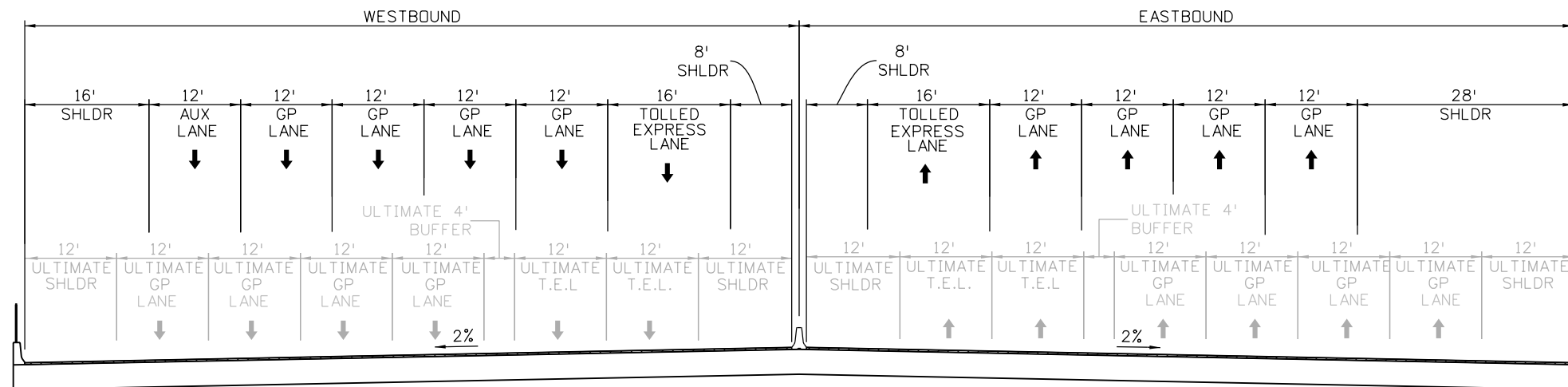
Exhibit H
ATC 28.1 Modifications

Attached.

G:\AN3182_21:7:03 PM S:\170Data\13599\Design\Drawings\Procurement Plans\KMP_ATC_Updates\ATC_28.1\13599BRDG_TypSec01_ACT_28.1 - Sht 12.dgn



I-270 EB CONNECTOR OVER I-70 MAINLINE
(STR. NO. E-17-AFS)



I-70 MAINLINE OVER PEORIA STREET
(STR. NO. E-17-AFT WB, E-17-AFU EB)

ATC 28.1

Print Date: 10/6/2017		Sheet Revisions				PRELIMINARY No Revisions: Revised: Void:	STRUCTURE TYPICAL SECTIONS			Project No./Code	
File Name: 13599BRDG_TypSec01_ACT 28.1 - Sht 12.dgn		Date:	Comments	Init.						FBR 0704-234	
Horiz. Scale: NTS Vert. Scale: NTS							19631				
Unit Information Unit Leader Initials							Sheet Number 12				
ATKINS 7604 Technology Way, Suite 400 Denver, CO 80237 Phone: (303) 221-7275 Fax: (303) 221-7276				Region 1	KJS	Sheet Subset: 10B Struct Subset Sheets: 12 of 12					

**Exhibit I
 ATC 68.0 Modifications**

Parcel # (In Fee Unless shown as Partial and/or TEs)	Design Section	DEPT = Department DEV = Developer ACQ = Acquisition PM = Property Mgmt.	Owner	Area of Partial Acquisition (Square Feet)	Date First Available for Possession
PE-26A (partial)	Brighton Boulevard To Quebec St. (Onsite Outfall)	DEPT – ACQ DEV – PM	UPRR	4,248	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)
PE-136C (Partial)	Brighton Boulevard to Colorado Boulevard (Onsite Outfall)	DEPT – ACQ DEV – PM	DRIRR	554	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)

Central 70 Project: Design and Construction Contract
 Schedule 28 (Proposal Extracts)

