

**CM/GC CONSTRUCTION CONTRACT  
DENVER COUNTY JAIL BUILDING 24 LEVELS 6 AND 7 BUILD OUT  
Bid Package 001**

**CONTRACT AND AGREEMENT**

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **FEDERAL CONTRACTING, INC., DBA BRYAN CONSTRUCTION, INCORPORATED**, a Colorado corporation, whose address is 7025 Campus Drive, Colorado Springs, Colorado 80920 “the Contractor”, jointly “the parties.”

**RECITALS**

1. The City wishes to redevelop Denver County Jail Building 24 levels 6 and 7 build out.

DENVER COUNTY JAIL BUILDING 24 LEVELS 6 AND 7 BUILD OUT  
Project No. GK05016\_30  
CONTRACT CONTROL NO. 201736311  
(the “PROJECT”)

2. In furtherance of the Project, the City has contracted with Wold Architects and Engineers (the “Designers or Design Consultants or Consultant Team”) to perform professional architectural and engineering design services for the programming and design of the Project.

3. Pursuant to Section 20-56 of the Denver Revised Municipal Code, the City commenced on August 1, 2016 and advertised for at least three (3) consecutive days, the City’s solicitation for qualification submissions from qualified contractors for the Project.

4. The City’s solicitation sought a contractor to furnish all Construction Manager/General Contractor (“CM/GC”) preconstruction and construction experience, expertise and services; and all construction administration, management, supervision, coordination and project construction experience and expertise; and all construction services, work effort, labor, tools, supplies, manufactured components, equipment, materials, and everything else necessary and required to assist in the Project design and to complete the construction of the Project on an expedited basis and within budget; while satisfying the City’s longstanding commitment to quality, efficiency, value, innovation, partnering, responsiveness to agency and community needs and compliance with all applicable regulatory requirements in the performance of general public improvements.

5. Submissions received pursuant to said advertisement were evaluated and formal proposals were requested from selected firms best meeting the City’s qualifications criteria for this Project.

6. Proposals received were evaluated and ranked by a selection committee and a recommendation was made to the Executive Director of Public Works who evaluated the Proposals and recommended that a contract or contracts for performance on the Project be made and entered into with the above named Contractor.

7. Based upon that ranking, the City and the Contractor entered into a Preconstruction Services Agreement, Contract No. PWADM-201632008-00, dated February 01, 2017, to perform preconstruction services.

8. In accordance with the terms and conditions of the Preconstruction Services Agreement, the Contractor has reviewed the Project Site and design documents and has performed constructability, availability, scheduling and cost estimating analysis on design documents prepared for the Project.

9. Based on this performance, the Contractor is thoroughly informed about the Project and the Project design. Contractor has submitted and the City has accepted a GMP to construct the Denver County Jail Building 24 levels 6 and 7 build out.

10. As a consequence of the Project's time limitations and in order to maintain the existing Project schedule, the Contractor and the City now desire to enter into a Construction Manager/General Contractor contract (the "Construction Contract") for a Guaranteed Maximum Price (the "GMP") for all of the Work necessary to complete the Project.

11. The Contractor is willing, able and has the present capacity to perform the construction phase services, as an independent contractor, in accordance with this Construction Contract, said advertisement, the preconstruction agreement and the referenced selection documents.

**NOW THEREFORE**, in consideration of the compensation to be paid the Contractor, the mutual agreements hereinafter contained, and subject to the terms hereinafter stated, it is mutually agreed as follows:

## **1.0 PROJECT SUMMARY AND DEFINITIONS:**

**1.1 Project.** The "Project" as used herein shall mean the:

Denver County Jail Building 24 levels 6 and 7 build out

**1.1.1** The Project is located at the "Project Site" 10500 Smith Road Denver, Colorado 80239.

**1.1.2** The specific details of the Project are more particularly set forth in the "Bid Pack 001 Package" prepared by the Designer and dated July 15, 2017.

**1.1.3** The Project shall be comprised of the following:

**1.1.3.1 Bid Package I Guaranteed Maximum Price (GMP) Work.** The GMP proposal provides all necessary labor, materials and equipment necessary to complete the work more particularly set out in Bid Package 1 Design Drawings and the Contractor's Basis for GMP Proposal.

**1.1.3.2 Bid Package II Guaranteed Maximum Price (GMP) Work.** The GMP proposal will include remaining building and site work. (to be incorporated by written amendment).

**1.1.4 Contractor Selection.** In accordance with the requirements of Section 20-56 of the Denver Revised Municipal Code (the "DRMC"), the City implemented and completed a competitive selection process to identify qualified Contractors to perform both preconstruction and construction services for the Project. The Contractor was selected as the first ranked proposer to perform such services for the City as set forth in the City's Request for Proposals (RFP) dated September 22, 2016; and the Contractor's RFP Submittals dated October 13, 2016. In referencing these solicitations and submissions herein, the City and the Contractor acknowledge that the scope of the Project, as presented and addressed by these documents, has materially evolved since the issuance of these documents and that some information presented will not be applicable to this Construction Contract or the Project.

**1.2 Budget.** The Contractor acknowledges and accepts that there are limited funds available to design and construct the Project. The Project construction budget (the “Budget”) is **Seven Million Three Hundred Seventy Thousand Six Hundred Eighty Nine Dollars and Zero Cents (\$7,370,689.00)**, and is subject to increase or decrease at the sole discretion of the Manager of Public Works. The Contract further acknowledges and accepts that the GMP Work must be completed within the construction budget. As part of this acknowledgment and acceptance, the Contractor shall at all times cooperate fully with the City and the Design Consultant to develop the Project and its various components for construction and ultimately construct the Project so as not to exceed the limited funds available in the Project Budget.

**1.3 Project Format.** In the performance of this Construction Contract, the Contractor acknowledges and accepts that scope and schedule are critical for Project delivery. Based on these considerations, the City has elected to utilize a Construction Manager/General Contractor (“**CM/GC**”) project delivery approach and will fast track the Project.

**1.3.1** The Contractor is familiar with this approach and understands that the CM/GC method is a specialized and rigorous delivery approach requiring maximum cooperation between all parties. As a consequence of the delivery approach, the Contractor acknowledges and accepts the following: (1) that the complete services to be rendered by the Contractor, the organizational and process inter-relationships governing construction and the construction cost, schedule and sequencing are either in the developmental stage or have not yet been fully defined; and (2) that portions of the Project could have their design completed as separate phases.

**1.3.2** In preparing and submitting the GMP Proposal, the Contractor understands, confirms and agrees that its responsibility under this CM/GC approach is to construct the Project in accordance with the Contract Documents. It is further understood and accepted that because the GMP will be based, in part, on incomplete design documents, the Contractor shall exercise reasonable care and its best diligence, efforts and judgment to determine the intent of the most recent Project design documents, has or will have carefully considered this intent, both express and inferable, in calculating the GMP and has or will have based all of its GMP calculations on the Scope of Work , program and standards of workmanship, and quality of construction, equipment, materials and finishes that can be inferred from the most recent design documents and any documented Project expectations and/or requirements provided to the Contractor.

**1.3.3** Subject to any allowed contingency provided for in Section 1.5, the Contractor further acknowledges and agrees the GMP fully accounts for any risks associated with failing to consider the design intent reasonably inferable from the Contract Documents. The Contractor has documented in the Basis of the GMP Proposal and provided or will provide to the City any and all clarifications regarding the design intent, including the intended level of quality of the Project. No GMP increase or extension of the Contract Time will be allowed to account for any assumption, exclusion and clarification the Contractor failed to document or for any other item of Work covered by the Contract Documents that the Contractor failed to account for in its GMP.

**1.4 Allowances.** The allowances set forth in the GMP Proposal have been accepted by the Project Manager. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the Contractor shall not be required to employ any persons or entities against which the Contractor may make reasonable objection. The Contractor may also supply allowances for those items the Contractor and the Project Manager mutually determine require an allowance. **Exhibit C** (GMP Proposal) sets forth all allowances applicable to the Work. Unless otherwise provided for in the Contract Documents:

**1.4.1** Materials and equipment under an allowance shall be selected promptly by the City to avoid delay in the Work;

**1.4.2** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Project site and all required taxes, less applicable trade discounts;

**1.4.3** Contractor's costs for unloading and handling at the Project site, labor, installation costs, and other expenses contemplated for the stated allowance amounts are included in the allowances. However, Contractor's home office overhead and profit for all allowance items are included in the Contractor's Fee and are not in the allowance; and

**1.4.4** Whenever costs are more than or less than the allowances, the GMP shall be adjusted accordingly by change order. The amount of the change order shall reflect the difference between actual costs and the allowances. If actual costs exceed allowances, the change order shall include Fee on the difference in accordance with allowable Contractor Fee under the Construction Contract.

## **1.5 Contingency.**

**1.5.1 Construction Contingency Amount.** The GMP will include a construction contingency in an amount equal to a lump sum of **Eighty Thousand Five Hundred Seventy Seven Dollars and Zero Cents (\$80,577.00)** ("GMP Contingency") for the entire scope of the GMP Work

**1.5.2 Contingency Accounting.** The GMP Proposal is not a line item GMP. During the course of the Work, some GMP line items may exceed the estimated amounts and others may under run the estimated amounts shown in the GMP Proposal without impacting the overall GMP. The Contractor may charge to the Contingency any costs which are properly reimbursable as Cost of the Work, but not the basis for a Change Order. These costs may include costs attributable to errors and omissions by the Contractor; costs to correct defective, nonconforming or damaged work; costs generated from clarification of the Contract Documents; costs for code changes or code upgrades required by governmental agencies which are not otherwise the basis for a change order; overtime and acceleration costs to meet contract schedule; and costs, including legal fees, for contractual disputes, with parties other than the City. The Contingency shall be increased to the extent that there are underruns in budget items included in the GMP. The Contractor shall notify the Project Manager, in writing, of each such charge to or credit of the contingency prior to taking such action and shall provide a periodic reconciliation of contingency credits and expenditures in a format acceptable to the Project Manager.

**1.5.3 Contingency Management.** The Contractor acknowledges that, subject to available funding, it is the desire of the City to incorporate as many additional Work items into the Work as reasonable or otherwise increase the Work to be performed by the Contractor to enhance the Project. The Contractor agrees to accept a mutually agreeable reduction of the contingency whenever the City and the Contractor reasonably agree that the Project risk is substantially decreased and such agreement shall not be unreasonably withheld.

**1.5.4 Owner's Contingency Amount.** The GMP will include an Owner's Contingency in an amount equal to a lump sum of: **One Hundred Forty Four Thousand Eight Hundred Thirty Three Dollars and Zero Cents (\$144,833.00)** ("Owner's Contingency"). Adjustments to owner's contingency to be made by written agreement.

**1.5.5 Owner's Contingency Accounting.** The Owner's Contingency will be used at the sole discretion of the City for changes to the scope of work that are initiated and requested by the City, and for overruns in Allowances. This contingency shall not be used for any other purpose other than scope changes initiated by the City. Any unused portion of this Owner's Contingency shall be returned to the City upon project completion.



**1.6 Design Consultant.** The “**Design Consultant**” or “**Designer**” as used herein shall mean the legally approved professional architect/engineer, or group or association or professional corporation or joint venture of such approved professional architects, engineers and/or consultants, who have contracted with the City to accomplish the architectural, engineering and other design and related technical services necessary to complete the Project. The Project Design Consultant is: Wold Architects and Engineers.

In case of termination of the Design Consultant, the City will appoint a Design Consultant whose status under the Construction Contract shall be the same as that of the former Design Consultant.

**1.7 User Agency.** The “User Agency” as used herein shall mean the City agency currently responsible for the operation and maintenance of the Project. The User Agency is the City and County of Denver Sheriff’s Department.

**1.8 Construction Team.** The Contractor, the City, and the Design Consultant, called the “Construction Team,” shall work together to complete the Project. The Contractor shall provide leadership to the Construction Team on all matters relating to Construction.

## **2.0 CONTRACT DOCUMENTS:**

**2.1** It is agreed by the parties hereto that the following list of instruments, drawings and documents which are attached hereto, bound herewith or incorporated herein by reference constitute and shall be referred to as the “Contract Documents” and all of said instruments, drawings and documents taken together as a whole constitute the Contract and Agreement between the parties hereto, and they are as fully a part of this Contract and Agreement as if they were set out verbatim and in full herein. The Contract Documents represent the entire and complete integration of all understandings between the City and the Contractor and supersedes all prior negotiations, representations or agreements. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement or change order properly executed by the parties. When the Contract Drawings and Technical Specifications are complete and issued by the Design Consultant for construction., they will, without further action be incorporated into this Construction Contract as if fully set forth herein as **Exhibits D and E.**

This CMGC Construction Contract

Advertisement of Notice of Invitation for Proposals, dated August 1, 2016 (incorporated herein by reference)

Request for Proposals (RFP), dated September 22, 2016 (incorporated by reference)

Contractor Response to RFP, dated October 13, 2016 (incorporated by reference)

General Contract Conditions (incorporated by reference; table of contents attached as **Exhibit A**)

Special Contract Conditions (attached as **Exhibit B**)

Bid Package 1 GMP Proposal (attached as **Exhibit C**). Future Bid Package GMP Proposals will be incorporated by written amendment to the agreement

Technical Specifications (incorporated herein by reference as **Exhibit D**)

Contract Drawings (incorporated herein by reference as **Exhibit E**)

Minority/Women Owned Business Enterprise Program Compliance Plan (attached as **Exhibit F**)

Preconstruction Services Agreement, dated February 01, 2017 (incorporated by reference as **Exhibit G**)

Equal Employment Opportunity Provisions (attached as **Exhibit H**)

Prevailing Wage Rate Schedule(s) (attached as **Exhibit I**)

Performance and Payment Bond (attached as **Exhibit J**)

Final/Partial Lien Release Form (attached as **Exhibit K**)

Notice to Proceed Form (attached as **Exhibit L**)

Contractor's Certification of Payment Form (attached as **Exhibit M**)

Final Receipt Form (attached as **Exhibit N**)

Equipment Rental Rates (to be later attached as **Exhibit O**)

Billing Rates for Salaried Personnel (attached as **Exhibit P**)

New Hire Requirements (attached as **Exhibit Q**)

Self-Performed Work Proposal (attached as **Exhibit R**)

Certificate of Insurance (attached as **Exhibit S**)

**2.2** If anything in the Contract Documents is inconsistent with this Construction Contract, this Construction Contract will govern. The order of precedence of the Contract Documents shall be as follows:

**2.2.1** this Construction Contract, as may be modified by amendment or change orders;

**2.2.2** the Special Conditions

**2.2.3** the General Contract Conditions;

**2.2.4** the Basis of the GMP Work Proposal,

**2.2.5** the Technical Specifications;

**2.2.6** the Contract Drawings; and

**2.2.7** all other Exhibits, whether attached to this Construction Contract, incorporated by reference or later added by Change Order.

**2.3** The intent of the Contract Documents is to include all terms, conditions, work items and services necessary or required for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be binding as if required by all. Work items or

services not covered in the Contract Documents will be required unless they are not consistent with the Contract Documents and are not inferable from the Contract Documents as being necessary to produce the result intended by the Contract Documents. Anything mentioned in the Technical Specifications and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the Technical Specifications, shall be of like effect as if shown or mentioned in both. Words and abbreviations that have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meaning.

**2.4** It is contemplated by the parties that numerous exhibits or attachments, including construction documents and final technical specifications, will not be accomplished or must be developed after execution of this Construction Contract and, as such, must be finalized, incorporated by reference and/or attached to and be made a part of the Contract Documents subsequent to execution of this Construction Contract. The incorporation of such exhibits or attachments into this Construction Contract shall be accomplished by written directive from the Manager of Public Works or the Manager's designee. The parties shall be diligent in accomplishing these exhibits and attachments. To the extent these new exhibits or attachments conflict with other exhibits or portions of this Construction Contract, the greater service, better quality or greater quantity shall be included in the Work. However, nothing contained in this section shall limit the Contractor's ability to seek Change Order time and compensation adjustments for City changes to the Work incorporated into any of these later exhibits and attachments.

**2.5** Where reference is made in this Construction Contract to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### **3.0 SCOPE OF WORK:**

**3.1 Completion Obligation.** The Contractor shall execute the Project described in the Contract Documents, except to the extent specifically indicated in the Contract Documents as the responsibility of others. The Contractor agrees to commence and undertake the performance of the Work under this Construction Contract within ten (10) days of the date of issuance of a Notice to Proceed in substantially the form attached as **Exhibit L** and agrees to substantially complete said Work within the Contract Time and fully complete said Work in accordance with the Contract Documents. The Contractor may complete the Project earlier than the date for substantial completion established by the Contract Time, but any claim by the Contractor based on delay shall be based upon the date for substantial completion established by the Contract Time and not on an earlier projected completion date that the Contractor may propose.

**3.2 Scope of Work.** The entire Scope of Work shall include the following:

**3.2.1 Preconstruction Phase Services.** The Preconstruction Services are comprised of all those services, obligations and responsibilities set forth in the Preconstruction Services Agreement, incorporated herein by this reference as **Exhibit G**. In order to expedite Project completion, the Parties entered into the Preconstruction Agreement to perform Preconstruction Services, in anticipation of the start of the Construction Phase of the Project. In accordance with the terms of the Preconstruction Agreement, compensation for the performance of such services is based on a lump sum fee for services. For the duration of this Construction Contract, the Contractor shall continue to perform any further Preconstruction Services required by the Project as part of its obligations under this Construction Contract as a Cost of the Work with no increase to the GMP.

**3.2.2 Construction Services.** The Construction Phase Services shall include the furnishing of all construction administration, management, supervision and coordination experience and expertise, as well as all construction services, work effort, labor, tools, supplies, manufactured components, equipment,

materials, and everything else necessary and required to complete the construction of the Project on time and within budget; while satisfying the City's longstanding commitment to quality, efficiency, value, innovation, partnering, responsiveness to agency and community needs and compliance with all applicable regulatory requirements in the performance of general public improvements. Compensation for the Construction Phase Services shall be in accordance with the terms and conditions of this Construction Contract.

**3.2.2.1 GMP Scope of Work.** The Contractor shall perform all Construction Services, as set forth in the Bid Package 001 GMP Proposal, which is attached as **Exhibit C**.

(Note: The City may in its sole discretion elect to complete the Project using multiple bid packages. In the event that the City elects to proceed in this manner the City will modify the contract appropriately.)

**3.2.3 The Work.** The terms "Scope of Work" or "Work" as used herein shall mean all Construction Services required by or reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work shall constitute the whole of the Project.

**3.3 Acknowledgement of Scope of Work.** The Contractor expressly recognizes and acknowledges that this Project must be completed within the time and fiscal constraints as set forth throughout this Construction Contract.

**3.3.1** The Contractor further represents to the City that by executing this Construction Contract, it has been fully informed of and has thoroughly reviewed the following: the objectives of the Project; the work effort of the Design Consultant performed to date for the Project; all of the Contract Documents attached to this Construction Contract or incorporated by reference; the City's general time and budget constraints and contingencies applicable to the Budget; and all of the Work required by the Contractor by the Contract Documents. Based upon this thorough review and analysis and recognizing that the contract for design services is between the City and the Designer, the Contractor nonetheless represents to the City that it will provide or perform all of the necessary Work within the requirements of the Contract Documents.

**3.3.2** Also by execution of this Construction Contract, the Contractor covenants and represents that the Contractor has visited the site of the Project (the "Site") and has had sufficient time and opportunity to independently examine and is sufficiently familiar with: the Site, the character and nature of the Site layout and materials, the character and nature of all Site constraints, restrictions and limitations, and limitations on ingress, egress and construction staging and performance; and the local conditions under which the Work is to be performed, including weather conditions and any other factors which may impact the Work. The Contractor further represents that it has taken into consideration and correlated these direct observations, examinations and investigations with the requirements of the Contract Documents and in the pricing of the Work, the formulation of the GMP, the Contractor's Fee and in preparing all Exhibits.