Parcel # (In Fee Unless shown as Partial and/or TEs)	Design Section	DEPT = Department DEV = Developer ACQ = Acquisition PM = Property Mgmt.	Owner	Area of Partial Acquisition (Square Feet)	Date First Available for Possession
PE-35 (Partial)	Brighton Boulevard to Colorado Boulevard (Onsite Outfall)	DEPT – ACQ DEV – PM	E&S Real Estate LLC	13,950	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)
PE-36 (Partial)	Brighton Boulevard to Colorado Boulevard (Onsite Outfall)	DEPT – ACQ DEV – PM	BNSF	4,200	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)
PE-37 (Partial)	Brighton Boulevard to Colorado Boulevard (Onsite Outfall)	DEPT – ACQ DEV – PM	G&K Services Inc., owner	30,250	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)

Central 70 Project: Design and Construction Contract
 Schedule 28 (Proposal Extracts)

Parcel # (In Fee Unless shown as Partial and/or TEs)	Design Section	DEPT = Department DEV = Developer ACQ = Acquisition PM = Property Mgmt.	Owner	Area of Partial Acquisition (Square Feet)	Date First Available for Possession
RW-38 (Partial)	Brighton Boulevard to Colorado Boulevard (Onsite Outfall)	DEPT – ACQ DEV – PM	Versacold USA, Inc.	93,800	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)
PE-39 (Partial)	Brighton Boulevard to Colorado Boulevard (Onsite Outfall)	DEPT – ACQ DEV – PM	Middleton Properties LLC	12,820	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)
PE-40 (Partial)	Brighton Boulevard to Colorado Boulevard (Onsite Outfall)	DEPT – ACQ DEV – PM	Rockyn Lazy L Land LLC	13,050	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)

Central 70 Project: Design and Construction Contract
 Schedule 28 (Proposal Extracts)

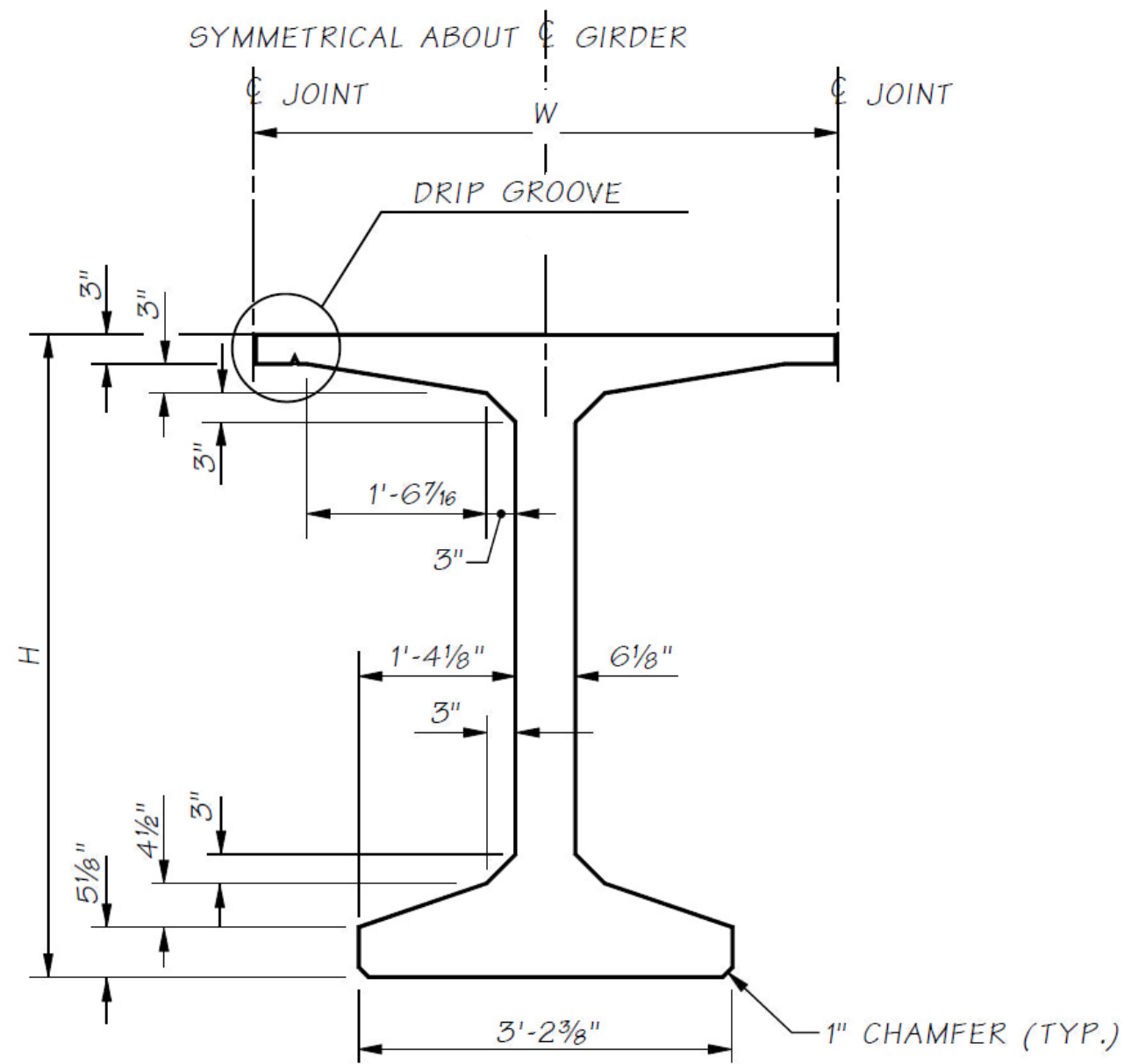
Parcel # (In Fee Unless shown as Partial and/or TEs)	Design Section	DEPT = Department DEV = Developer ACQ = Acquisition PM = Property Mgmt.	Owner	Area of Partial Acquisition (Square Feet)	Date First Available for Possession
PE-197 (Partial)	Brighton Boulevard to Colorado Blvd. (Onsite Outfall)	DEPT – ACQ DEV – PM	KAI IWI Investments, LLC	11,300	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)
PE-200 (Partial)	Brighton Boulevard to Colorado Blvd. (Onsite Outfall)	DEPT – ACQ DEV – PM	BH Partnership B LP	400	19 Months after Written Notice from Construction Contractor to Developer (which Notice Developer will promptly provide to the Department) for Acquisition (needed for Onsite Outfall System)

Exhibit J
ATC 30.1 Modifications

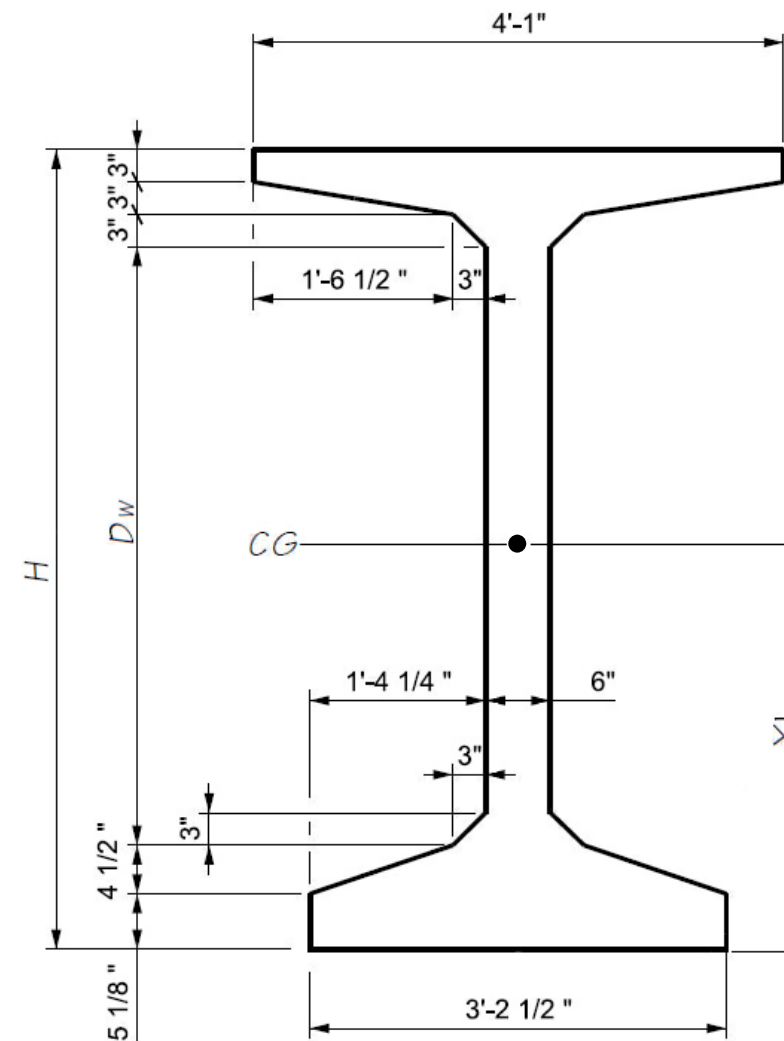
Attached.