**3.3.3** Also by execution of this Construction Contract, the Contractor represents that it has reviewed and is familiar with the City's general expectations and scheduling assumptions regarding the completion of the Project and opening of the completed facility and that, given the Scope of Work, these scheduling assumptions are reasonable and achievable. The Contractor further represents that it will take into consideration and correlate these assumptions and constraints with the requirements of the Contract Documents and in the pricing of the Work, the GMP and the Contractor's Fee.

**3.3.4** Finally, the Contractor represents that it has reviewed the Design Consultant Agreements, Bid Package 001 drawings and the 50% Design Drawings, accepts the terms and requirements thereof and affirmatively states that the Project, as expressed by the design documents and the Project requirements and constraints as modified by value engineering suggestions, budget adjustments and cost cutting measures suggested by the Contractor as of July 15, 2017 is a reasonable and constructible Project, incorporating a reasonable and workable delivery approach, schedule and budget.

**4.0 RELATIONSHIP OF THE PARTIES:**

**4.1** The parties intend herein to establish a relationship wherein the City relies upon the integrity and fidelity of the Contractor to complete the Project within the time and budget constraints set forth in this Construction Contract and in a manner which satisfies the City’s longstanding commitment to quality, efficiency, value, innovation, partnering, responsiveness to agency and community needs and compliance with all applicable regulatory requirements in the performance of general public improvements.

**4.2** The Contractor accepts the relationship of trust and confidence established by this Construction Contract with the City. The Contractor further agrees to utilize the Contractor’s best skills, efforts, and judgment in furthering the interests of the City regarding the Project; to furnish at all times an adequate supply of qualified and competent workers and quality materials; and to perform the work in the best, most expeditious, and economical manner. Further, the Contractor agrees to furnish efficient business administration, construction management and superintendence and to use its best efforts to complete the Work in an expeditious and economical manner, consistent with the interests of the City.

**4.3** The City will have a separate agreement with the Design Consultant to design the Project and to provide construction contract administration services necessary to ensure that the Work conforms to the Contract Drawings and Technical Specifications. Both the Contractor and the Design Consultant shall be given direction by the City, or the City’s designated and authorized representative(s). The Contract Documents shall not be deemed to create any contractual relationship between the Design Consultant and the Contractor or any separate contractors, subcontractors of any tier or suppliers on the Project. The relationship between the Contractor and the Design Consultant is intended to be cooperative and proactive, with both participating on the same team with the City.

**4.4** The Contractor shall accept the designated and authorized representatives of the City identified in the Contract Documents and perform its obligations toward and in response to such representatives in the same manner it would toward and in response to the City, pursuant to such designation and authorization.

**4.5 City Delegation of Authority.** With reference to G.C. 212, CITY’S CONTRACT ADMINISTRATION LINE OF AUTHORITY, the Manager delegates to the City Engineer the authority necessary to undertake the responsibilities identified as the responsibilities of the Deputy Manager under this Construction Contract. The City Engineer hereby designates as Project Manager with authority to handle the day to day administration of this Construction Contract, the following personnel:

<u>Department of Public Works Project Manager</u>	<u>Telephone</u>
Michael A Lopez	719.369.8650

**5.0 COORDINATION AND COOPERATION:**

**5.1** The Contractor agrees to cooperate and coordinate fully with the City in its performance of the Work to meet or exceed the City’s time and budgetary objectives and limitations, while maintaining the City’s longstanding commitment to quality, efficiency, value, innovation, partnering, responsiveness to

agency and community needs and compliance with all applicable regulatory requirements in the construction of general public improvements.

**5.2** The Contractor shall, as a continuing work item under this Construction Contract, facilitate coordination, communication and cooperation regarding its performance hereunder between the City's Department of Public Works ("Public Works"), the Project Manager, the Design Consultant, the User Agency, other City consultants and any affiliated entities. In addition, the Contractor shall coordinate its efforts under this Construction Contract with all involved governmental and regulatory entities.

**5.3** The Contractor shall be responsible for taking accurate and comprehensive minutes at all Construction meetings attended by the Contractor regarding the Project. Those minutes shall be prepared in a format approved by the Project Manager and issued to all attendees, as well as those other parties designated by the City, no later than three working days after the meeting. Unless approved in advance in writing by the Project Manager and to the greatest extent practicable, Project meetings with the City shall be conducted in the City and County of Denver, Colorado.

**5.4** Nothing contained in the Contract Documents shall be deemed to give any third party any claim or right of action against the City, the Design Consultant or the Contractor that does not otherwise exist without regard to the Contract Documents.

**5.5** The Contractor shall use its best efforts and take all necessary precautions to protect and prevent damage and/or disruption to all City facilities and equipment, and shall coordinate all ingress and egress requirements with appropriate persons and agencies.

**6.0 CONTRACT TIME, SUBSTANTIAL COMPLETION AND LIQUIDATED DAMAGES:**

**6.1 Substantial Completion.** The term "Substantial Completion" is defined in the General Conditions. The number of days the Contractor shall have to attain Substantial Completion of the Scope of the Work set forth in the Contract Documents is set forth in this Section.

**6.2 Construction Time.** The term "Construction Time" is defined as the total number of days between the date of the Notice to Proceed with Construction and the date on which Substantial Completion of all Work must be completed by the Contractor. The Construction Time shall be: **262 Calendar Days.**

**6.3 Final Completion.** Final Completion of the Work occurs following Substantial Completion when all punch list items are completed and the Contractor has provided the City with a Final Lien Release Form (which may be contingent upon receipt of Final Payment) (in the form of **Exhibit K**). The term "Final Completion" is defined in the General Conditions.

**6.4 Liquidated Damages.** The parties recognize and agree that time is of the essence of this Contract. In the event that the Work is not Substantially Complete within the Construction Time, as that time may be extended for delays for which an extension of time is permitted under the terms of the Contract Documents, the City and the Contractor acknowledge and agree, after a full discussion of the implications of this section, that it would be impractical and extremely difficult to estimate the damages (including, by way of example but without limitation, direct and indirect, incidental, special and consequential damages) which the City might incur for failure of the Contractor to timely achieve Substantial Completion within either the Construction Time. Therefore, the City and the Contractor have determined that a reasonable estimate of the total detriment that the City would suffer in the event that the Contractor so defaults and the Project is not Substantially Complete within the Construction Time, as extended as permitted herein, is and shall be, in the event of said default and failure, as the sole and

exclusive remedy (whether at law or in equity) of the City for this delay, and not as a penalty, the amount per day stated below that the Work shall remain not Substantially Complete after the Construction Time, as applicable, including extensions, has elapsed. It is understood and agreed that the City reserves all of its other rights and remedies for any other or different breach or default of this Construction Contract by Contractor, or for any other cause of action.

Amount per Day                      Substantial Completion                      \$\_\_2,000.00\_

The parties agree that the foregoing amounts shall be the full amount of liquidated damages recoverable against the Contractor by the City for the Contractor's breach of its covenants of timely performance hereunder. The amount so determined shall be the full, agreed upon and liquidated damages recoverable against the Contractor by the City for the Contractor's breach of its covenants of timely performance hereunder. The provisions of this Section shall not limit the rights and remedies of the City pursuant to the General Conditions.

**7.0 SUBCONTRACTS AND OTHER AGREEMENTS:**

**7.1 Subcontractor Selection.** The Contractor recognizes and accepts that the subcontractor and supplier selection and contracting procedures specified herein are intended to promote pricing or buyout of the Work which is fair and reasonable and, to the greatest extent practicable, is based on fair and open competition. As such, all Work, except for Work or Services included in the Contractor's Fee, the Contractor's General Conditions or Work performed by the Contractor with the prior written approval of the Project Manager ("Self-Performed Work") shall be procured based upon competitive bids awarded to the lowest, responsive and qualified bidder and subcontracted to "Subcontractors" and "Suppliers," which may include Contractor Self-Performed Work under Section 7.1, in accordance with **Exhibit R** and in compliance with the General Conditions, attached hereto and incorporated herein as **Exhibit A**. Each Subcontractor and Supplier selection shall be reviewed by the City and the City reserves the right to reject any Subcontractor or Supplier in accordance with the terms and conditions of the General Conditions or in the event the City determines that the selection was not made after a competitive bid. Upon request of the Contractor, the City may waive the competitive bid requirement of this Section with the express written approval of the Project Manager.

**7.2 Self-Performed Work.**

**7.2.1** Upon prior written approval of the Project Manager, the Contractor may compete for designated Subcontractor or Supplier Work packages. Should the Contractor submit a proposal for any such package, such proposal shall be submitted directly to the Project Manager prior to any proposal deadline and all bid or selection requirements specified in **Exhibit F** shall apply to proposal or bid opening and evaluation. The Project Manager shall review with the Contractor all bids submitted where the Contractor has submitted a bid and shall make the final award after consultation with the Contractor. The City must approve any Self-Performed Work award to the Contractor. The Contractor shall perform for the Contractor's lump sum bid amount on the basis of a Stipulated Lump Sum Subcontract, which shall also be subject to City review and written approval of the Project Manager prior to commencement of any Self-Performed Work, but shall not be subject to the cost of work limitations of the Contract Documents.

**7.2.2** Notwithstanding the bidding requirements set forth in Section 7.2.1, the Contractor shall submit to the City, on or before July 14, 2017, a final Self Performed Work Proposal for the identified work on the Project. Such final Proposal shall be for the scope of work described in the Self Performed Work Proposal attached hereto as **Exhibit R** and, under no circumstances, shall the proposal exceed the maximum amount for such work set forth in **Exhibit C**. Upon receipt of the final Proposal, the Manager may, at the Manager's sole discretion, accept the proposal, reject the proposal or engage in further

negotiations regarding this work. If finally accepted by the Manager, the City will issue a change order for this work and the work described in the Final Self Performed Work Proposal will be incorporated into the GMP Scope of Work and GMP price as if fully set forth herein. In addition, the Construction Time shall be adjusted accordingly. If the City rejects the final proposal, the terms of Section 7.2.1 shall apply to the above work of the Project.

**7.3 Subcontract Forms.** All subcontracts will be between the Contractor and the selected Subcontractors or Suppliers, which may include the Contractor for Lump Sum Self-Performed Work. The form of each subcontract shall be furnished to the City for review and acceptance as to form, which acceptance shall not be unreasonably withheld. All subcontracts shall require that all Subcontractors or Suppliers of any tier performing Work accept and agree to be bound by the terms and conditions of the Contract Documents and to assume toward the Contractor all obligations and responsibilities the Contractor, by the Contract Documents, assumes toward the City. All subcontracts shall preserve and protect the rights of the City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof shall not prejudice these rights.

**7.4 Substitution.** The Contractor shall make no substitution for a Subcontractor or Supplier previously selected without the prior written approval of the Project Manager and such approval shall not be unreasonable withheld.

**7.5 Responsibility.** The Contractor shall be responsible to the City for the acts and omissions of its agents and employees, Subcontractors and Suppliers of any tier, and their agents and employees performing Work under this Construction Contract.

## **8.0 COMPENSATION.**

**8.1 Cost of the Work.** The term Cost of the Work shall consist of costs necessarily incurred in the proper performance of the Work for the Project as delineated below which shall be paid by the City to the Contractor. Cost of the Work shall not include any Fee of the Contractor. Any allowable mark-up by the Contractor is included in the Contractor's Fee. Cost of the Work shall consist of the following Contractor incurred items set forth below:

**8.1.1** Cost of wages paid for labor in the performance of the Work at the site or with the City's agreement at offsite workshops, which shall at a minimum be in accordance with the prevailing wage rates established by the City and County of Denver for construction projects, as set out in DRMC Section 20-76. In the event the prevailing wage rates are increased in accordance with DRMC Section 20-76, on the anniversary date of this Construction Contract, these increases shall also be included as a cost of the work. Costs paid or incurred by the Contractor shall include actual wages for the Contractor's own personnel (including overtime premiums as applicable), taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and for personnel not covered by such agreements, customary benefits and the Contractor's company policy such as sick leave, individual and dependent medical and health benefits, disability insurance, holidays, craft training fund, vacation, pension, and, as applicable, 401K contributions. The City and the Contractor agree that the wages and burden for the personnel referenced in this paragraph and paragraphs 8.1.17 and 8.1.18 shall be charged as a Cost of the Work at not less than the stipulated fixed rates set forth on Prevailing Wage Rate Schedule, attached as **Exhibit I**, or as appropriate charges at the stipulated fixed rates set forth on the Billing Rates for Salaried Personnel attached as **Exhibit P**.

**8.1.2** Cost of contributions, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries or other remuneration paid pursuant to Section 8.1.1.



- 8.1.3** Cost of mock-ups and testing, as may be previously approved by the Project Manager.
- 8.1.4** Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.
- 8.1.5** Payments properly made by the Contractor to Subcontractors and Suppliers under Project subcontracts for performance of portions of the Work including insurance required by this Contract and bond premiums incurred.
- 8.1.6** Payments actually made for architects, engineers and other consultants providing services to the Contractor reasonably required to perform the work, unless such services are to be provided to the Owner by the Design Consultant or other City-Retained Consultants (as defined in the Design Consultant's Agreement for Professional Design Services).
- 8.1.7** Cost, including transportation, inspection, handling, storage and maintenance, of all temporary facilities and all materials, supplies, equipment and hand tools not owned by the workmen that are consumed in the performance of the Work on the Project. The Contractor shall negotiate with the City the salvage value of all items purchased and used on the Project but not consumed, damaged, lost or stolen at the completion of the work, crediting any proceeds against the Cost of the Work. If the Contractor and the City cannot agree on the salvage value of the above items then said items shall remain the property of the City and the Contractor shall give no credit to the Cost of the Work. The Contractor may institute a voluntary recycling program.
- 8.1.8** Actual rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the Site, whether rented from the Contractor (at rental rates approved by City and specified on **Exhibit O**) or others, including equipment owned by the Contractor that is assigned to salaried staff and charged to the Project and costs of fuel, oil, insurance, maintenance and minor repairs and replacements, transportation, installation, dismantling and removal thereof. The City and the Contractor agree that the rates for the rented equipment shall be charged as a Cost of Work at the stipulated fixed rates set forth on the Equipment Rental Rate Schedule, attached as **Exhibit O**.
- 8.1.9** The cost of the premiums for all bonds and Builder's Risk insurance that the Contractor is required to procure by this Construction Contract. The costs of the premiums for all other insurance that the Contractor is required to procure by this Construction Contract or that are deemed necessary by the Contractor with the City's written approval shall be charged as a Cost of the Work at the stipulated fixed percentage of 1.28% of the Cost of Work, and all deductibles that are attributable to this Construction Contract, including equipment insurance deductibles.
- 8.1.10** Applicable sales, use or similar taxes related to the direct performance of the Work and for which the Contractor is liable, imposed by any governmental authority.
- 8.1.11** Permits, fees, licenses, costs of all tests, commissioning costs, inspections and approvals, as may be required by the Contract Documents or applicable laws, ordinances or public authority for the performance of the work (except for inspection and testing performed by the City, at its cost).
- 8.1.12** Actual costs of reproduction, telegrams, facsimile transmissions, mobile phones, long distance telephone calls, telephone service at the Site, postage and express delivery charges, and reasonable petty cash expenses of the site office in connection with the Work.
- 8.1.13** Cost of removal of all debris from the Site.

**8.1.14** Costs for temporary and permanent power, lighting, heat, chilled drinking water, sewer and water services as required to complete the Work at the Site, and costs for snow removal as required.

**8.1.15** Cost incurred by the Contractor in repairing or correcting defective, damaged or nonconforming work, provided that such defective, damaged or nonconforming work was beyond the control of the Contractor, Subcontractors, or Suppliers, or caused by the ordinary mistakes or inadvertence, and not the negligence of the Contractor's or any Subcontractor's or Supplier's supervisory personnel. If the costs associated with such defective, damaged or nonconforming work are recoverable from insurance or Subcontractors or Suppliers, the Contractor shall exercise its best efforts to obtain recovery from the appropriate source and credit the Cost of the Work if recovery is obtained.

**8.1.16** Costs incurred due to any emergency affecting the safety of persons and property and related to the Work unless otherwise covered by insurance or reimbursable from a Subcontractor or Supplier, or unless such costs are due to the fault or negligence of the Contractor or a Subcontractor or Supplier of any tier.

**8.1.17** Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site, and when stationed off-site and working on the Project in accordance with the staffing and salary schedule set forth in **Exhibit P**, including vacation time, in accordance with the Contractor's company policy, accrued and taken during the performance of the Work. This includes estimators, safety personnel, quality control personnel and their assistants.

**8.1.18** Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work in accordance with the staffing and salary schedule set forth in **Exhibit P**.

**8.1.19** With prior written approval of the Project Manager, that portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

**8.1.20** Fees of testing laboratories for tests required by the Contract Documents.

**8.1.21** Legal, mediation and arbitration costs other than those arising from disputes between the City and the Contractor reasonably incurred by the Contractor in the performance of the Work and with the City's prior written permission of the Project Manager.

**8.1.22** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

**8.1.23** Costs associated with the implementation of any established company safety program, which costs shall be subject to City's reasonable approval.

**8.1.24** Contractor's General Conditions expenses as identified in **Exhibit C**. These expenses include rented or purchased materials and equipment used by the Contractor at the Project site office in connection with the Work.

**8.1.25** Cost of warranty repairs, to the extent not covered by a subcontract or purchase agreement (provided that the Contractor shall use its best efforts to enforce the warranties received from subcontractors, suppliers and vendors). These costs include the Contractor's administrative staff associated with supervision and management of the warranty repairs.

**8.1.26** Reasonable data processing costs related to the work, including data line service, internet charges, software costs and licenses fees.

**8.1.27** All costs and fees incurred in the performance of work and approved for payment under the Preconstruction Services Agreement (**Exhibit G**).

**8.1.28** Deposits for materials, design of manufactured items and supplied items is the responsibility of the contractor. Reimbursements will be made once the item is installed and accepted by the Project Manager.

**8.2** **Costs Not To Be Reimbursed.** Cost of the Work shall not include expenditures made for any of the following:

**8.2.1** Salary of any officer of the Contractor.

**8.2.2** Salary of the Contractor's employees stationed at the Contractor's main office not working on the Project.

**8.2.3** Overhead, profit and general expenses of any kind except as included in the Contractor's Fee.

**8.2.4** The capital expenses of the Contractor, including interest on capital employed for the work.

**8.2.5** Expenses of the Contractor's principal office and offices, other than the Site office.

**8.2.6** Costs incurred by the Contractor in situations where such costs may be covered by insurance or recoverable from a Subcontractor or Supplier, if the Contractor failed to use its best efforts to obtain such insurance proceeds or recovery from the responsible Subcontractor(s) or Supplier(s).

**8.2.7** Expenses incurred for relocation and temporary living expenses of personnel required for the Work, or when such relocation is for the convenience of the Contractor.

**8.2.8** Any cost that would cause the GMP to be exceeded.

**8.2.9** Any costs not specifically included in the Cost of the Work, Section 8.1.

**8.2.10** Costs of retesting non-conforming Work.

**8.3** **Contractor's Fee.** The "Contractor's Fee" (the "Fee") to be paid to the Contractor and included in the GMP shall be a lump sum of **One Hundred Twenty One Thousand One Hundred Eighty Seven Dollars and Zero Cents (\$121,187.00)**, payable in progress installments pursuant to a mutually agreeable schedule of progress installments.