Exhibit K
ATC 38.0 Modifications

Attached.



WSDOT WFxxTDG Girder



UDOT UBT Girder

Schedule 29
TIFIA Representations and Warranties

1. Definitions

For purposes of this Schedule:

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

“Material Adverse Effect” means a material adverse effect on (a) the CC Work, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Construction Contractor, (c) the legality, validity or enforceability of any material provision of any CC Project Document, or (d) the ability of the Construction Contractor or the Construction Guarantor to enter into, or perform or comply with any of its material obligations under, any CC Project Document to which it is a party.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

“Principals” has the meaning provided in 2 C.F.R. § 180.995.

“Represented Environmental Laws” has the meaning given in Section 2(j) of this Schedule 29 (*TIFIA Representations and Warranties*).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

2. Representations and Warranties

- (a) Litigation. There is no action, suit, proceeding or, to the knowledge of the Construction Contractor, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Construction Contractor, threatened against or affecting the ability of the Construction Contractor to execute, deliver and perform its obligations under the CC Project Documents to which it is a party. There is no action, suit, proceeding or, to the knowledge of the Construction Contractor, any inquiry or investigation before or by any court or other Governmental Authority pending or, to the knowledge of the Construction Contractor, threatened against or affecting the Construction Contractor that in any case could reasonably be expected to result in a Material Adverse Effect. To the Construction Contractor’s knowledge, there are no actions of the type described above pending, threatened against or affecting any

Central 70 Project: Design and Construction Contract
Schedule 29 (TIFIA Representations and Warranties)

Construction Contractor-Related Entity, except for matters arising after the Agreement Date that could not reasonably be expected to result in a Material Adverse Effect.

- (b) No Debarment. The Construction Contractor and its Principals (i) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency; (ii) have not within a three (3) year period preceding the Agreement Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) 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 clause (ii); and (iv) have not within a three (3) year period preceding the Agreement Date had one or more public transactions (federal, state or local) terminated for cause or default.
- (c) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Construction Contractor set forth in Schedule 2 to this Agreement are true, correct and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct and complete as of such earlier date).
- (d) Compliance with Federal Requirements. The Construction Contractor has complied, with respect to the CC Work, with all applicable requirements of NEPA, and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).
- (e) Governmental Approvals. All Governmental Approvals required as of the Agreement Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Construction Contractor of the CC Work have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval. The Construction Contractor has no reason to believe that any Governmental Approval that is not required until after any date as of which this representation and warranty is made will not be obtained or effected in the ordinary course in a timely manner when so required. The Construction Contractor is not in default (and no event has occurred and is continuing that with the giving of notice or the passage of time or both could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.
- (f) CC Project Documents. Each CC Project Document is in full force and effect and all conditions precedent to the obligations of the Construction Contractor and the Construction Guarantor under each CC Project Document have been satisfied. No event has occurred that gives the Construction Contractor or, to the Construction Contractor's knowledge, the Construction Guarantor, the right to terminate any such CC Project Document. The Construction Contractor is not in breach of any material term in or in default under any of such agreements or contracts and, to the knowledge of the Construction Contractor, the Construction Guarantor is not in breach of any material term therein or in default under any such agreement or contract.
- (g) OFAC; Anti-Money Laundering; Anti-Corruption.
 - (i) None of (a) the Construction Contractor, the Construction Guarantor, nor any of their respective directors, officers or employees, (b) any Person owning individually or in the aggregate, directly or indirectly, a ten percent (10%) or greater beneficial interest in the Construction Contractor or the Construction

Central 70 Project: Design and Construction Contract
Schedule 29 (TIFIA Representations and Warranties)

Guarantor, nor (c) to the knowledge of the Construction Contractor, any agent of the Construction Contractor or the Construction Guarantor that has acted on behalf of the Construction Contractor or the Construction Guarantor in connection with the Project, is a Sanctioned Person.

- (ii) The Construction Contractor, the Construction Guarantor, and the directors, officers, and employees of the Construction Contractor and the Construction Guarantor, are in compliance with all applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws and anti-drug trafficking or anti-terrorism laws and have not within the past five (5) years violated any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws or anti-drug trafficking or anti-terrorism laws.
- (iii) There are no pending or, to the knowledge of the Construction Contractor or the Construction Guarantor, threatened claims or investigations by any Governmental Authority against, or any internal investigations within the past five (5) years that have resulted in the disclosure of any violation of applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws or anti-drug trafficking or anti-terrorism laws to any Governmental Authority conducted by, the Construction Contractor or the Construction Guarantor with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or anti-drug trafficking or anti-terrorism laws.
- (iv) Each of the Construction Contractor and the Construction Guarantor has implemented and maintains in effect policies and procedures designed to ensure compliance by the Construction Contractor, the Construction Guarantor, and each of their respective directors, officers, and employees with all applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, and anti-drug trafficking or anti-terrorism laws.
- (v) None of the Construction Contractor, the Construction Guarantor, nor any Person owned or controlled by, any of the foregoing engages in any activity with respect to which an offeror must make a certification or representation pursuant to Subpart 25.7 of the Federal Acquisition Regulation, 48 C.F.R. § 25.7. To the Construction Contractor's knowledge, no Subcontractor of any tier, or Person owned or controlled by any Subcontractor of any tier engages in any activity with respect to which an offeror must make a certification or representation pursuant to Subpart 25.7 of the Federal Acquisition Regulation, 48 C.F.R. § 25.7.
- (vi) No transaction contemplated by this Agreement or any other CC Project Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.
- (h) Compliance with Law. Each of the Construction Contractor and each other Construction Contractor-Related Entity is in compliance in all material respects with all applicable laws (other than Represented Environmental Laws, which are addressed in (j), below). No notices of violation of any applicable law have been issued, entered or received by the Construction Contractor or, to the Construction Contractor's knowledge, any other Construction Contractor-Related Entity, other than, in each case, notices of violations that are immaterial.
- (i) Environmental Matters. Each of the Construction Contractor and, to the Construction Contractor's knowledge, each other Construction Contractor-Related Entity is in compliance with all laws applicable to the CC Work relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid

Central 70 Project: Design and Construction Contract
Schedule 29 (TIFIA Representations and Warranties)

waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> (collectively, "**Represented Environmental Laws**"). All Governmental Approvals for the CC Work relating to Represented Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Except as disclosed to the Developer in writing, neither the Construction Contractor nor any other Construction Contractor-Related Entity has received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Construction Contractor or such other Construction Contractor-Related Entity is not in full compliance with all Represented Environmental Laws and Governmental Approvals relating thereto in connection with the CC Work and, to the Construction Contractor's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Construction Contractor or any other Construction Contractor-Related Entity with any such Represented Environmental Law or Governmental Approval.

- (j) Sufficient Rights and Utilities. The Construction Contractor possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the performance of the CC Work. As of any date on which this representation and warranty is made, the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Construction Contractor sufficient to enable the Construction Contractor to perform the CC Work. All utility services, means of transportation, facilities and other materials necessary for the CC Work (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made, or will be made when needed, on commercially reasonable terms.
- (k) Insurance. The Construction Contractor is in compliance with all insurance obligations required under this Agreement as of each date on which this representation and warranty is made.
- (l) Intellectual Property. The Construction Contractor owns, or has adequate licenses or other valid rights to use, all material patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case, necessary for the CC Work. To the Construction Contractor's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Construction Contractor's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.
- (m) Patriot Act. The Construction Contractor and, to the Construction Contractor's knowledge, each Construction Contractor-Related Entity that is subject to compliance with the Patriot Act has established an anti-money laundering compliance program if and as required by the Patriot Act and is in compliance with the Patriot Act in all material respects.