**8.4** **Guaranteed Maximum Price.**

**8.4.1** **Guaranteed Maximum Price.** The GMP shall be established at the time the GMP proposal is accepted by the City and incorporated herein as **Exhibit C**, subject to adjustments as provided in the Contract Documents.

**8.4.2** The Guaranteed Maximum Price consists of the sum of (i) the estimated Cost of the Work; and (ii) the Fee. The Contractor has presented and the City has accepted the Guaranteed Maximum Price and Basis of the GMP Proposal attached hereto as **Exhibit C**. The Parties specifically agree that the City shall not be subject to any cost, charge or fee under this Agreement that is not specified above.

**8.5 Savings.** In the event that the actual Cost of the Work plus the Fee shall be less than the GMP, the resulting savings shall inure One Hundred Percent (100%) to the City. The Contractor shall distribute such savings to the City by Change Order that either reduces the GMP or implements enhancements or additions to the Project requested by the City.

**8.6 Construction Contract Amount and Funding.** In accordance with the terms of this Construction Contract, the maximum Construction Contract Amount to be paid by the City to the Contractor under this Agreement shall not exceed **Three Million Forty Five Thousand Nine Hundred Thirty One Dollars and Zero Cents (\$3,045,931.00)**. The Contractor guarantees and warrants that the Project will be completed by its performance hereunder for the GMP amount. In no event will the City's liability exceed the maximum Construction Contract Amount, as adjusted by duly authorized change order in accordance with this Construction Contract. The parties specifically agree that any performance by the Contractor hereunder shall not subject the City to any cost, charge or fee not specified above.

## **9.0 DISPUTE RESOLUTION:**

It is the express intention of the parties to this Construction Contract that all disputes of any nature whatsoever regarding the Construction Contract including, but not limited to, any claims for compensation or damages arising out of breach or default under this Construction Contract, shall be resolved by administrative hearing pursuant to the provisions of Section 56-106, DRMC or, with respect to appropriate issues involving Small Business Enterprise contracting, by Section 28-33, DRMC. The Contractor expressly agrees that this dispute resolution process is the sole and only dispute resolution mechanism that will be recognized and employed by the parties for any claims put forward by the Contractor, notwithstanding any other claimed theory of entitlement on the part of the Contractor or its Subcontractors or Suppliers.

## **10.0 ADDITIONAL PROVISIONS:**

**10.1 No Discrimination in Employment.** In connection with the performance of the Work under this Construction Contract, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder. Further, the Contractor agrees to comply with the provisions of Section 28-45 to 28-47, DRMC, and all Rules and Regulations promulgated and adopted by the Manager of Public Works pursuant thereto relating to non-discrimination in employment by contractors, subcontractors and suppliers receiving compensation for work performed on the Project.

**10.2 Insurance.** In addition to the requirements and obligations set forth in Title 16, the Contractor shall comply with the insurance requirements set forth in **Exhibit S**.

**10.3 Title to the Work.** The parties agree that the City shall have title to all components and aspects of the Project which are in place and title to all materials for which any payment has been made to the Contractor hereunder.

**10.4 Compliance with Minority/Women Owned Business Enterprise Requirements.** This Construction Contract is subject to all applicable provisions of Divisions 1 and 3 of Article III, of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 – 29-36 and 28-52 – 28-90 D.R.M.C. and referred to in this Contract as the "M/WBE Ordinance". In accordance with the requirements of the M/WBE Ordinance, the Contractor is committed to, at a minimum, meet the participation goal of **ten (10%)** established for this Project utilizing properly certified M/WBE

subcontractors and suppliers. In addition to the applicable provisions of the M/WBE Ordinance, the Contractor agrees, as an express condition of its performance hereunder, to comply with the requirements of any approved Small Business Enterprise Compliance Plan (attached and incorporated herein as **Exhibit F**). Such plan shall, at a minimum, include a narrative regarding compliance with the goal; a list of committed M/WBE participants along with dollar and percent participation for each evidencing compliance with the overall goal, and fully executed letters of intent for each listed participant, all in a form satisfactory to the City. Without limiting the general applicability of the foregoing, the Contractor acknowledges its continuing duty, pursuant to Sections 28-72, 28-73 and 28-75 DRMC and the M/WBE Program, to meet and maintain throughout the duration of this Construction Contract its participation and compliance commitments and to ensure that all Subcontractors subject to the M/WBE Ordinance or the M/WBE Program also maintain such commitments and compliance. Failure to comply with these requirements may result, at the discretion of the Director of the Division of Small Business Opportunity (“DSBO”), in the imposition of sanctions against the Contractor in accordance with Section 28-77, DRMC. Nothing contained in this Paragraph or in the referenced City ordinance shall negate the City’s right to prior approval of Subcontractors, or substitutes therefore, under this Construction Contract.

**10.5 Prevailing Wages.**

**a.** Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Contractor shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered. A copy of the applicable prevailing wage rate schedule is attached as **Exhibit I** and incorporated herein by reference.

Date bid or request for qualifications/proposals was advertised September 22, 2016.  
If contract opportunity was not advertised, date of written encumbrance \_\_\_\_\_.

**b.** Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the date the Contract was fully executed. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

**c.** Contractor shall provide the Auditor with a list of all subcontractors providing any services under the contract.

**d.** Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract.

**e.** Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing [auditor@denvergov.org](mailto:auditor@denvergov.org).

**f.** If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.

**10.6 Applicability of Laws.** This Contract and Agreement between the Contractor and the City shall be deemed to have been made in the City and County of Denver, State of Colorado and shall be subject

to, governed by and interpreted and construed in accordance with the laws of the State of Colorado and the Charter, the Revised Municipal Code, Rules, Regulations, Executive Orders and fiscal rules of the City. As such, the Contractor shall at all times comply with the provisions of the Charter, Revised Municipal Code, Rules, Regulations, Executive Orders and fiscal rules of the City, and those of the State of Colorado and Federal Laws and Rules and Regulations, which in any manner limit, control or apply to the actions or operations of the Contractor, any Subcontractors, employees, agents or servants of the Contractor engaged in the Work or affecting the materials and equipment used in the performance of the Work, as the same may be, from time to time, promulgated, revised or amended. The Charter and Revised Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Construction Contract as if fully set out herein by this reference.

**10.7 Appropriation.** Notwithstanding any other term, provision, or condition herein, all payment obligations under this Construction Contract shall be limited to the funds appropriated or otherwise made available by the Denver City Council and paid into the Treasury of the City. As of the date of this Construction Contract, **Three Million Forty Five Thousand Nine Hundred Thirty One Dollars and Zero Cents (\$3,045,931.00)** have been appropriated for this Construction Contract. The Manager of Public Works, upon reasonable written request, will advise the Contractor in writing of the total amount of appropriated and encumbered funds that are or remain available for payment to the Contractor.

**10.8** The issuance of any form of order or directive by the City which would cause the aggregate amount payable to the Contractor to exceed the amount appropriated for the Work to be performed in accordance with the Contract Documents is expressly prohibited. In no event shall the issuance of any change order or other form of order or directive by the City be considered valid or binding if it requires additional compensable Work to be performed, which Work will cause the aggregate amount payable for such Work to exceed the amount appropriated and encumbered for the Work, unless and until such time as the Contractor has been advised in writing by the Manager of Public Works that a lawful appropriation sufficient to cover the entire cost of such additional Work has been made. It shall be the responsibility of the Contractor to verify that the amounts already appropriated for the Work are sufficient to cover the entire cost of such Work, and any Work undertaken or performed in excess of the amount appropriated is undertaken or performed in violation of the terms of this Agreement, without the proper authorization for such Work, and at the Contractor's own risk and sole expense.

**10.9 Approvals.** In the event this contract calls for the payment by the City of five hundred thousand dollars (\$500,000.00) or more, approval by the City Council of the City and County of Denver, acting by ordinance, in accordance with Section 3.2.6 of the Charter of the City and County of Denver, is and shall be an express condition precedent to the lawful and binding execution and effect and performance of this contract.

**10.10 Assignment Strictly Prohibited.** The Contractor shall not assign or otherwise transfer, in whole or in part, any of its rights, benefits, claims, obligations, duties or entitlement to monies owed or which may become due under this Construction Contract, except upon the prior written consent and approval of the Manager to such assignment.

**10.11 Conflict of Interest.** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the City further agrees not to hire or contract for services with any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

**10.12 Taxes, Charges and Penalties.** Except as provided in the City's Prompt Payment ordinance, codified at DRMC Sections 20-107, 20-108 and 20-109, the City shall not be liable for the payment of any taxes, late charges, interest or penalties of any nature arising out of this Construction Contract.

**10.13 Waiver of C.R.S. 13-20-802 et. seq.** The Contractor specifically waives all the provisions of Part 8 of Article 20 of Title 13, Colorado Revised Statutes regarding defects in the Work under this Construction Contract.

**10.14 Proprietary or Confidential Information.**

**10.14.1 City Information:** The Contractor understands and agrees that, in performance of this Construction Contract, the Contractor may have access to private or confidential information that may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. The Contractor agrees that all information disclosed by the City to the Contractor shall be held in confidence and used only in performance of the Construction Contract. The Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would to protect its own proprietary data.

**10.14.2 Contractor Information:** The parties understand that all the material provided or produced under this Construction Contract may be subject to the Colorado Open Records Act, C.R.S. 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material. The Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Contractor's intervention to protect and assert its claims of privilege against disclosure under this Section including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

**10.15 Status of Contractor.** It is understood and agreed that the status of the Contractor shall be that of an independent contractor retained on a contractual basis to perform work or services for limited periods of time, and it is not intended, nor shall it be construed, that the Contractor, or any member of its staff or any consultant, is an employee or officer of the City for any purpose whatsoever.

**10.16 Rights and Remedies Not Waived.** No payment or failure to act under the Construction Contract by the City shall constitute a waiver of any breach of covenant or default which may then exist on the part of the Contractor. No assent, expressed or implied, by either party to any breach of the Construction Contract shall be held to be a waiver of any default or other breach.

**10.17 Notices.** Any notices, demands, or other communications required or permitted to be given by any provision of this Construction Contract shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to the parties at the addresses set forth herein or at such other address as either party may hereafter or from time to time designate by written notice to the other party given in accordance herewith. Notice shall be considered received on the day on which such notice is actually received by the party to whom it is addressed, or the third (3rd) day after such notice is mailed, whichever is earlier. Unless changed in writing, such notices shall be mailed to:

If to the Contractor:  
Bryan Construction Inc.  
7025 Campus Drive  
Colorado Springs, CO 80920

If to the City  
Manager of Public Work  
Department of Public Works  
City and County of Denver  
201 West Colfax, Department 608  
Denver, Colorado 80202

With a copy to:  
City Attorney  
City and County of Denver  
201 West Colfax, Department 1207  
Denver, Colorado 80202

**10.18 Survival of Certain Provisions.** The parties understand and agree that all terms, conditions and covenants of this Construction Contract, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Construction Contract (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Contractor's obligations for the provision of insurance, for indemnity to the City and for preserving confidentiality of trade secrets and other information shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**10.19 Contract Binding.** It is agreed that this Construction Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and duly authorized assigns.

**10.20 Paragraph Headings.** The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

**10.21 Severability.** It is understood and agreed by the parties hereto that, if any part, term, or provision of this Construction Contract, except for the provisions of this Construction Contract requiring prior appropriation and limiting the total amount to be paid by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Construction Contract did not contain the particular part, term or provision held to be invalid.

**10.22 Use, Possession or Sale of Alcohol or Drugs.** Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

**10.23 Electronic Signatures and Electronic Records.** Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties



agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[SIGNATURE PAGES FOLLOW]**

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PWADM-201736311-00

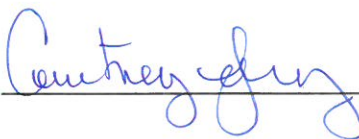
**Contractor Name:** FEDERAL CONTRACTING, INC. DBA BRYAN  
CONSTRUCTION, INCORPORATED

By:  \_\_\_\_\_

Name: Vincent C. Shoemaker  
(please print)

Title: President-CFO  
(please print)

**ATTEST: [if required]**

By:  \_\_\_\_\_

Name: Courtney A Lavy  
(please print)

Title: Project Administrator  
(please print)



**EXHIBIT A**

**Department of Aviation  
Department of Public Works**

**Standard Specifications for  
Construction  
General Contract Conditions**

**2011 Edition**

**(To be included by reference)**

**EXHIBIT B**  
**SPECIAL CONTRACT CONDITIONS**

**CITY AND COUNTY OF DENVER**  
**DEPARTMENT OF PUBLIC WORKS**

**SC-1 CONSTRUCTION SPECIFICATIONS**

Except as amended herein or in the attached Technical Specifications, all Work performed under the terms of this Contract shall be governed by the applicable provisions of the following latest editions:

*Standard Specifications for Construction, GENERAL CONTRACT CONDITIONS, City and County of Denver* (The Index for which is bound herein and commonly referred to as the "Yellow Book") (2011 Edition)

*Colorado Department of Transportation "Standard Specifications for Road and Bridge Construction"* (Sections 200 through 700 of the 2011 Edition).

*Transportation Standards and Details for the Engineering Division, City and County of Denver* (January, 2013)

*Manual on Uniform Traffic Control Devices for Streets & Highways* (MUTCD)

*Building Code of the City and County of Denver*

*National Fire Protection Association Standards* (As referenced in the Building Code of the City and County of Denver)

*Wastewater Management Division – Detail and Technical Specifications for Storm and Sanitary Construction.*

The aforementioned documents are available for review at the Capital Projects Management Office, 201 W. Colfax Ave., Dept. 506, (5<sup>th</sup> floor), Denver, CO 80202. *The Standard Specifications for Construction, GENERAL CONTRACT CONDITIONS, City and County of Denver*, and the *Standards and Details for the City and County of Denver* are available online at:

<http://www.denvergov.org/Portals/480/documents/2011%20DENVER%20GENERAL%20CONTRACT%20CONDITONS.pdf>

<http://www.denvergov.org/rightofwayservices/RightofWayServices/ConstructionInspection/RightofWayConstructionInspection/StandardsandDetails/TransportationStandardsandDetails/tabid/442463/Default.aspx>

<http://www.denvergov.org/wastewatermanagement/WastewaterManagement/EngineeringandPermits/StandardsandDetails/tabid/438018/Default.aspx>

The *Manual on Uniform Traffic Control Devices for Streets & Highways* is available for review as stated above, or can be viewed at the Federal Highway Administration Website at: [www.fhwa.dot.gov](http://www.fhwa.dot.gov), where you will also find purchase information.

The "*Colorado Department of Transportation Standard Specifications for Road and Bridge Construction*" is available for review as stated above, or can be purchased from the Colorado Department of Transportation.

The *Wastewater Management Division – Detail and Technical Specifications for Storm and Sanitary Construction*, is available at Wastewater Management Division, 2000 W. 3<sup>rd</sup> Avenue, Denver, CO 80223

**SC-2 CITY DELEGATION OF AUTHORITY**

With reference to General Contract Condition 109, DEPUTY MANAGER, General Contract Condition 206, ENGINEERING DIVISION and General Contract Condition 214, CITY’S CONTRACT ADMINISTRATION LINE OF AUTHORITY, the Manager hereby designates the City Engineer as the City official responsible for those certain actions and decisions designated as the responsibility of the Deputy Manager under the General Conditions and delegates to the City Engineer the authority necessary to undertake those responsibilities under this Contract. The Director shall have supervisory responsibility over the Project Manager. Additionally, Contractor questions concerning the Plans and Technical Specifications shall be directed to:

**Denver Department of Public Works / Engineering Division,**

Project Manager

Michael A Lopez, Public Works/ Facilities Capital  
Projects

Consultant

WOLD Architects and Engineers

**SC-3 CONTRACT AMOUNT; BID PRICE, GUARANTEED MAXIMUM PRICE**

General Condition 103, CONTRACT AMOUNT, is hereby deleted in its entirety and replaced with the following:

"Contract Amount," "Bid Price," "Bid Amount," or "Maximum Contract Amount" means the Guaranteed Maximum Price ("GMP") under the Contract.

In the General Conditions, the phrases "provided to the City at no cost," "at no cost to the City," "cost . . . shall be borne by the Contractor," "costs shall be reimbursed by the Contractor," "at the expense of the Contractor," "Contractor shall bear any and all costs," and "Contractor shall bear any and all additional costs," mean that the costs in question are to be included as a Cost of the Work without any increase to the Guaranteed Maximum Price. Also, whenever a General Condition states that the Contractor shall be required to take any action, or responsible for any action or thing, it means that such requirements and responsibilities are included as a Cost of the Work without any increase to the Guaranteed Maximum Price, unless there is a specific statement to the contrary as to any such requirement or responsibility.

**SC-4 TIME OF BIDDING; TIME OF CONTRACTING**

In the General Conditions, the words "time of bidding," "bidding," and the like, shall mean the time when the Contract is signed.

**SC-5 CONTRACT DOCUMENTS**

General Condition 104 CONTRACT DOCUMENTS is hereby deleted in its entirety and replaced with the following:

"The Contract Documents" consist of the documents which are listed in the Contract Form."

**SC-6 CONTRACT TIME**

General Condition 105 CONTRACT TIME is hereby deleted in its entirety and replaced with the following:

"Contract Time" is the time specified in the Contract within which the Contractor is required to substantially complete the Work. Substantial Completion shall occur prior to Final Completion. The Contract Documents may require completion on or before a certain specified date.

**SC-7 DEPUTY MANAGER/CITY ENGINEER**

General condition 109 DEPUTY MANAGER is hereby deleted in its entirety and replaced with the following:

The "Deputy Manager" means the official who reports directly to the Manager and exercises supervisory responsibility in the City agency defined in Title 2 herein that is responsible for the Project. The Manager hereby designates the City Engineer as the Deputy Manager for purposes of this Contract. The City Engineer shall have responsibility for this Project and shall undertake all duties, responsibilities, rights and authority, including specific actions and decisions, delegated to the Deputy Manager under the various terms and conditions of this Contract.

**SC-8 SUBCONTRACTOR**

General Condition 118, SUBCONTRACTOR, is hereby amended by adding a new final sentence to read as follows:

"Subcontractor" may also mean the Contractor pursuant to a subcontract for lump-sum self-performed work, as authorized in the Contract Form.

**SC-9 WORK**

General Condition 121 WORK is hereby deleted in its entirety and replaced with the following:

The terms "Scope of Work" or "Work" as used herein shall mean all Preconstruction and Construction Phase services required by or inferable from the Contract Documents, whether completed or partially completed, and includes all other labor, management, administration, supervision, materials, supplies, manufactured components, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

**SC-10 WORKING HOURS AND SCHEDULE**

General Condition 306 WORKING HOURS AND SCHEDULE is hereby deleted in its entirety and replaced with the following:

1. Work shall normally not be done on Saturdays, Sundays, City observed holidays, or outside of the daytime working hours which may be specified in the Special Conditions, except for such work as may be necessary for proper care, maintenance, and protection of Work already done, or in cases when the Work would be endangered or when hazard to life or property would result The Contractor shall comply with Denver's noise control ordinance during all working hours.
- 2.. If the Contractor believes it may be necessary to work on Saturdays, Sundays, holidays, city furlough days, or at night, the Contractor shall make prior arrangements with the Project Manager and receive written approval at least twenty-four (24) hours before such work period so that proper inspection and engineering services can be provided. Such approval may be revoked by the Project Manager if the Contractor fails to maintain adequate equipment and lighting at night for the proper prosecution, control and inspection of the Work. If Work is done outside of approved working hours, and the Project Manager has not assigned inspectors to the Work, the Work performed during

those periods of time may be declared defective solely on the grounds that it was not properly inspected.

3. The Contractor shall schedule and coordinate the performance of all of its Subcontractors and Suppliers, including their use of the Work site. The Contractor shall keep the Subcontractors and Suppliers informed of the Project construction schedule to enable the Subcontractors and Suppliers to plan and perform their work properly.
4. The Contractor shall submit, with the GMP Proposal, a construction schedule which shall provide for the expeditious and practicable execution of the Work. Such construction schedule shall be in a Critical Path Method (CPM) format or such other format approved by the Project Manager. This Schedule shall be considered, upon City acceptance, the baseline schedule for the Project. A Critical Path Method schedule shall be required in any event for any Contractor Change Request pursuant to G.C. 1103.4 and any resulting claim. The receipt of the schedule by the Project Manager shall in no way constitute acceptance of the Contractor's anticipated schedule of construction activities. The schedule will be reviewed for comment by the Project Manager. The Project Manager's review and comment on the schedule shall not constitute approval or acceptance thereof by the City.
5. The Critical Path Method schedule shall provide reasonable detail as described in the Technical Specifications and shall include a time scaled network and computer printout. Additionally, float or slack is defined 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, of any activities in the schedule. Float or slack is not time for the exclusive use or benefit of either the Contractor or the City.
6. The Contractor shall, once a month, submit a progress report and an updated schedule in a form acceptable to the Project Manager.

#### **SC-11 SUBCONTRACTOR ACCEPTANCE**

General Condition 502, SUBCONTRACTOR ACCEPTANCE, is hereby deleted in its entirety and replaced by the following:

1. Except as provided in the City's Small Business Enterprise (SBE), Disadvantaged Business Enterprise (DBE), or Minority and Women Business Enterprise (M/WBE) contracting requirements, the City recognizes that prior to bidding, the bidder may not have been able to negotiate for all portions of the Work which the bidder proposes to subcontract. The City will, therefore, permit the successful bidder to propose additional Subcontractor(s) at any time during the Contract period provided, however, that any limitation on subcontracting has not been exceeded, and that all such SBE, DBE, or M/WBE requirements are adhered to, including, if applicable, the Contractor's SBE or M/WBE Compliance Plan. If the proposed Subcontractor(s) are acceptable and the City, by letter to the Contractor, approves of the Subcontractor(s), the Contractor may enter into agreements with these parties. If any proposed Subcontractor(s) are not acceptable to the City, the Contractor must submit for City approval the names of substitute Subcontractors.
2. Each Subcontractor which the Contractor expects to perform Work must be accepted in writing by the Project Manager before the Subcontractor begins work. The acceptance or rejection of any proposed Subcontractor shall be at the Project Manager's sole discretion. The reasons the Project Manager may use for not accepting a Subcontractor include, but are not limited to, the following:
  - A. Default on a contract within the last five (5) years.
  - B. Default on a contract which required that a surety complete the contract under payment or performance bonds issued by the surety.



- C. Debarment within the last five (5) years by a public entity or any organization which has formal debarment proceedings.
  - D. Significant or repeated violations of Federal Safety Regulations (OSHA).
  - E. Failure to have the specific qualifications listed in the Contract Documents for the work that the Subcontractor will perform.
  - F. Failure to have the required City or Colorado licenses to perform the work described in the subcontract.
  - G. Failure to pay workers the proper wage and benefits or to pay suppliers or subcontractors with reasonable promptness within the last five (5) years.
  - H. Conviction, plea of nolo contendere, entry into a formal agreement admitting guilt or entry of a plea of guilty or otherwise admitting culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, anti-trust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Subcontractor's business, on the part of Subcontractor's principal owners, officers, or employees, within the last five (5) years.
  - I. Failure to pay taxes or fees to the City.
  - J. Evidence that the Subcontractor was selected by the Contractor through the process of bid shopping, dishonesty or buyout.
3. The Contractor shall submit a statement signed by an officer or principal of the Contractor certifying that the Contractor has investigated the qualifications and background of each proposed Subcontractor and certifying under oath that, to the best of his or her knowledge, none of the bases for rejection listed above exist. In lieu of this certification, the Contractor may identify, for each proposed Subcontractor, any of the issues listed above applicable to that Subcontractor and attach to that statement a list of all judicial and administrative proceedings in the last five (5) years in which any proposed Subcontractor is or was a party, the proceedings involving any of the issues listed above or in which any proposed Subcontractor filed for bankruptcy.
4. This Title 5 does not create, and shall not be interpreted as creating, any contractual relationship or privity of contract between the City and any Subcontractor. The acceptance or rejection of a proposed Subcontractor shall not create in that Subcontractor a right to any subcontract nor shall said acceptance or rejection relieve the Contractor of its responsibilities for the work of any Subcontractor.

## **SC-12 PAYMENT PROCEDURE**

The application for payment shall be submitted through Textura® Corporations Construction Management Website. Contractor recognizes and agrees that it shall be required to use the Textura Construction Payment Management System for this Project. Contractor further agrees that, to the fullest extent possible within the CPM System, the City shall be entitled to all non-Confidential records, reports, data and other information related to the project that are available to Contractor through the CPM System, including, but not limited to, information related to Contractor and subcontractor billings. To that end, Contractor agrees that it will activate any available settings within the CPM System that are necessary to grant the City access to such non-Confidential information related to the contract and the project. Applications for payment shall be based on the Contract Unit Prices or the approved Schedule of Values described in GC 903.1

In accordance with General Contract Condition 902, PAYMENT PROCEDURE, the party(ies) responsible for review of all Pay Applications shall be:

<u>Agency/Firm</u>	<u>Name</u>	<u>Telephone</u>
Public Works/ Facilities Capital Projects	Michael A Lopez	720-913-4525 - 719-369-8650

In accordance with General Contract Condition 906, APPLICATIONS FOR PAYMENT, each Application submitted shall include the following:

1. The estimate of Work completed shall be based on the approved schedule of values or unit prices, as applicable, and the percent of the Work complete.
2. Each Application for Payment shall include each and every independent subcontractor's payroll information including pay dates and pay amounts.
3. The Contractor shall also submit to the Auditor and other appropriate officials of the City in a timely fashion, information required by General Contract Condition 1004, REPORTING WAGES PAID.

In accordance with General Contract condition 907, RELEASES AND CONTRACTORS CERTIFICATION OF PAYMENT, Applications for Payment must be accompanied by completed Partial or Final Claim Release Form, as appropriate, from EACH subcontractor and supplier, **AND/OR** the Contractors' Certification of Payment Form. The forms, Final/Partial Release and Certificate of Payment (Subcontractor/Supplier) and the Contractor's Certification of Payment, both of which must be used are attached.

#### **SC-13 SCHEDULE OF VALUES FOR LUMP SUM SUBCONTRACTS**

Special Condition 903, SCHEDULE OF VALUES FOR LUMP SUM CONTRACTS, is hereby deleted in its entirety and replaced by the following:

1. The Contractor shall furnish to the Project Manager, for review and approval, a Schedule of Values for lump sum subcontracts, in such detail as the Project Manager shall request, no later than thirty (30) Days prior to the issuance of the first pay application. The Schedule of Values shall show the amount included for each principal category of work and shall be in proper balance. No pay application shall be submitted until the submitted Schedule of Values is approved in writing by the Project Manager.
2. Should the City issue a Change Order that decreases or increases the Contract Amount, the Schedule of Values shall be modified to reflect the amount of such decrease or increase and resubmitted to the Project Manager at least fifteen (15) Days prior to the pay application reflecting such increase or decrease.

#### **SC-14 APPLICATIONS FOR PAYMENT**

General Condition 906, APPLICATIONS FOR PAYMENT, is hereby deleted in its entirety and replaced by the following:

1. Each complete application shall contain a list of Subcontractor and material invoices. If requested by the City, the Contractor will furnish the City with invoices shown on the lists which accompany any application for payment.
2. Application for payment shall be based on approved Cost of the Work items incurred, completed and/or certified by the Contractor. The application shall specify the Cost of the Work so certified as having been incurred by the Contractor for Work performed during the preceding period. The Contractor's Fee shall be paid based on the actual Cost of Work items incurred. Each application for payment shall also be accompanied by a written schedule of values which sets out the Cost of the Work for the Project together with the Contractor's accounting of the percentage of completion of each line item of Cost of the Work of which the City is liable to pay the Contractor.

3. The Contractor shall certify in writing with each application for payment that to its knowledge the Project will be completed at a cost within the Guaranteed Maximum Price, as modified by change orders, and shall identify with reasonable particularity any circumstances which could result in the total cost to the Contractor (including Fee) in completing the Project exceeding the Guaranteed Maximum Price.
4. Reserved
5. Each application for payment for materials or equipment stored on or off the Project site shall be accompanied by bills of sale to establish the City's title to such material or equipment free and clear of liens and encumbrances; evidence of property insurance covering such materials or equipment; evidence, as to material and equipment stored off the Project site, that the same have been properly labeled as the City's property and segregated from the vendor's other inventory; and, if required by the City, contracts and financing statements sufficient to create a security interest in favor of the City in materials or equipment stored off the Project site which remain in the possession of the vendor of such materials or equipment.
6. Each progress payment application shall show each Subcontractor or Supplier participating in the Work completed during the previous progress period and the dollar amount of such participation. The Contractor will assure that the Subcontractors and/or Suppliers are filing for and are being paid for only the value of materials and services delivered and performed upon or incurred for the Project and that the Subcontractors and/or Suppliers are not over-billing for the effort performed. The Contractor shall, prior to or with the submission of each application for payment, furnish to the City proper evidence accounting for the distribution to Subcontractors and/or Suppliers of funds received under prior applications together with proper releases and waiver, in form and content acceptable to the City, obtained in connection therewith.
7. If the Contractor disputes a Subcontractor's or Supplier's entitlement to a portion of the previous progress payment, the Contractor shall submit to the City copies of any written communication from the Contractor to such Subcontractor or Supplier explaining the Contractor's determination not to render payment to such Subcontractor or Supplier, together with proof of service of such written communication upon such Subcontractor or Supplier.
8. Each application for payment shall be signed. Such signed application for payment shall constitute a representation by the Contractor to the City that the Work has progressed to the point indicated; that the quality of the Work covered by the estimate is in accordance with the Contract Documents; that each obligation covered by the payment application has been properly incurred, is a proper charge and has not been the basis of any previous application (except as otherwise noted); that the money received as a result of the application will be used to discharge the Contractor's obligations under the Contract; and that the Contractor is entitled to payment in the amount requested. The Project Manager or the Design Consultant, as appropriate, must also verify and certify the estimate of Work completed prior to any acceptance by the City.
9. By submitting an application for payment, the Contractor warrants that: (i) the title to the Work covered by an application for payment will pass to the City upon receipt of payment by the Contractor; (ii) the Work covered by previous payment applications is free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens", except for any interest created by retainage; and (iii) no Work covered by an application for payment is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or any other person or entity.

10. The Contractor shall not include in its application for payment any billing for defective Work or for work performed by Subcontractors or Suppliers if it does not intend to pay the Subcontractors or Suppliers for such work.
11. Approval of an application for payment of Work completed or actual payment by the City shall not foreclose the right of the City to examine the books and records of the Contractor to determine the correctness and accuracy of any item.
12. Should the City decline or fail to approve for payment any items of the Contractor's Fee, the Cost of the Work, or any other item shown on an application for payment, the City shall notify the Contractor in writing, setting forth the reasons for such action. The City shall pay that portion of each payment application which is not disapproved in writing by the City.
13. No progress payment or partial or entire use or occupancy of the Project by the City shall constitute an acceptance of Work not in accordance with the Contract Documents.

#### **SC-15 DISCOUNTS, REBATES AND REFUNDS**

Cash discounts obtained on payments made by the Contractor shall accrue to the City if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from the City, or (2) the City has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they can be secured. Amounts which accrue to the City herein shall be credited to the City as a deduction from the Cost of the Work.

#### **SC-16 ADJUSTMENT OF CONTRACT AMOUNT**

General Condition 1104, ADJUSTMENT TO CONTRACT AMOUNT, is hereby deleted in its entirety and replaced by the following:

1. Contract Amount Adjustments. All adjustments to the Contract Amount shall be determined by using one or more of the following methods:
  - A. A negotiated lump sum. If requested by the City, the Contractor shall promptly provide itemized and sufficient substantiating data, including calculations, measurements, cost records, production rates, equipment types and capacity, labor costs by craft and other information which the City may reasonably require the Contractor to produce in order to permit the City to evaluate any lump sum Contractor Change Request. In pricing such proposals, the Contractor shall include estimates of the type of costs described in G.C. 1104.2.
  - B. Unit prices (as stated in the Contract Documents or subsequently agreed upon) multiplied by final verified quantities of work performed;
  - C. Costs as determined in a manner previously agreed upon by the parties, which include markups, that do not exceed those set forth in G.C. 1104.2 below; or
  - D. Time and Material costs as determined in the manner described in G.C. 1104.2, Calculation of the Contract Adjustment. These amounts may be reduced where necessary to take into account the cost of Base Contract Work, Work included in approved Change Orders, Work described in other Field Order/Change Directives, idle time for workers and/or equipment when Work could have been performed in other locations or when the number of workers or amount of equipment provided exceeded the number or amount required to perform the

Work, unsatisfactory Work, or Work which may be or was performed concurrently with the changed Work and which cannot be easily segregated from the changed Work .

2. Calculation of the Contract Adjustment. In no event shall the charge or credit to the City associated with any change exceed the sum of the following:
  - A. Direct Labor The actual net, direct increase or decrease in the cost of the Contractor's labor. Such cost shall include only the cost associated with the workers who actually perform the changed Work. The cost of supervision, management and field or office overhead shall not be included or calculated as a direct labor cost. For shop work, the direct labor cost shall include only those workers who work directly on the item being manufactured or the actual operators of the equipment being used to handle the items being manufactured.
  - B. Labor Burden. Contractor's actual costs for worker's compensation and liability insurance, payroll taxes, social security and employees' fringe benefits (including employer paid health insurance) imposed on the basis of payrolls. This burden must reflect the variability of some burdens, ie social security. The burden shall be itemized and include all small tools and miscellaneous supplies. The total labor burden for such small tools shall not exceed two percent (2%) of the Direct Labor cost.
  - C. Direct Material, Supplies, Installed Equipment. The actual net, direct cost of materials, supplies and equipment incorporated into or consumed by the Work. If actual costs are not available, this cost shall be the lowest commercially available price including all discounts and rebates and all applicable taxes Such cost shall be based on buying the material, supplies and equipment in the largest practical quantity to receive quantity discounts.
  - D. Equipment Costs. Without markup or operator, the lesser of (i) the actual net cost to the Contractor of owned or rented equipment, other than small tools; or (ii) the rental rate for such equipment as determined by using the following method(s):
    - (1) Equipment rental rates listed in the appropriate rental rate book currently in use by the Colorado Department of Transportation. If an item of equipment does not appear in the rental rate book currently in use by the Colorado Department of Transportation, the rental rates published by the Associated Equipment Dealers may be used as a basis for negotiating a rental rate for a particular piece of equipment. The Contractor shall provide all information necessary to determine the appropriate rental rate at the time the equipment is brought on the job. This shall include, but not be limited to, type, description, make, year, model, series, serial number, fuel type, transmission, wheel combination, GVW, capacity and equipment owner.
    - (2) Rental equipment costs shall be determined using actual invoiced rates, less all discounts for basic equipment rental.
    - (3) Mobilization/demobilization costs will be paid if the equipment is mobilized exclusively for Work described in a Change Order. If the equipment is also used on Base Contract Work, no mobilization or demobilization cost will be paid. Mobilization/demobilization costs will be based on using the least expensive means to mobilize or demobilize Equipment shall be obtained from the nearest available source. When the least expensive methods are used, the costs shown in the actual invoice will be the basis for pricing.

E. Mark Up For Overhead And Profit.

- (1) The Contractor's Fee on the calculated change of Cost of Work shall be the only amount added to such calculated cost of Work to as markup and profit to the Contractor, including any fee on applicable Work self-performed by the Contractor.
- (2) A Subcontractor of any tier who actually performs the Work shall be entitled to a markup of twelve percent (12 %) on the actual costs for items A through D in GC 1104.2 above. Bonds and insurance are compensated at direct cost without markup.
- (3) A supervising Subcontractor (if any) shall be entitled to a three percent (3%) markup on the actual price charged to the Subcontractor by a Subcontractor of lower tier.
- (4) All of the Contractor's and Subcontractor's field and office overhead and supervision costs are included in the Fee and markups listed above.
- (5) Neither the Contractor nor Subcontractor of any tier, nor the City in the case of a credit, will apply or attempt to apply these percentage adjustments in a way which would pyramid either the cost or credit because of the involvement of a Subcontractor or sub-subcontractor. Written justification and approval shall be required for any percentages exceeding a total of fifteen percent (15%).

F. Bonds, Insurance, Permits And Taxes. The actual increases or decreases in the cost of premiums for bonds and insurance, permit fees, and sales, use or similar taxes related to the Work. The Contractor shall not be entitled to a Fee for any such costs.

3. Totals as Equitable Adjustment. The Contractor agrees that the total of the above items constitute an equitable adjustment for any and all costs or damages resulting from a change.

4. No Equitable Adjustment for Obstruction by Contractor. No equitable adjustment shall be made as a result of costs resulting from any act, hindrance, obstacle, obstruction, interference or omission of the Contractor, its Subcontractors, Suppliers, or surety, or any other entity or individual acting on behalf of the Contractor.

5. Calculation of Certain Equitable Adjustments.

A. In case of delay in completion of the entire Contract due to drawings, designs or specifications which are defective and for which the City is responsible, the equitable adjustment for delays or costs incurred prior to notification to the City of such defect shall only include the extra cost and time reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect.

B. An equitable adjustment shall not include increased costs for delay resulting from the Contractor's failure to continue performance during determination of any Contractor Change Request or claim.

6. Price Reductions for Defective Cost or Pricing Data. If it is later determined that pricing adjustments to the Contract were not correct due to incomplete or inaccurate pricing data by the Contractor or any Subcontractor or Supplier or that lower prices were reasonably available, the

price shall be reduced accordingly and the Contract Amount modified by an appropriate Change Order.

7. Variation in Quantity of Unit Priced Items. Where the quantity of a unit-priced item in the Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than twenty-five percent (25%) above or below the estimated quantity, and where this difference changes the total original Contract value by more than five percent (5%), an equitable adjustment in the Contract Amount may be made by Change Order. The equitable adjustment shall be based upon any increase or decrease in cost due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completing the Work, the Contractor may request, in writing, an extension of time in accordance with GC 1105.
8. Disposition of Excess or Obsolete Property. When the cost of materials, supplies, equipment or other personal property made obsolete or excess as a result of a delay is included in the equitable adjustment, the Project Manager shall have the right to prescribe the manner of disposition of such property.

#### **SC-17 SURETY BONDS**

General Condition 1501, SURETY BONDS, is hereby deleted in its entirety and replaced by the following:

1. Payment and performance bonds must be issued by a corporate surety authorized to do business in the State of Colorado and approved by the Mayor, the Manager and the City Attorney.
2. Before the Contract is executed, the Contractor shall have furnished such surety bonds and appropriate Powers of Attorney as a guarantee of the faithful performance of the Contract and the payment of bills for labor and materials.
3. The Manager may direct, at his sole discretion, that the required payment and performance bonds be combined in a format approved by the City Attorney.
4. The Contractor shall provide a Consent of Surety for any duly executed Change Order that increases the Contract Amount, thereby increasing the penal sum of the bonds.
5. The form of the Performance and Payment Bond to be used by the Contractor is included in the Contract Documents.

#### **SC-18 CONSTRUCTION INSPECTION BY THE CITY**

General Condition 1701, CONSTRUCTION INSPECTION BY THE CITY, is modified as follows:

1. Persons who are employees of the City or who are under contract to the City or the City as lessee will be assigned to inspect and test the Work. These persons may perform any tests and observe the Work to determine whether or not designs, materials used, manufacturing and construction processes and methods applied, and equipment installed satisfy the requirements of the drawings and specifications, accepted Shop Drawings, Product Data and Samples, and the General Contractor's warranties and guarantees. The General Contractor shall permit these inspectors unlimited access to the Work and provide means of safe access to the Work, which cost shall be included as a Cost of the Work without any increase to the Guaranteed Maximum Price. In addition, General Contractor shall provide whatever access and means of access are needed to off-site facilities used to store or manufacture materials and equipment to be incorporated into the Work and shall respond to any other reasonable request to further the inspector's ability to observe or complete any tests. Such inspections shall not relieve the General Contractor of any of its quality control responsibilities or any other obligations under the Contract. All inspections and all tests

conducted by the City are for the convenience and benefit of the City. These inspections and tests do not constitute acceptance of the materials or Work tested or inspected, and the City may reject or accept any Work or materials at any time prior to the inspections pursuant to G.C. 2002, whether or not previous inspections or tests were conducted by the inspector or a City representative.

2. The Building Inspection Division will perform building code compliance inspections for structures designed for human occupancy. It is the General Contractor's responsibility to schedule and obtain these inspections. If a code compliance inspection results in identification of a condition which will be at variance to the Contract Documents, the General Contractor shall immediately notify the Project Manager and confirm such notification with formal correspondence no later than forty-eight (48) hours after the occurrence.
3. When any unit of government or political subdivision, utility or railroad corporation is to pay a portion of the cost of the Work, its respective representatives shall have the right to inspect the Work. This inspection shall not make any unit of government or political subdivision, utility or railroad corporation a party to the Contract, and shall not interfere with the rights of either party.

### **SC-19 AUTHORITY OF INSPECTORS**

General Condition 1702, AUTHORITY OF INSPECTORS, is hereby deleted in its entirety and replaced by the following:

Inspectors assigned to the Work by the Project Manager are authorized to reject any Work, any materials, or any component of the Work which is not as required or specified in the Contract Documents. Such rejection will be confirmed by the Project Manager in writing to the Contractor. Inspections may extend to all or any part of the Work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to alter or waive the provisions of the Contract Documents, nor is the inspector authorized to issue instructions contrary to the provisions of the Contract Documents or to act as foreman for the Contractor.

### **SC-20 TERMINATION OF CONTRACT FOR CONVENIENCE OF THE CITY**

General Condition 2202, TERMINATION OF CONTRACT FOR CONVENIENCE OF THE CITY, is hereby deleted in its entirety and replaced by the following:

1. The performance of Work under the Contract may be terminated without cause by the City in whole or in part whenever the Manager, in his sole discretion, shall determine that such termination is in the best interest and convenience of the City or whenever the City is prohibited from completing the Work for any reason. Such termination shall be effected by giving not less than three (3) Days' written notice to the Contractor specifying the extent to which performance of the Work is terminated and the date upon which such termination becomes effective.
2. Upon receipt of such notice of termination, the Contractor shall:
  - A. Stop work as specified in the notice;
  - B. Terminate all orders and subcontracts except as necessary to complete Work which is not terminated;
  - C. If directed in writing by the Manager to do so, assign all right, title, and interest in subcontracts and materials in progress, in which case the City will have the right, in its discretion, to settle or pay any or all Claims arising out of the termination of such subcontracts;
  - D. Settle outstanding liabilities and claims with the approval of the Manager;



- E. Complete performance of such part of the Work as has not been terminated; and
  - F. Take such other actions as may be necessary, or as may be directed by the City, for the protection and preservation of the property related to the Contract.
3. Except as provided herein, any inventory resulting from the termination of the Contract may, with written approval of the Manager, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the City.
  4. Upon receipt of notice of such termination, the Contractor shall submit to the Project Manager a request for final payment, in a form and with certification prescribed by the City. Such request shall be submitted promptly but in no event later than sixty (60) Days from the effective date of termination, unless extended in writing by the Project Manager upon the written request of the Contractor within such sixty (60) Day period.
  5. The final payment to the Contractor after a termination for convenience shall be calculated by adding the following amounts:
    - (1) Any actual costs incurred by the Contractor since the last approved pay request that are reimbursable as a Cost of the Work plus the proportionate Fee on such costs;
    - (2) The actual costs incurred by the Contractor for terminating the Work and for protecting the Work in the manner, if any, directed by the City, plus the proportionate Fee on such costs; and
    - (3) The amount of retainage withheld by the City to date.
  6. The acceptance of final payment as calculated above shall constitute a waiver of all Claims by the Contractor except those previously made in accordance with G.C. 1301 which have been separately identified by the Contractor as unsettled in the final Project Application for Payment.
  7. The Manager may, from time to time, under such terms and conditions as the Manager may prescribe, authorize partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if it is estimated that the total of such payments will not exceed the amount to which the Contractor will be entitled. If the total of such payments is in excess of the amount to which the Contractor is entitled, the excess shall be payable by the Contractor to the City upon demand, together with interest computed pursuant to statute, for the period from the date the excess payment is received by the Contractor to the date the excess is repaid to the City.
  8. The settlement for the Work performed shall not relieve the Contractor or its surety from responsibility for defective Work and/or materials on the completed portion of the Work nor for labor and materials or any other items as guaranteed by the surety bond or bonds.
  9. The City shall be given full access to all books, correspondence, records, electronic files and data bases, and other materials of the Contractor relating to the Contract in order to determine the amounts to be paid on account of the termination of the Contract under this G.C. 2202. The Contractor shall, as requested by the City, furnish clear copies of any such materials.
  10. In the event the parties fail to agree in whole or in part on the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this G.C. 2202, the Contractor may appeal the Project Manager's determination as to the amount owed in accordance with Title 13, except that, if the Contractor has failed to submit its request for payment within the time provided above and has failed to request an extension of such time, it shall have no such right of appeal.

**SC-21 SUBCONTRACTS**

In accordance with General Contract Condition 501, SUBCONTRACTS, no limit shall apply to that percentage of the Work, which may be sublet providing that the subcontractors receive prior approval in accordance with General Contract Condition 502, SUBCONTRACTOR ACCEPTANCE.

**SC-22 RESERVED**

**SC-23 DISPOSAL OF NON-HAZARDOUS WASTE AT DADS**

In accordance with the Landfill Agreement made between the City and Waste Management of Colorado, Inc., bidders will be required to haul dedicated loads (non-hazardous entire loads of waste) to the Denver-Arapahoe Disposal Site (“DADS”) for disposal. DADS is located at Highway 30 and Hampden Avenue in Arapahoe County, Colorado. The City will pay all fees associated with such disposal but the bidder shall be responsible for the costs of transporting the loads. Non-hazardous waste is defined as those substances and materials not defined or classified as hazardous by the Colorado Hazardous Waste Commission pursuant to C.R.S. §25-15-207, as amended from time to time, and includes construction debris, soil and asbestos. Bidders shall not use Gun Club Road between I-70 and Mississippi Avenue as a means of access to DADS.

**SC-24 PROHIBITION ON USE OF CCA-TREATED WOOD PRODUCTS**

The use of any wood products pressure-treated with chromated copper arsenate (CCA) is prohibited. Examples of CCA-treated wood products include wood used in play structures, decks, picnic tables, landscaping timbers, fencing, patios, walkways and boardwalks.

**SC-25 WAIVER OF: PART 8 OF ARTICLE 20 OF TITLE 13, COLORADO REVISED STATUTES.**

The Contractor specifically waives all the provisions of Part 8 of Article 20 of Title 13, Colorado Revised Statutes regarding defects in the Work under this Construction Contract.

**SC-26 DEBARRED SUBCONTRACTORS PROHIBITED**

The Contractor is prohibited from hiring any subcontractor currently debarred by the City in accordance with section 20-77 of the Denver Revised Municipal Code.

**SC-27 ATTORNEY’S FEES**

Colorado Revised Statute 38-26-107 requires that in the event any person or company files a verified statement of amounts due and unpaid in connection with a claim for labor and materials supplied on this project, the City shall withhold from payments to the Contractor sufficient funds to insure the payment of any such claims. Should the City and County of Denver be made a party to any lawsuit to enforce such unpaid claims or any lawsuit arising out of or relating to such withheld funds, the Contractor agrees to pay to the City its costs and a reasonable attorney’s fee which cost shall be included as a Cost of the Work.

Because the City Attorney Staff does not bill the City for legal services on an hourly basis, the Contractor agrees a reasonable fee shall be computed at the rate of one hundred dollars per hour of City Attorney time.

General Condition 1601 is hereby deleted in its entirety and replaced with the following:

**1.      General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for eight (8) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**2.      Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit V**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**3.      Additional Insureds:** For Commercial General Liability, Auto Liability and Contractors Pollution Liability, Contractor and subcontractor’s insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**4.      Waiver of Subrogation:** For all coverages required under this Agreement, Contractor’s insurer shall waive subrogation rights against the City.

**5.      Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers’ Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**6.      Workers’ Compensation/Employer’s Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. . If an exposure exists, the U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering

into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**7. Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**8. Business Automobile Liability:** Contractor shall maintain Business Automobile Liability, or its equivalent, with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

**9. Excess/Umbrella Liability:** Contractor shall maintain excess liability limits of \$3,000,000. Coverage must be written on a "follow form" basis. Any combination of primary and excess coverage may be used to achieve required limits.

**10. Builders Risk or Installation Floater:** Contractor shall maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. Contractor is responsible for payment of all policy deductibles. The City and County of Denver, Contractor, and sub-contractors shall be named insureds under the policy. Policy shall remain in force until acceptance of the project by the City.

**11. Contractors Pollution Liability:** Contractor shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean up costs. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

**12. Additional Provisions:**

(a) For Commercial General Liability, Excess Liability and Contractors Pollution Liability the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(c) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**SC-29 GREENPRINT DENVER REQUIREMENTS**

In accordance with the City and County of Denver Executive Order 123: Greenprint Denver Office and Sustainability Policy, as amended, Contractor shall adhere to sections of Executive Order 123 pertinent to the construction of the built environment. This includes but is not limited to: all construction and renovation of buildings shall follow instructions and memorandum for high performance buildings; horizontal projects shall include the use of fly ash concrete and recycled aggregate where possible; and, all projects shall recycle construction and demolition waste, and install materials that contain recycled content whenever possible using the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) as guidance. Non-hazardous solid waste that is eligible for reuse or recycling is not subject to the DADS disposal requirement defined in SC-12.

A completed "Greenprint Denver Closeout Form for Construction Projects" shall be delivered to the Project Manager as a submittal requirement of Final Acceptance.

<http://www.denvergov.org/constructioncontracts/Home/ContractorResources/tabid/443154/Default.aspx>

## **EXHIBIT C**

### **Guaranteed Maximum Price (GMP) Proposal**



**Project: Denver County Jail - Bid Package #1**  
**Location: Denver, CO**  
**Owner: City County of Denver**  
**Architect: Wold**  
**Date: 7/15/17**  
**Gross SF: 24,230**

**Contract Design Estimate (CD)**

<b>CSI SUMMARY</b>		<b>SUBTOTAL</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
02	EXISTING CONDITIONS		\$120,991	\$4.99	
	Demolition	\$120,991			
	Surveying	\$0			
03	CONCRETE		\$0	\$0.00	
	Site Concrete	\$0			
	Caissons	\$0			
	Building Concrete	\$0			
	Gypcrete	\$0			
	Pre-Cast Concrete	\$0			
04	MASONRY		\$0	\$0.00	
05	STEEL		\$95,100	\$3.92	
06	CARPENTRY		\$0	\$0.00	
	Rough Carpentry	\$0			
	Finish Carpentry	\$0			
07	THERMAL & MOISTURE PROTECTION		\$141,150	\$5.83	
	Stucco & Faux Stone	\$0			
	Metal Wall Panels	\$0			
	Roofing	\$0			
	Building Insulation	\$0			
	Spray-On Fireproofing	\$0			
	Waterproofing & Joint Sealants	\$141,150			
08	DOORS & WINDOWS		\$0	\$0.00	
	Doors & Hardware	\$0			
	Storefront & Glazing	\$0			
	Special Glazing Systems	\$0			
	Overhead Doors	\$0			
09	FINISHES		\$0	\$0.00	
	Steel Studs & Drywall	\$0			
	Acoustical Ceilings	\$0			
	Flooring & Base	\$0			
	Paint & Wall Covering	\$0			
10	SPECIALTIES		\$0	\$0.00	
11	EQUIPMENT		\$0	\$0.00	
12	FURNISHINGS		\$0	\$0.00	
13	SPECIAL CONSTRUCTION		\$0	\$0.00	
14	CONVEYING SYSTEMS		\$0	\$0.00	
21	FIRE SUPPRESSION		\$2,000	\$0.08	
22	HVAC		\$30,100	\$1.24	
23	PLUMBING		\$0	\$0.00	
26	ELECTRICAL		\$1,800	\$0.07	
28	ELECTRONIC SAFETY & SECURITY		\$2,039,002	\$84.15	
31	EARTHWORK		\$5,780	\$0.24	
32	EXTERIOR IMPROVEMENTS		\$0	\$0.00	
	Asphalt Paving	\$0			
	Landscaping	\$0			
	Site Amenities	\$0			
33	UTILITIES		\$0	\$0.00	
<b>SUBTOTAL BUILDING COSTS</b>			<b>\$2,435,923</b>	<b>\$100.53</b>	
ON SITE STAFF			\$69,408	\$2.86	3 Months
ON SITE REIMBURSABLES			\$126,916	\$5.24	3 Months
WEATHER PROTECTION			\$0	\$0.00	Excluded
BUILDING PERMIT and Plan Review			\$0	\$0.00	Excluded
USE TAX City of Castle Rock (3.5% x 50% valuation)			\$0	\$0.00	Excluded
INSURANCE			\$41,650	\$1.72	3 Months
DEVELOPMENT FEES, Assessments, Etc.			\$0	\$0.00	Excluded
ESCALATION COSTS			\$0	\$0.00	Excluded
BCI PAYMENT & PERFORMANCE BOND			\$0	\$0.00	Included in Insurance
PRECONSTRUCTION SERVICES			\$12,000	\$0.50	
CONTINGENCY, Construction		3.00%	\$80,577	\$3.33	
MOCKUPS			\$10,000	\$0.41	
BRYAN CONSTRUCTION FEE			\$121,187	\$5.00	3 Months
OWNER CONTINGENCY		5.00%	\$144,883	\$5.98	
TEXTURA FEE			\$3,386		
<b>TOTAL CONSTRUCTION COST</b>			<b>\$3,045,931</b>	<b>\$125.71</b>	

PROJECT: **Denver County Jail - Bid Package #1**  
 CITY, STATE: **Denver, CO**  
 JOB DURATION: **8.00 MONTHS**  
 GROSS SF: **24,230 SF**

DATE: **7/15/17**  
 OWNER: **City County of Denver**  
 ARCHITECT: **Wold**

**Bryan Construction**

**Denver County Jail - Bid Package #1**

**Contract Design Estimate (CD)**

<b>EXISTING CONDITIONS</b>									
	<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
<b>DEMOLITION:</b>	1	SUB					\$0	\$0.00	#NAME?
- Building Demolition	1	LS	\$32,886.00	\$45.00	\$32,841.00	\$0.00	\$32,886	\$1.36	
- Premium for Leed requirements	1	ALLOW	\$7,500.00	\$0.00	\$7,500.00	\$0.00	\$7,500	\$0.31	
- Exterior Demo	1	LS	\$32,396.00	\$0.00	\$32,396.00	\$0.00	\$32,396	\$1.34	
- Add for demo @ 5th floor ceiling	1	LS	\$8,209.00	\$0.00	\$8,209.00	\$0.00	\$8,209	\$0.34	
- Shoring/Steel at opening	1	ALLOW	\$20,000.00	\$0.00	\$20,000.00	\$0.00	\$20,000	\$0.83	
- Hoisting for punch out	1	LS	\$10,000.00	\$0.00	\$10,000.00	\$0.00	\$10,000	\$0.41	
- Misc Core Drills	1	LS	\$10,000.00	\$0.00	\$10,000.00	\$0.00	\$10,000	\$0.41	
- Taxes		LS	7.65%				Inc	\$0.00	
- Subcontractor Bond	-	LS					\$0	\$0.00	
<b>SUBTOTAL DEMOLITION</b>							<b>\$120,991</b>	<b>\$4.99</b>	Check Math
<b>TOTAL EXISTING CONDITIONS</b>							<b>\$120,991</b>	<b>\$4.99</b>	
<b>CONCRETE</b>									
	<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
<b>TOTAL CONCRETE</b>							<b>\$0</b>	<b>\$0.00</b>	



Bryan Construction		Denver County Jail - Bid Package #1					Contract Design Estimate (CD)			
<b>MASONRY</b>		<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
<b>TOTAL MASONRY</b>								\$0	\$0.00	*
<b>STEEL</b>		<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
<b>MISCELLANEOUS METALS:</b>										
- Sprinkler Shroud		1	LS	\$56,100.00	\$56,100	\$0	\$0	\$56,100	\$2.32	
- Structural Upgrades (CFRP) - For Penetrations		1	ALLOW	\$39,000.00	\$39,000	\$0	\$0	\$39,000	\$1.61	
- Taxes			LS	7.65%				Inc	\$0.00	
- Subcontractor Bond		-	LS					\$0	\$0.00	
<b>TOTAL STEEL</b>								\$95,100	\$3.92	Check Math
<b>CARPENTRY</b>		<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
<b>TOTAL CARPENTRY</b>								\$0	\$0.00	
<b>THERMAL &amp; MOISTURE PROTECTION</b>		<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
<b>CAULKING &amp; SEALANTS:</b>										
- Caulking (Pick proof) @ Cells		1	LS	\$141,150.00	\$141,150.00	\$0.00	\$0.00	\$141,150	\$5.83	
- Taxes			LS	7.65%				Inc	\$0.00	
- Subcontractor Bond		-	LS					\$0	\$0.00	
<b>SUBTOTAL WATERPROOFING &amp; JOINT SEALANTS</b>								\$141,150	\$5.83	Check Math
<b>TOTAL THERMAL &amp; MOISTURE PROTECTION</b>								\$141,150	\$5.83	
<b>DOORS &amp; WINDOWS</b>		<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>

Bryan Construction		Denver County Jail - Bid Package #1					Contract Design Estimate (CD)			
<b>TOTAL</b>										
<b>DOORS &amp; WINDOWS</b>								\$0	\$0.00	
<b>FINISHES</b>		<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
<b>PAINT &amp; WALL COVERING:</b>		1	SUB					\$0	\$0.00	#NAME?
- Cell Walls			LS	\$90,000.00	\$90,000.00	\$0.00	\$0.00	\$0	\$0.00	In BP #2
- Taxes			LS	7.65%				Inc	\$0.00	
- Subcontractor Bond		1	LS	2.0%				\$0	\$0.00	
<b>SUBTOTAL PAINT &amp; WALL COVERING</b>								\$0	\$0.00	*
<b>TOTAL FINISHES</b>								\$0	\$0.00	

Bryan Construction		Denver County Jail - Bid Package #1					Contract Design Estimate (CD)			
<b>SPECIALTIES</b>										
	QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES	
<b>TOTAL SPECIALTIES</b>							\$0	\$0.00	*	
<b>EQUIPMENT</b>										
	QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES	
<b>TOTAL EQUIPMENT</b>							\$0	\$0.00	*	
<b>FURNISHINGS</b>										
	QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES	
<b>TOTAL FURNISHINGS</b>							\$0	\$0.00	*	
<b>SPECIAL CONSTRUCTION</b>										
	QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES	
<b>TOTAL SPECIAL CONSTRUCTION</b>							\$0	\$0.00	*	
<b>CONVEYING SYSTEMS</b>										
	QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES	
<b>TOTAL CONVEYING SYSTEMS</b>							\$0	\$0.00	*	
<b>FIRE SUPPRESSION</b>										
	QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES	
<b>FIRE PROTECTION:</b>										
- Submittals/Shop Drawings	1	SUB					\$0	\$0.00	#NAME?	
- Layout/Rough-In	1	ALLOW	\$1,000.00	\$0.00	\$1,000.00	\$0.00	\$1,000	\$0.04		
- Taxes		LS	7.65%				Inc	\$0.00		
- Subcontractor Bond	-	LS					\$0	\$0.00		
<b>TOTAL FIRE SUPPRESSION</b>							\$2,000	\$0.08	Check Math	

Bryan Construction		Denver County Jail - Bid Package #1					Contract Design Estimate (CD)			
HVAC		QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES
<b>H.V.A.C. SYSTEMS:</b>		1	SUB					\$0	\$0.00	#NAME?
- Submittals/Shop Drawings		1	LS	\$15,000.00	\$0.00	\$15,000.00	\$0.00	\$15,000	\$0.62	
- Cad Coordination		1	ALLOW	\$1,500.00	\$0.00	\$1,500.00	\$0.00	\$1,500	\$0.06	
- Layout/Rough-In		1	LS	\$13,600.00	\$0.00	\$13,600.00	\$0.00	\$13,600	\$0.56	
- Taxes			LS	7.65%				Inc	\$0.00	
- Subcontractor Bond		-	LS					\$0	\$0.00	
<b>TOTAL HVAC</b>								<b>\$30,100</b>	<b>\$1.24</b>	Check Math
PLUMBING		QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES
<b>PLUMBING SYSTEMS:</b>		1	SUB					\$0	\$0.00	#NAME?
- Submittals/Shop Drawings			0	\$0.00	\$0.00	\$0.00	\$0.00	\$0	\$0.00	In HVAC
- Cad Coordination			0	\$0.00	\$0.00	\$0.00	\$0.00	\$0	\$0.00	In HVAC
- Layout/Rough-In			0	\$0.00	\$0.00	\$0.00	\$0.00	\$0	\$0.00	In HVAC
- Taxes			LS	7.65%				Inc	\$0.00	
- Subcontractor Bond		-	LS					\$0	\$0.00	
<b>TOTAL PLUMBING</b>								<b>\$0</b>	<b>\$0.00</b>	*
ELECTRICAL		QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES
<b>ELECTRICAL SYSTEM:</b>		1	SUB					\$0	\$0.00	#NAME?
- Submittals/Shop Drawings		1	LS	\$800.00	\$0.00	\$800.00	\$0.00	\$800	\$0.03	
- Layout/Rough-In		1	LS	\$1,000.00	\$0.00	\$1,000.00	\$0.00	\$1,000	\$0.04	
- Taxes			LS	7.65%				Inc	\$0.00	
- Subcontractor Bond		-	LS					\$0	\$0.00	
<b>TOTAL ELECTRICAL</b>								<b>\$1,800</b>	<b>\$0.07</b>	Check Math
ELECTRONIC SAFETY & SECURITY		QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES
<b>ELECTRONIC SAFETY &amp; SECURITY:</b>		1	SUB					\$0	\$0.00	#NAME?
- Trusswall System		1	LS	\$1,566,700.00	\$1,566,700.00	\$0.00	\$0.00	\$1,566,700	\$64.66	
- Preconstruction Services		1	LS	\$14,000.00	\$0.00	\$14,000.00	\$0.00	\$14,000	\$0.58	
- Security Electronics		1	LS	\$414,650.00	\$414,650.00	\$0.00	\$0.00	\$414,650	\$17.11	
- Delete Programming (CML)		(1)	0	\$13,000.00	\$0.00	\$13,000.00	\$0.00	(\$13,000)	(\$0.54)	
- Add Programming (Sierra)		1	0	\$35,000.00	\$0.00	\$35,000.00	\$0.00	\$35,000	\$1.44	
- Taxes		-	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0	\$0.00	
- Subcontractor Bond		1	LS	7.65%				Inc	\$0.00	
			LS	1.1%				\$21,652	\$0.89	
<b>TOTAL ELECTRONIC SAFETY &amp; SECURITY</b>								<b>\$2,039,002</b>	<b>\$84.15</b>	Check Math
EARTHWORK		QTY	UNIT	UNIT COST	F&I M	L	EQUIP.	TOTAL COST	COST PER SF	NOTES
<b>SITE EARTHWORK:</b>		1	SUB					\$0	\$0.00	#NAME?
- Demo Concrete Sidewalk/Paving		90	SF	\$2.00	\$2.00	\$0.00	\$0.00	\$180	\$0.01	
- Mob		1	LS	\$3,500.00	\$3,500.00	\$0.00	\$0.00	\$3,500	\$0.14	
- Demo Curb and Gutter		20	LF	\$10.00	\$10.00	\$0.00	\$0.00	\$200	\$0.01	
- Clear and Grub, Strip Topsoil		400	SF SITE	\$1.00	\$1.00	\$0.00	\$0.00	\$400	\$0.02	
- Moisture treat/scarify/recompact		400	SF SITE	\$1.50	\$1.50	\$0.00	\$0.00	\$600	\$0.02	
- Remove/Salvage gravel/respread gravel		300	SF	\$3.00	\$3.00	\$0.00	\$0.00	\$900	\$0.04	
<b>TOTAL EARTHWORK</b>								<b>\$5,780</b>	<b>\$0.24</b>	Check Math

Bryan Construction		Denver County Jail - Bid Package #1					Contract Design Estimate (CD)			
<b>EXTERIOR IMPROVEMENTS</b>		<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
TOTAL EXTERIOR IMPROVEMENTS								\$0	\$0.00	
<b>UTILITIES</b>		<b>QTY</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>F&amp;I M</b>	<b>L</b>	<b>EQUIP.</b>	<b>TOTAL COST</b>	<b>COST PER SF</b>	<b>NOTES</b>
TOTAL UTILITIES								\$0	\$0.00	*



**JOB NAME: Denver County Jail - Bid Package #1**

**Date: 7/15/17**

**Owner: City County of Denver**

**Architect: Wold**

**Gross SF: 24,230**

**Tax: 0.00%**

ITEM #	GENERAL CLARIFICATIONS & EXCLUSIONS:
1	Proposal based on drawings titled Bid Package #1 dated 5/1/17 as prepared by Wold Architects.
2	Bid Package 2 is excluded.
3	GC Overhead is based on 3 months of work. Additional work to complete project will be part of BP #2.
4	Our proposal is based on a NTP date of: August 30th, 2017
5	Our proposal is based on a 5 day work week, 8 hours/day.
6	We exclude all Tap & Development Fees.
7	All Public Utility fees are excluded.
8	We exclude the cost for electrical consumption during construction.
9	We exclude all Permit, Plan Check and Use Tax Fees.
10	An Alto Survey is Excluded.
11	Drainage & Traffic Studies are excluded.
12	Materials Testing is excluded.
13	Geotechnical services are excluded. (i.e. Soils Report).
14	Hazardous Material Investigation and Abatement is excluded.
15	Major Dewatering is excluded.

CSI Div.	CLARIFICATION/EXCLUSION
2	We assume that we will be able to bolt the personnel/material hoist into the existing façade for stabilization and anchoring.
2	We assume that we will be able to punch out the area shaded in red in the attached drawing as provided by BKBM engineers. We have included allowances for shoring/hold downs due to the removal of the precast concrete.
3	Concrete work is excluded.
4	Masonry work is excluded.
5	Steel work is excluded.
6	Casework is excluded.
7	Security Caulking for the cells is included. Any other caulking or division 7 work is excluded.
8	Doors/Frames/Hardware for the cells and secure areas are included. All other openings are excluded. Pricing for security doors/frames/hardware is in division 28.
9	All finishes are excluded.
12	The detention contractor will furnish and install all furnishings at the North cells. The Detention contractor will install the Owner provided furnishings at the South cells. Furnishings @ Cells include bunks, desk W/ chair and bookshelf, wall mounted seat, shelving, mirrors. Furnishings @ showers include Grab Bars, Shower seats as necessary, Robe Hook, Fold down shelves as necessary.
21	Fire suppression work is excluded.
22	Submittals/layout for plumbing work is included.
23	Submittals/layout for HVAC work is included.
26	Submittals/layout for electrical work is included.
28	This proposal assumes that Sierra will be performing the programming for security electronics and that CML will be performing all other security electronics work which has been approved by the city and county of Denver.
28	Cells will be a trusswall panelized system. 6th floor cells will not have a metal ceiling and will use the underside of the concrete mezzanine as the ceiling. The 7th floor cells will have a metal ceiling. It is assumed that there will be a sprinkler shroud at the 6th floor cells. It is assumed that there will be no sprinkler shroud at the 7th floor cells as the sprinkler heads will extend down through the ceiling.



## Allowances - BP #1

Item	Amount	
Demo - Premium for Leed requirements	\$7,500	
Shoring/Steel at opening	\$20,000	
Misc Core Drills	\$10,000	
Cementitious Fireproofing	\$ -	To be included BP #2
Structural upgrades (CFRP) - For penetrations	\$39,000	
Firestopping	\$0	To be included BP #2
Security Hardware	\$109,000	
Security Glazing	\$18,600	
Infill between 7th floor cells and ACT	\$ -	To be included BP #2
Fluid applied flooring @ showers	\$ -	To be included BP #2
Impact resistant Board 4' AFF in corridor	\$ -	To be included BP #2
Bike Racks	\$ -	To be included BP #2
Interior Building Signage	\$ -	To be included BP #2
Energy Star Equipment	\$ -	To be included BP #2
Fire sprinkler submittals and shop drawings	\$1,000	
Fire sprinkler layout	\$1,000	
CAD coordination	\$1,500	
Low emitting materials	\$ -	To be included BP #2
Low Flow Fixtures	\$ -	To be included BP #2
Green power	\$ -	To be included BP #2
Metering Equipment for LEED	\$ -	To be included BP #2
Allowance for heating exercise rooms	\$ -	To be included BP #2
Outside air delivery monitoring	\$ -	To be included BP #2

# **EXHIBIT D**

## **Technical Specifications**

**[TO BE INCORPORATED BY REFERENCE]**



**EXHIBIT E**

**Contract Drawings**

[TO BE INCORPORATED BY REFERENCE]

## **EXHIBIT F**

### Compliance Plan

**CITY AND COUNTY OF DENVER  
DIVISION OF SMALL BUSINESS OPPORTUNITY**

**CONSTRUCTION CONTRACT COMPLIANCE PLAN  
FOR M/WBE PARTICIPATION**

**BRYAN CONSTRUCTION INC.  
DENVER COUNTY JAIL BUILDING 24 – FLOOR 6/7 BUILDOUT  
Contract Number 201736311**

SECTION 1: INTRODUCTION ..... 1  
SECTION 2: KEY PERSONNEL ..... 2  
SECTION 3: STRUCTURING BID PACKAGES FOR M/WBE PARTICIPATION ..... 2  
SECTION 4: COMMUNITY OUTREACH EFFORTS AND ADVERTISING TO M/WBE  
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**CITY AND COUNTY OF DENVER  
DIVISION OF SMALL BUSINESS OPPORTUNITY  
CONSTRUCTION CONTRACT COMPLIANCE PLAN  
FOR M/WBE PARTICIPATION**

**Bryan Construction Inc.  
Denver County Jail Building 24 Floor 6/7 Buildout  
Contract Number 201736311**

**SECTION 1: INTRODUCTION**

- A. [Bryan Construction Inc.] (the “Contractor”) submits this Compliance Plan to the Director of the Division of Small Business Opportunity (“Director”), as required by the Manager of Public Works, in accordance with §§ 28-51 to 28-83, D.R.M.C., and the implementing rules adopted by the Director (“Rules”).
- B. Under the City’s Ordinance No. 760, Series of 2006 (the “M/WBE Ordinance”), codified at §§ 28-51 to 28-83, D.R.M.C., the M/WBE participation goal for this contract is 10.44%. The good faith solicitation level is 100%
- C. The Contractor is committed to compliance with the M/WBE Ordinance in its performance of the Contract. The Contractor will continually pursue a level of M/WBE participation that equals or exceeds [goal]% of the total construction price under the Contract.
- D. Because of the delivery method used for this Project, the work was not ready for subcontracting at the time when the Contractor was awarded the Contract. Therefore this Compliance Plan provides for the M/WBE solicitation and subcontracting to be performed after contract formation. The process by which the Contractor will solicit, obtain, count and maintain participation by MBE and WBE firms for this Project under this Compliance Plan, will be same as the M/WBE Ordinance requires for “design-bid-build” construction contracts.
- E. This Compliance Plan describes how the Contractor will address the project goal at the point where the project work is sufficiently defined that the process of obtaining subcontractors and suppliers can begin, by committing to utilize MBE/WBEs for the Project work, using the good faith efforts as defined by the M/WBE Ordinance.
- F. The delivery method for this project under the Contract is [CM/GC].
- G. The Contractor [will not] deliver the construction work in phases. [If the work will be delivered in phases, Section 3 below describes the Contractor’s plan to meet the project goal as it relates to such phases.]

## SECTION 2: KEY PERSONNEL

[Colin Leed], [719-632-5355], [CLeed@Bryanconstruction.com], has been assigned as the [Project Manager] for this Contract. The [Project Manager] is responsible for the overall management of the Contractor's performance of the Project.

*[Identify the other key staff who will be responsible for carrying out the Compliance Plan, and for contract administration for subcontractors and suppliers, etc. The following are examples, to be tailored to the Contractor's situation:*

[John Moya], [970-999-2803], [JMoya@bryanconstruction.com], is the [Superintendent], who reports to the [Project Manager] and is responsible for compliance with this Compliance Plan, outreach and coordination activities, and maintaining appropriate records to ensure that goals are met.

## SECTION 3: STRUCTURING BID PACKAGES FOR M/WBE PARTICIPATION

- A. The Contractor has identified preliminarily the following separate packages of work to be subcontracted:

*[Display the information in chart form. Examples are provided below for your use.*

*Customize the form so that it provides the information specific to your project.*

*The total at bottom needs to be the contract total.*

*Showing subtotals along the way for completely different types of work is acceptable.*

***Force accounts and contingency fees may be deducted from the total goals are met upon.***

*The overall committed contract goal is the percentage stated on page 1. ]*

## M/WBE Goals Schedule Chart

Scope	Anticipated Total Contract \$	Anticipated Total Contract %	\$ of listed Scope	% of Construction Services
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### Bid Package 1:

Demolition	\$120,991.00	2.01%	\$0.00	0%
Steel/Structural Modifications	\$95,100.00	1.58%	\$0.00	0%
Fire Suppression Submittals	\$1,000.00	0.02%	\$0.00	0%
Fire Suppression - Rough In/Layout	\$1,000.00	0.02%	\$0.00	0%
Mechanical/Plumbing Submittals	\$15,000.00	0.25%	\$15,000.00	0.25%
Mechanical/Plumbing - Rough In/Layout	\$13,600.00	0.23%	\$13,600.00	0.23%
Electrical Submittals	\$800.00	0.01%	\$0.00	0%
Electrical - Rough In/Layout	\$1,000.00	0.02%	\$0.00	0%
Detention Cells	\$1,743,502.00	28.95%	\$0.00	0%
Security Electronics	\$436,650.00	7.25%	\$0.00	0%
Earthwork	\$5,780.00	0.10%	\$0.00	0%
Cad Coordination	\$1,500.00	0.02%	\$0.00	0%

### Bid Package 2:

Concrete	\$161,159.00	2.68%	\$0.00	0%
Masonry	\$150,240.00	2.49%	\$0.00	0%
Steel	\$259,279.00	4.31%	\$0.00	0%
Carpentry	\$59,847.00	0.99%	\$0.00	0%
Termal & Moisture Protection	\$86,426.00	1.44%	\$0.00	0%
Doors & Windows	\$168,040.00	2.79%	\$0.00	0%
Finishes	\$684,465.00	11.37%	\$0.00	0%
Specialties	\$22,000.00	0.37%	\$0.00	0%
Equipment	\$15,000.00	0.25%	\$0.00	0%
Furnishings	\$1,000.00	0.02%	\$0.00	0%
Fire Suppression	\$194,100.00	3.22%	\$0.00	0%

HVAC/Plumbing	\$1,232,736.00	20.47%	\$600,000.00	9.96%
Electrical	\$551,531.00	9.16%	\$0.00	0%

<b>Total Construction Amount:</b>	<b>\$6,021,746.00</b>	<b>100%</b>	<b>\$628,600.00</b>	<b>10.44%</b>
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- B. These packages will be reviewed and refined as the work for the Contract is further defined and ready for the process of subcontracting. Specifically, prior to advertising any package of work for bids or proposals, the Contractor will review the work in detail, to determine the types of work that can be performed by M/WBE firms, with reference to the DSBO’s database and directory of certified M/WBE firms, and will adjust its subcontracting packages to maximize opportunities for M/WBE participation in such subcontracting, within economically feasible packages.
- C. The Contractor has the following preliminary schedule for issuance of each bid package:
  - Bid Package 1 – ITB Sent June 28<sup>th</sup>, 2017
  - Bid Package 2 – ITB July 31<sup>st</sup>, 2017
- D. *[Identify any specific issues or potential issues with the contract’s scope of work and how the Contractor will address them – specialized work items, etc.]*
- E. *[State whether the Contractor will prequalify any subcontractors. If prequalification will be used, identify all subcontracts for which the Contractor will prequalify subcontractors, and explain the prequalification process that will be used. ]*All subcontractors will be prequalified for the project. During our ITB process a prequalification form is sent to the bidder via our ITB software. Once the prequal form has been filled out and approved, the contractor will be allowed to bid.
- F. The Contractor may pursue different percentage goals for M/WBE participation in each separate package of work put out for bids, based on the types of work and availability of certified M/WBE firms. However, the Contractor is committed to the overall goal of 10.44% M/WBE participation in the total construction work amount.
- G. The Contractor may consider, in order to maximize M/WBE participation, subcontracting the following types of work which it might ordinarily self-perform: N/A

**SECTION 4: COMMUNITY OUTREACH EFFORTS AND ADVERTISING TO M/WBE CERTIFIED FIRMS:**

The Contractor will conduct the following outreach efforts:

- A. Contractor will use the City's M/WBE directory and encourage all non-M/WBE subcontractors to use the directory when soliciting any of their own subcontractors or suppliers for the project.
- B. If during outreach efforts, Contractor locates a firm which appears to be eligible for City M/WBE certification but is not so certified, Contractor will direct the firm to DSBO and encourage the firm to pursue certification if eligible.
- C. When it has work packages ready for subcontracting, the Contractor will publish notices in The Daily Journal and other local publications and websites, identifying the subcontracting opportunities and specifically soliciting City-certified M/WBE participation. The Contractor will also provide notice of all such solicitations to relevant organizations such as, but not limited to, the Colorado Black Chamber of Commerce, Rocky Mountain Minority Supplier Development Council, Hispanic Contractors of Colorado, and the Colorado Women's Chamber of Commerce. Notices will be published or provided no less than 10 calendar days before bids are due on the work.
- D. Contractor will conduct at least one pre-bid meeting, as announced in published notices, which all interested subcontractors and suppliers may attend, at which the Contractor will present information and answer questions about the work.
- E. [Identify any additional efforts or initiatives the Contractor will carry out.]
- F. [Describe the bid/proposal process that will be used.]
- G. The Contractor will send to each bidder/proposer, a Notice of Selection for each subcontract for which it solicited M/WBE participation, no later than 30 days after it has entered into the subcontract, so that unsuccessful bidders/proposers are aware of the result of the bid/proposal process.

**SECTION 5: M/WBE PARTICIPATION; MAINTAINING COMMITMENTS**

- A. When issuing each work package for bid under the Contract, the Contractor will make a good faith effort to meet or exceed the goal percentage of M/WBE participation which it has identified for that package. The minimum level of these efforts is specified in § 28-62(b), D.R.M.C. and Rule VII(B). They may include, but will not be limited to, the outreach activities identified in Section 4 above.
- B. When requested by DSBO, the Contractor will submit bid packages to DSBO for review and comment when requested by DSBO, the Contractor will submit bid tabulation sheets to DSBO for review.
- C. The Contractor will report to DSBO the total M/WBE participation obtained for each bid package. No later than 5 days after issuing Notice to Proceed for such work, the Contractor will submit to DSBO, for each M/WBE subcontractor or supplier with whom



it contracts, a Letter of Intent and other documentation, in accordance with Section 6 below.

- D. The Contractor will document its efforts to obtain M/WBE participation for each work package, and submit such documentation to DSBO upon request by DSBO at any time. The Contractor acknowledges that it may meet or exceed a percentage goal for M/WBE participation on one or more work packages, but fall short of meeting the participation goal for the total construction contract amount. Therefore the Contractor must be able to demonstrate its good faith effort, consistent with § 28-62(b), D.R.M.C., to obtain M/WBE participation for each bid package under the contract, except for bid packages which are subject to a “modified good faith effort” under § 28-75(c), D.R.M.C., in which case the Contractor must be able to demonstrate its compliance with the requirements of § 28-75(c), D.R.M.C. Sections 28-62(b) and 28-75(c), D.R.M.C., are attached to this Compliance Plan as Attachment 1, for convenient reference.
- E. The M/WBE participation percentage will be calculated by dividing the total value of the M/WBE participation by the total contract amount for the project, including all change orders. The Contractor will count M/WBE participation according to the M/WBE Ordinance, including § 28-63, D.R.M.C., and Rule VII(C).
- F. As required by D.R.M.C. § 28-73, the Contractor shall immediately inform the DSBO in writing of any agreed-upon increase or decrease in the scope of work of the Contract, regardless of whether it has been reduced to writing at the time of notification. Any increase in the scope of work which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MBE or WBE under any subcontract, shall be contemporaneously submitted to the DSBO. Those changes to the scope of work that cannot be performed by existing project participants (the Contractor, subcontractors, suppliers, etc.) shall be subject to a goal for MBEs and WBEs equal to the original committed goal. The Contractor shall satisfy the goal for the changed scope of work by soliciting new MBEs or WBEs in accordance with § 28-60, D.R.M.C, and it must show each element of modified good faith that is stated in § 28-75(c), D.R.M.C. The Contractor shall provide to the Director the documentation described in § 28-75(c) with respect to the increased dollar value of the contract..
- G. The Contractor will comply with the provisions of § 28-75 as to the replacement of a WBE or MBE on the Project.
- H. The Contractor acknowledges that it has a continuing duty, under D.R.M.C. §§ 28-72, 28-73, and 28-75, to maintain, throughout the duration of the contract, compliance with the level of MBE and WBE participation committed to under any approved compliance plan, and that such commitment is a material condition of the Contract.

## **SECTION 6: COMPLIANCE DOCUMENTS AND REPORTING**

A. The Contractor will submit the following documentation, properly completed and submitted monthly or when otherwise required by DSBO.

1. Prime contractor background information form\*
2. DSBO Schedule of Work form\*
3. Subcontractor background information form for all subcontractors\*
4. M/WBE Letters of Intent
5. Monthly contractor's certification of payment forms (participation report)
6. DSBO change order forms
7. M/WBE final lien release forms
8. B2G online payment verification

(\*due at NTP + 5 days; revisions as required)

B. The Contractor will document its progress in seeking and obtaining M/WBE participation as required by DSBO. Records of the Contractor's efforts to solicit M/WBE subcontractor and supplier participation, will be maintained and reported monthly to DSBO, or as otherwise required, including:

1. Dates of solicitation
2. Names, addresses and telephone numbers of all M/WBE firms contacted.
3. Description of efforts made to contact M/WBE firms.
4. Description of information provided to M/WBE firms.
5. Description of the process and outcome.
6. Advertisements soliciting bids from M/WBE firms in local community publications or construction industry related publications.
7. Schedules of prebid meetings to inform M/WBE and non-M/WBE subcontractors and suppliers of opportunities to participate.
8. Evidence that the Contractor provided M/WBE subcontractors and suppliers necessary access to and adequate time to review all project documents.
9. All other documentation required to establish the Contractor's compliance with the good faith efforts required by City ordinance, specifically the items enumerated in subsections 28-62(b)(2) through 28-62(b)(10). D.R.M.C.

## **SECTION 7: PLAN ADMINISTRATION; MONITORING; CLOSEOUT**

A. DSBO shall have prompt, full and complete access to all Contractor and subcontractor personnel, books and records required to monitor and assure performance of this Compliance Plan.

B. The Contractor's personnel identified in Section 2 above, will be responsible for administering and monitoring the Contractor's performance of this Compliance Plan.

C. Actual M/WBE participation will be calculated in accordance with the M/WBE Ordinance, including § 28-63, D.R.M.C., and applicable Rules. The Contractor will

submit to DSBO a monthly tracking report demonstrating the M/WBE participation that has been achieved. .

- D. The following milestones for review and reconciliation of M/WBE participation will be observed during the contract:
- July/August 2017 – Confirmation of all M/WBE subs that are to be used for the Bid Package 1 work that begins immediately
  - August/September 2017 – Confirmation of all M/WBE subs that are to be used for the Bid Package 2 work begins in September/October.
  - April 2018 – Make final reconciliation of all figures including any prime contract change order adjustments to the City and County of Denver contract with Bryan Construction Inc and any subcontract change orders that have been issued to any of the M/WBE firms.
- E. The Contractor acknowledges that the City may impose monetary penalties and/or withhold payment in the event of Contractor's non-compliance with the M/WBE Ordinance and this Compliance Plan.
- F. The Contractor will use the following methodology for final reconciliation of M/WBE participation performance achieved during the Contract term, measured against the established project goal. The Contractor will present copies of all signed DSBO Final Lien Release forms for MWBE firms utilized for participation on the Contract. DSBO will compare the Final Monthly Participation Report submitted by the Contractor to determine if the Final Lien Release dollar figures match what is contained within the Final Monthly Participation Report. Final Compliance shall be achieved when the Contractor establishes to the Director's satisfaction, that it has remitted payments to M/WBE firms utilized on the Project; that it utilized M/WBE firms in accordance with each such firm's Letter of Intent; and that the amount of payments to M/WBE firms equals or exceeds the assigned M/WBE goal for the total amount of the Contract. Failure to achieve final compliance may subject the Contractor to sanctions, in accordance with D.R.M.C, Section 28-77. As provided in such ordinance, sanctions may include, but are not limited to, assessment by the Director of a monetary penalty against the Contractor in an amount not more than 150% of the contract amount for each MBE or WBE involved. Any such monetary penalty leveled by the Director shall be withheld from the final payment due to the Contractor, and any amount that remains due and owing to the City may be collected pursuant to D.R.M.C., Section 28-77. The Contractor may seek review of any such determination by the Director to levy sanctions through the dispute resolution process set forth in the Construction Contract.

## **SECTION 8: NON-COMPLIANCE; SANCTIONS; REMEDIATION PLAN**

- A. At all times, DSBO shall monitor the Contractor's compliance with this Plan and the M/WBE Ordinance and Rules. The Contractor shall fully cooperate with DSBO's compliance monitoring and auditing efforts, including DSBO's investigation of any alleged or suspected non-compliance by the Contractor.

- B. If the Director has reason to believe that the Contractor is not in compliance with this Plan or with the M/WBE Ordinance, the Director shall give the Contractor written notice of non-compliance, citing the reasons why the Contractor is not in compliance, and giving the Contractor thirty (30) days in which to submit a remediation plan for the Director's review and acceptance. The remediation plan shall demonstrate how the Contractor will cure such non-compliance, and if such non-compliance consists of failure to obtain or maintain M/WBE participation at the committed level, that the Contractor's M/WBE participation level will again achieve the committed level, and that the Contractor will ultimately achieve the committed participation goal for the contract..
- C. The Contractor shall, within such thirty (30) day period, deliver to the Director a written remediation plan the Director's review and approval.
- D. The Director may issue a written determination of non-compliance and the sanction which the Director has elected to impose as a consequence:
  - (1) If the Contractor does not respond within the time allowed; or
  - (2) If the Contractor fails to submit a satisfactory remediation plan; or
  - (3) If a Contractor submits an acceptable remediation plan but thereafter fails to comply with the plan.
- E. The Contractor may contest a determination issued under Section 8(D), by requesting a hearing within 30 days after the date of such determination, as provided in § 28-33, D.R.M.C.

## **SECTION 9: MEDIATION**

The Contractor will provide a process to resolve disputes that occur between a MBE or WBE and any non-M/WBE subcontractors or suppliers under the Contract. The Contractor will document such disputes and inform DSBO of the steps the Contractor plans to take to resolve the dispute. The Contractor may ask DSBO to assist in the resolution process it has developed. The Contractor will document and notify DSBO if those disputes have been resolved and inform DSBO of any disputes it was unable to resolve. DSBO will notify the Contractor of any complaints received by DSBO from M/WBE firms regarding a dispute they are experiencing with either a subcontractor or the Contractor.

## ATTACHMENT 1

### EXCERPTS FROM DENVER REVISED MUNICIPAL CODE

#### *Sections 28-62(b) and 28-75(c), D.R.M.C*

#### **Sec. 28-62. Same--Good faith efforts.**

(b) The statement of good faith efforts shall include a specific response and verification with respect to each of the following good faith effort categories, which may be further defined by rule or regulation. A bidder or proposer may include any additional information it believes may be relevant. Failure of a bidder or proposer to show good faith efforts as to any one (1) of the following categories shall render its overall good faith effort showing insufficient and its bid or proposal non-responsive:

- (1) If prebid or preselection meetings are scheduled by the city at which MBEs and WBEs may be informed of subcontracting or joint venture opportunities under a proposed contract to be bid, or procured pursuant to the competitive selection process, attendance at such prebid or preselection meetings is not mandatory; however, bidders and proposers are responsible for the information provided at these meetings.
- (2) The bidder or proposer must solicit through all reasonable and available means, the interest of all MBEs and WBEs certified in the scopes of work of the contract. The bidder or proposer must solicit the interest of such MBEs and WBEs within sufficient time, prior to the bid opening or date of final project-specific proposal in the case of a competitive selection process, to allow such MBEs and WBEs to respond to the solicitation. The bidder or proposer must determine with certainty if the MBEs and WBEs are interested by demonstrating appropriate steps to follow up initial solicitations.
- (3) The bidder or proposer must select portions of the work of the contract to be performed by MBEs and WBEs in order to increase the likelihood that the project goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE and WBE participation as subcontractors or joint venturers, and for bidder or proposer self-performed work, as suppliers, manufacturers, manufacturer's representatives and brokers, all reasonably consistent with industry practice, even when the bidder or proposer would otherwise prefer to perform these work items with its own forces. The bidder or proposer must identify what portions of the contract will be self-performed and what portions of the contract will be opened to solicitation of bids, proposals and quotes from MBE and WBEs. All portions of the contract not self-performed must be solicited for MBE and WBE participation. The ability or desire of a bidder or proposer to perform the work of a contract with its own forces does not relieve the bidder or proposer of the responsibility to meet the project goal or demonstrate good faith efforts to do so.
- (4) The bidder or proposer, consistent with industry practice, must provide MBEs and WBEs at a clearly stated location with timely, adequate access to and information about the plans, specifications, and requirements of the contract, including bonding and insurance requirements, if any, to assist them in responding to a solicitation.

- (5) The bidder or proposer must negotiate in good faith with interested MBEs and WBEs and provide written documentation of such negotiation with each such MBE or WBE.
- (6) For each MBE or WBE which contacted the bidder or proposer or which the bidder or proposer contacted or attempted to subcontract or joint venture with, consistent with industry practice, the bidder or proposer must supply a statement giving the reasons why the bidder or proposer and the MBE or WBE did not succeed in negotiating a subcontracting, supplier, manufacturer, manufacturer's representative, broker or joint venture agreement, as applicable.
- (7) The bidder or proposer must provide verification that it rejected each non-utilized MBE and WBE because the MBE or WBE did not submit the lowest bid or it was not qualified. Such verification shall include a verified statement of the amounts of all bids received from potential or utilized subcontractors, suppliers, manufacturers, manufacturer's representatives, brokers or joint venturers on the contract, whether or not they are MBEs or WBEs. In making such a determination of not being qualified, the bidder or proposer shall be guided by the definition of qualified in section 28-54(42), but evidence of lack of qualification must be based on factors other than solely the amount of the MBE's or WBE's bid. For each MBE or WBE found not to be qualified by the bidder or proposer, the verification shall include a statement giving the bidder's or proposer's reasons for its conclusion. A bidder's or proposer's industry standing or group memberships may not be the cause of rejection of an MBE or WBE. A bidder or proposer may not reject an MBE or WBE as being unqualified without sound reasons based on a reasonably thorough investigation and assessment of the MBE's or WBE's capabilities and expertise.
- (8) If requested by a solicited MBE or WBE, the bidder or proposer must make reasonable efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance as required by the city or by the bidder or proposer, provided that the bidder or proposer need not provide financial assistance toward this effort.
- (9) If requested by a solicited MBE or WBE, the bidder or proposer must make reasonable efforts to assist interested MBEs and WBEs in obtaining necessary and competitively priced equipment, supplies, materials, or related assistance or services for performance under the contract, provided that the bidder or proposer need not provide financial assistance toward this effort.
- (10) The bidder or proposer must use the DSBO MBE/WBE directories to identify, recruit, and place MBEs and WBEs.

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**Sec. 28-75. Potential violations during contract performance.**

(c) The following modified good faith requirements shall apply to sections 28-72 and 28-73. In the event that a contractor or consultant must add or replace an MBE or WBE subcontractor, subconsultant, joint venturer, supplier, manufacturer, manufacturer's representative or broker or in the event that a new scope of work is added to the ongoing contract, and the contractor or consultant in such event is in non-compliance with maintenance of the original project goal upon which the contract was awarded, due to failure to utilize additional MBEs or WBEs, the following modified good faith efforts must be completed. Failure of a contractor or consultant to show

good faith efforts as to any one (1) of the following categories shall render its overall good faith efforts showing insufficient; and its contract performance in non-compliance with this division 3.

- (1) Verification in writing to the DSBO of the contractor's or consultant's intention to terminate or replace an MBE or WBE originally identified for participation in the bid, proposal or competitive selection process proposal upon which the contract was awarded. The reason for the termination or replacement must be stated and the type of work or services must be identified.
- (2) Verification that the contractor or consultant used the most current MBE and WBE directory from the DSBO in order to contact MBEs and WBEs that are certified in the applicable area of work or supply at the time of the modified good faith effort.
- (3) Verification of efforts to contact appropriate MBEs and WBEs within the same identified subcontractor, subconsultant, joint venturer, supplier, manufacturer, manufacturer's representative or broker area must be documented. Facsimile transmission, e-mail and telephone communication will be acceptable. The director may verify such contacts as he deems appropriate.
- (4) Documentation of the modified good faith efforts must be submitted to the DSBO prior to the payment to the contractor or consultant of the next progress or other partial payment or fund release under the contract.

**EXHIBIT G**

**Preconstruction Agreement**



## PRECONSTRUCTION DESIGN SERVICES AGREEMENT

**THIS AGREEMENT** is entered into between the **CITY AND COUNTY OF DENVER** (the "City"), a municipal corporation of the State of Colorado, and **FEDERAL CONTRACTING, INC., dba BRYAN CONSTRUCTION, INCORPORATED**, (the "Design Consultant"), a Colorado Corporation, whose address is 7025 Campus Drive, Colorado Springs, Colorado 80920.

### SECTION 1 – ENGAGEMENT

**1.1 Engagement.** The City engages the Design Consultant to furnish professional design services for the preconstruction phase of the Project as set forth in this Agreement. The Design Consultant accepts such engagement upon, subject to and in accordance with the terms, conditions and provisions of this Agreement.

- (a) In accordance with the requirements of 20-56 of the Denver Revised Municipal Code (the "DRMC"), the City advertised a Request for Qualifications (RFQ) and a Request for Proposal ("RFP") (Attached as **Exhibits A**) seeking highly qualified consultants to provide preconstruction and construction services for the Project.
- (b) The Design Consultant was selected as the first ranked proposer to perform such services for the City based on Design Consultant's Proposal dated October 13, 2016 and attached hereto as **Exhibit B**. The City and Design Consultant now wish to enter into this Agreement to provide preconstruction design services. After preconstruction design services are satisfactorily completed, the City and Design Consultant will enter into a separate Architectural and Engineering Professional Design Services Contract at a later date. The Design Consultant represents that it has the present capacity and is experienced and qualified to perform the required professional and related services as provided for in this Agreement.

**1.2 The Project.** The scope of the project consists of the Denver County Jail E. Smith Road Building 24 Housing Project scope includes, among other components, design services for the build out of 18,280 square feet Level 6 and 6,120 square feet of Level 7 of Building 24; 24 double-bunk cells with integrated comby units per level, with associated day room and exercise yards as needed; clinical spaces; multi-purpose/class rooms; interview rooms; and office space for staff (the "Project").

**1.3 Preconstruction Design Services.** The City desires to engage a highly qualified and experienced consultant to expeditiously perform preconstruction services as set forth in **Exhibit E**, including scheduling, cost estimating, constructability review, value engineering, construction phasing, logistics and sequencing/planning, subcontractor procurement and scope validation, necessary meetings and/or conference calls, and all other preconstruction services necessary to complete a satisfactory final design and construction pricing for the Project. The City and Consultant now wish to enter into this Agreement to provide preconstruction services.

**1.4 Line of Authority for Contract Administration.** The City's Executive Director of Public Works ("Director") is the City's representative responsible for authorizing and approving the work performed under this Agreement. The Director hereby designates the City Engineer as the Director's authorized representative for the purpose of designating a Project Manager, for the purpose of issuing a written Notice to Proceed and for purposes of

administering, coordinating and finally approving the work performed by the Design Consultant under this Agreement. The Project Manager shall be responsible for the day-to-day administration, coordination and approval of work performed by the Design Consultant, except for approvals which are specifically identified in this Agreement as requiring the Director's approval. The Director expressly reserves the right to designate another authorized representative to perform on the Director's behalf by written notice to the Design Consultant.

**1.5 Independent Contractor.** The Design Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Design Consultant nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

**1.6 Scope of Design Consultant's Authority.** The Design Consultant shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. The Design Consultant is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. The Design Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

## **SECTION 2 – DESIGN CONSULTANT'S SERVICES**

**2.1 General.** The Design Consultant shall provide professional preconstruction design services for the Project in accordance with the terms and conditions of this Agreement. The Design Consultant's basic services for preconstruction shall consist of all of those services described in this Agreement and in **Exhibit E**.

### **2.2 Professional Responsibility.**

- (a) All of the work performed by the Design Consultant under this Agreement shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform work of a nature similar to the Work described in this Agreement.
- (b) The Design Consultant agrees to strictly conform to and be bound by written standards, criteria, budgetary considerations and memoranda of policy furnished to it by the City and further agrees to design each project in compliance with applicable laws, statutes, codes, ordinances, rules and regulations, and industry standards.
- (c) All professional services, plans and specifications and other work, or deliverables provided under this Agreement for the Project shall be adequate and sufficient for the proper construction of the Project and its intended purpose.
- (d) All drawings, specifications and other products shall be prepared so the Project, when constructed in accordance with such drawings and specifications, is in compliance with all applicable laws, statutes, codes, ordinances, and rules and regulations of the City, the State and the Federal government.
- (e) Any design changes required by changes in such applicable laws, statutes, codes, ordinances or rules and regulations of the City, the state or the federal government, which are enacted after the City's acceptance of Construction Documents, defined herein, will be outside the scope of the Design Consultant's basic services and basic fee, and will be compensated for approval as an additional service, subject to the additional services budget for that project.
- (f) The Design Consultant shall prepare the plans, specifications and other materials for

the Project in a format that complies with all City requirements as well as all state and federal requirements for the Project. No funds will be paid to the Design Consultant for the preparation of contract documents in a form other than that considered usual and customary by the Department of Public Works. It shall be the responsibility of the Design Consultant to contact the reviewing agencies and determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though any responsible federal and state agencies have approved such documents.

- (g) The City anticipates that it will utilize a Construction Manager/General Contractor (“CM/GC”) Project delivery method. The CM/GC will be involved early in the Project, including assisting Design Consultant with the preconstruction services. The Design Consultant is familiar with this approach and understands that the CM/GC method is a specialized and rigorous delivery approach requiring maximum cooperation among all parties. The City reserves the right to proceed with the construction of the Project using another delivery method, including the City's standard general contractor bidding approach, on-call contractors or using construction management techniques. The Design Consultant agrees to organize its Contract Documents for utilization in a CM/GC delivery method, or other method, to coordinate the construction documents into selected bid packages, as appropriate. The City will notify the Design Consultant prior to the completion of the Design Development Phase if there is a change in the delivery method, and the change (if any) in the amount of work or the limits of construction to be included in the proposed bid package(s).
- (h) The reports, studies, drawings and specifications and other products prepared by the Design Consultant under this Agreement, when submitted by the Design Consultant to the Director and the user agency for any identified phase of the Project, must represent a thorough study and competent solution for the project as per usual and customary professional standards and shall reflect all architectural and engineering skills applicable to that phase of the project.
- (i) The responsibilities and obligations of the Design Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant or subconsultant, or an employee of the City.
- (j) The Design Consultant shall provide all professional services required by the City in defending all claims against the City, which relate in any way to alleged default hereunder, errors or omissions of the Design Consultant or its subconsultants, without additional compensation.

### **2.3 Program and Budget.**

- (a) The Design Consultant agrees to review the City's program and budget for the Project and further agrees, unless it has timely notified the City that the Project cannot be accomplished within such budget, to accomplish the Project within the intent of the program and established budget. Should the Design Consultant determine that The Project cannot be accomplished within the established budget, the Design Consultant shall immediately notify the City, in writing, so that the project scope or project budget can be reviewed and modified if necessary.
- (b) In addition to performing preconstruction services, the Design Consultant will deliver to the City a Guaranteed Maximum Price proposal (“GMP Proposal”) and fixed Project completion schedule proposal (the “Performance Period” or “Schedule”) by which the Contractor will agree to perform all of the design

services and other work required to complete the Project for a guaranteed maximum price.

- (c) The terms, conditions and obligations for the Consultant's performance on this Project are contained herein or in documents referenced herein or attached hereto and shall be collectively referred to as the "Agreement." In the performance of this Agreement, the Consultant acknowledges and accepts that time is critical for Project delivery. As a consequence of the CM/GC delivery approach, the Design Consultant acknowledges and accepts the following: (1) that the Design Consultant is assisting the City in developing the complete services to be rendered by the CM/GC as well as the Design Consultant; the organizational and process inter-relationships governing construction; and the cost, schedule and sequencing of construction; (2) that the Design Consultant may be required to design portions of the Project as separate packages, which may begin construction before other portions of the Project are fully designed; and (3) that the this Project may be contingent upon the Design Consultant formulating, as the Project design progresses, and submitting an acceptable GMP (or multiple GMP packages) and Performance Period GMP Proposal for the complete construction of the Project.
- (d) The term "Project Construction Cost" shall mean the estimated cost to the City of actually constructing the Project, but such cost shall not include any Design Consultant's or special consultant's fees or reimbursements or the cost of equipment installed by the City under separate contract, unless the Design Consultant is required by the City to prepare drawings and specifications for such equipment. The initial estimated Project Construction Cost has been provided to the Design Consultant.
- (e) The Design Consultant agrees to design the Project within the estimated Project Construction Cost for the Project. Should all responsive bids or proposal received for the Project work provided for in the design exceed such cost, the Design Consultant agrees to redesign the Project at no additional cost to City and, in a manner acceptable to the City.

#### **2.4 Coordination and Cooperation.**

- (a) The Design Consultant agrees to perform under this Agreement in such a manner and at such times that the City or any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.
- (b) Coordination with the City and other involved agencies shall be a continuing work item through all phases of each assigned project. Such coordination shall consist of regular progress and review meetings with the City, work sessions with the City's Public Works, and other user agencies or as otherwise directed by the City. Such coordination may also include field and office reviews of plans and documents as required during the development of the design for any specific project. The Design Consultant shall document all such conferences and distribute notes to the City.

#### **2.5 Personnel Assignments.**

- (a) The key professional personnel identified in **Exhibit D** will be assigned by the Design Consultant or its subconsultants to perform the services required under this Agreement, as appropriate.
- (b) The Design Consultant's services shall be diligently performed by the regular professional and technical staff of the Design Consultant. In the event the Design



Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with City approval, by practicing professional consultants outside of the employ of the Design Consultant.

- (c) The Design Consultant agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to through outside subconsultants, professional design personnel and technicians in sufficient strength to meet the requirements of the City. Such personnel and technicians shall be of the classifications referenced in **Exhibit D**. The hourly rates specified therein (if any) and/or the lump sum price, whichever is applicable, include all costs except those specifically referenced as reimbursables in the appropriate hourly rate schedule.
- (d) Prior to designating an outside professional to perform subconsultant work, the Design Consultant shall submit the name of such subconsultant, together with a resume of training and experience in work of like character and magnitude of the project being contemplated, to the City and receive prior approval in writing.
- (e) It is the intent of the Parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that the Design Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.
- (f) If the Design Consultant or a subconsultant decides to replace any of its key professional personnel, the Design Consultant shall notify the Director in writing of the desired change. No such changes shall be made until replacement personnel are recommended by the Design Consultant and approved in writing by the Director, which approval shall not be unreasonably withheld.
- (g) If, during the term of this Agreement, the Director determines that the performance of approved key personnel or a subconsultant is not acceptable, she shall notify the Design Consultant and give the Design Consultant the time which the Director considers reasonable to correct such performance. Thereafter, she may require the Design Consultant to reassign or replace such key personnel. If the Director notifies the Design Consultant that certain of its key personnel or a subconsultant should be replaced, Design Consultant will use its best efforts to replace such key personnel or a subconsultant within ten (10) days from the date of the Director's notice.
- (h) Neither the Design Consultant nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on a project to which they may be assigned, and the Design Consultant shall make written inquiry of all of its subconsultants concerning the existence of a potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.
- (i) Actions taken by the City under this Article shall not relieve the Design Consultant of its responsibility for contractual or professional deficiencies, errors or omissions.
- (j) The Design Consultant shall submit to the Director a list of any additional key professional personnel who will perform work under this Agreement within

thirty (30) days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks which may be assigned. Such additional personnel must be recommended by the Design Consultant and approved by the Director before they are assigned to a specific project.

- (k) The Director shall respond to the Design Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the Director receives the list of changes. If the Director or his designated representative does not respond within that time, the changes shall be deemed to be approved.

## **2.6 Basic Preconstruction Design Services – General.**

- (a) The Design Consultant's basic preconstruction design services for the Project shall consist of the phases and tasks described below and in **Exhibit E** and shall include, but not be limited to, architectural, structural, mechanical, civil and electrical engineering services appropriate to each Project for each phase as may be applicable.
- (b) The Design Consultant shall obtain written authorization from the City before proceeding with each phase.
- (c) Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any phase beyond the latest phase authorized in writing by City.
- (d) The required Basic Preconstruction Design Services tasks which must be performed include: 1) identifying Project requirements and preparing total Project Budget; 2) develop and refine Project Schedule; 3) provide Value Engineering; 4) prepare, monitor, and make ongoing adjustments to costs estimates; 5) review drawings and specifications and recommend alternate solutions related to budget, schedule and constructability; and 6) any and all other tasks and requirements as set forth in **Exhibit E**. As applicable for the Project, the Design Consultant shall satisfactorily complete all work necessary to complete each phase as specifically set out in **Exhibit E**.

## **2.7 Additional Services.**

- (a) If the Design Consultant performs services in addition to its Basic Preconstruction Design Services, as a result of material changes in the Project or due to other circumstances beyond the Design Consultant's control, and if such services (1) are pre-approved in writing; (2) will not cause the total compensation payable to the Design Consultant to exceed the Maximum Contract Amount; and (3) are not occasioned by any neglect, breach or default of the Design Consultant, then the Design Consultant will be reimbursed its pre-approved cost for performance of such service(s).
- (b) Before providing any such services, the Design Consultant first shall file with the City, and secure the City's written approval of, a complete description of the proposed services including an estimate of the maximum cost of any and all such services, on the basis set out in **Exhibits A and B**, of rates per hour, per day, or other basis of cost. Such description shall also include a statement from the Design Consultant that the maximum cost of such services will not cause the total amount payable to the Design Consultant under this Agreement to exceed the maximum contract amount. In no event shall any form of authorization or pre-

approval of additional services be deemed valid or binding upon either the City or the Design Consultant if the maximum cost of such services would cause the aggregate amount payable under this Agreement to exceed the maximum contract amount. Payment for additional services shall not, in any event, exceed the cost estimated by the Design Consultant and approved in writing by the City.

- (c) The cost of such additional service shall be deemed to be the lesser of the estimated maximum cost or:
  - 1. The actual time card cost of all design personnel including principal designer's time at the rates as set out in **Exhibit B**;
  - 2. The actual cost to the Design Consultant for other necessary outside services, such as structural, mechanical or electrical engineering performed by independent consultants; and
  - 3. The Design Consultant's actual reproduction cost for drawings.
- (d) The Design Consultant shall maintain an accurate and acceptable cost accounting as to all such additional expenses and shall make available to the City all records, canceled checks and other disbursement media to substantiate any and all requests for payment for additional services.
- (e) Payment to the Design Consultant for such additional services shall not, in any event, exceed the maximum additional services amount set forth in Section 3.

## **2.8 Surveying and Testing.**

- (a) The Design Consultant shall obtain all necessary surveying, tests and reports to properly design and administer the construction of each project, including, but not limited to, soils and hazardous materials testing. The Design Consultant shall be responsible for the accuracy, adequacy and content of such tests, surveying and reports.
- (b) The Design Consultant and its appropriate subconsultant shall review all survey and test results reports and shall follow the recommendation of the soils engineer or other subconsultant unless, in the exercise of appropriate professional judgment, the Design Consultant or appropriate subconsultant discovers, or should in the exercise of professional judgment discover, factors indicating the report or results are not reliable.
- (c) If any such inadequacy or any inconsistency, based upon such exercise of professional judgment, is noted the Design Consultant and/or its appropriate subconsultant shall report such inconsistency or inadequacy promptly to the City and require such inadequacy or inconsistency to be addressed by the soils engineer, testing laboratory or land surveyor before any further use is put to the data.
- (d) The Design Consultant shall require all surveying, engineering and testing entities it selects to carry and maintain Comprehensive Auto Liability and Property Damage Insurance, General Commercial Liability and Property Damage Insurance and Professional Errors and Omissions coverage as required by the City's Office of Risk Management which will adequately protect the interests of the City and third parties from the acts and omissions of the testing entity.
- (e) The amount of surveying or testing, the cost, and the types of reports required must be approved by the Director prior to the Design Consultant actually

ordering any such work to be accomplished. Such approvals by the City shall be for purposes of compensation only and shall not relieve the Design Consultant of any responsibility for determining the scope and amount of surveying and testing necessary for the design of the project.

- (f) It is understood and agreed that this Agreement does not include the investigation, sampling, testing, planning, abatement design, and remediation management of asbestos or other hazardous waste material. Should the presence of asbestos or other hazardous waste material be known to exist on a specific project or if the Design Consultant shall observe the presence of asbestos or hazardous waste material on any project site during its performance of services under this Agreement, the Design Consultant shall notify the City in writing immediately.
- (g) Payment to the Design Consultant for such surveying, testing, and abatement shall not exceed the surveying and testing budget set forth in the project specific proposal for each project.

**2.9 Compliance with M/WBE Requirements.** This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 to 28-36 and 28-52 to 28-90 D.R.M.C. (the “M/WBE Ordinance”) and any Rules or Regulations promulgated pursuant thereto. Under § 28-72 D.R.M.C., a Design Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with its originally achieved level of MBE and WBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting MBEs or WBEs performing on this Agreement through change order, contract amendment, force account, or as otherwise described in § 28-73 D.R.M.C. A participation goal has not been set for this Agreement, however, the City encourages MBE and WBE participation when available.

### **SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING**

The City shall compensate the Design Consultant for its service performed and expenses incurred under this Agreement as follows.

**3.1 Fee for Preconstruction Design Services.** The City agrees to pay the Design Consultant, as full compensation for its basic services rendered hereunder, a fee not to exceed **TWELVE THOUSAND DOLLARS AND ZERO CENTS (\$12,000.00)**, in accordance with the billing rates and project budget stated in **Exhibits A and B**. The amounts budgeted for phases may be increased or decreased, and the amounts allocated for services and expenses adjusted, upon written approval of the Director or his designee, and subject to the Maximum Contract Amount stated in this Section 3.

**3.2 Reimbursable Expenses.** Except for those reimbursable expenses approved in writing by the City as reasonably related to or necessary for the Design Consultant’s services, all other expenses shall be included in the Design Consultant’s fee for Preconstruction Services and will not be reimbursed hereunder, unless an additional amount is approved by the Director or his designee in writing, subject to the Maximum Contract Amount stated herein. Unless this Agreement is amended in writing according to its terms to increase the Maximum Contract Amount, any increase in the maximum amount of reimbursable expenses will reduce the Design Consultant’s maximum fee amount accordingly.

**3.3. Additional Services.** If pre-approved additional services are performed by the Design Consultant, the City agrees to pay the Design Consultant for such additional services in



accordance with Section 2.

**3.4 Invoicing and Payment.** The City will make monthly progress payments for all services performed under this Agreement based upon the Design Consultant's monthly invoices. Such invoices shall be in a form acceptable to the City and shall include detail of the time worked by the Design Consultant's own personnel, billings from subcontractors, and all other information necessary to assess the Design Consultant's progress. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought, and all other supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement. Final Payment to the Design Consultant shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by the Design Consultant. The City may, at the discretion of the Director, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the Director. However, no deductions shall be made from the Design Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractor(s).

**3.5 Maximum Contract Amount.**

- (a) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **TWELVE THOUSAND DOLLARS AND ZERO CENTS (\$12,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Design Consultant beyond that specifically described in **Exhibit E**. Any services performed beyond those set forth therein are performed at Design Consultant's risk and without authorization under the Agreement.
- (b) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- (c) The Design Consultant understands and agrees that the provision of any services by the Design Consultant, which would cause the total amount payable to the Design Consultant to exceed the amount of previously appropriated and encumbered funds, is strictly prohibited. In the event the continuation of services by the Design Consultant would cause the amount payable to the Design Consultant to exceed such amounts, the Design Consultant agrees to give to the Project Director at least two (2) weeks notice of the exhaustion of available funds. In the event additional funds are not made available within such two (2) week period, the Design Consultant agrees to stop providing services until such time as additional funds are appropriated and encumbered for the purposes of the this Agreement, and amounts which remain available for payment to the Design Consultant

**SECTION 4 – TERM AND TERMINATION**

**4.1 Term.**

The Agreement will commence on execution of this Agreement and expire, unless sooner terminated, upon final completion of the Project.

#### **4.2 Termination.**

- (a) Nothing herein shall be construed as giving the Design Consultant the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the Director.
- (b) The Director may terminate this Agreement for cause at any time if the Design Consultant's services become unsatisfactory, in the sole discretion of the Director. The City shall have the sole discretion to permit the Design Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.
- (c) In the event of a termination for cause, or in the event the Design Consultant becomes unable to serve under this Agreement, the City may take over work to be done under this Agreement and prosecute the work to the completion by contract or otherwise, and the Design Consultant shall be liable to City for all reasonable cost in excess of what the City would have paid the Design Consultant had there been no termination for cause.
- (d) The City may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) days' prior written notice to the Design Consultant, which notice shall state the date of cancellation and termination.
- (e) If the Design Consultant's services are terminated, postponed or revised, or if the Design Consultant shall be discharged before all the work and services contemplated have been completed, or if the project is, for any reason, stopped or discontinued, the Design Consultant shall be paid only for the portion of work or services which has been satisfactorily completed at the time of such dismissal, termination, cancellation, postponement, revision or stoppage.
- (f) All drawings, specifications, and other documents relating to the design or administration of work completed or partially completed shall be delivered by the Design Consultant to the City in the event of any dismissal, termination, cancellation, postponement, revision or stoppage.
- (g) In the event of any dismissal, termination, cancellation, postponement, revision or stoppage, the Design Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, delivery of drawings, specifications, and other documents referred to herein, and assisting the City during a transition to another Design Consultant, if applicable.

### **SECTION 5 – GENERAL PROVISIONS**

#### **5.1 City's Responsibilities.**

- (a) The City shall provide available information regarding its requirements for each project, including related budgetary information, and shall cooperate fully with the Design Consultant at all times. However, the City does not guarantee the accuracy of any such information and assumes no liability therefore. The Design Consultant shall notify City in writing of any information or requirements provided by the City which the Design Consultant believes to be inaccurate or inappropriate to the design or construction of the project.
- (b) If the City observes or otherwise becomes aware of any fault or defect in the project or non-conformance with Contract Documents, it shall give prompt notice thereof to Design Consultant.

## 5.2 **Ownership of Documents.**

- (a) The City shall have title and all intellectual and other property rights, in and to all phased and final Design documents, and all data used in the development of the same, including the results of any tests, surveys or inspections at the Project site, and all photographs, drawings, drafts, studies, estimates, reports, models, notes and any other materials or work products, whether in electronic or hard copy format, created by the Design Consultant pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the "Documents"), whether the Project for which the Documents were created is executed or not. The Design Consultant shall identify and disclose, as requested, all such Documents to the City.
- (b) To the extent permitted by the U.S. Copyright Act, 17 USC § 101 *et seq.*, as the same may be amended from time to time, the Documents are a "work made for hire," and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a "work made for hire," the Design Consultant hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.
- (c) The Design Consultant shall provide (and cause its employees and subcontractors to provide) all assistance reasonably requested in securing for the City's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City's name, all rights to such Documents.
- (d) The Design Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder.
- (e) The Design Consultant shall be permitted to retain reproducible copies of all of the Documents for the information and reference, and the originals of all of the Documents, including all CAD disks, shall be delivered to the City promptly upon completion thereof, or if authorized by the City's Project Manager, upon termination or expiration of this Agreement.

**5.3 Taxes and Licenses.** The Design Consultant shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the work and services which it performs under this Agreement, and shall take out and keep current all required municipal, county, state or federal licenses required to perform its services under this Agreement. The Design Consultant shall furnish the Director, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes. The Design Consultant shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and shall not allow any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations.

**5.4 Design Consultant's Records.** Records of the Design Consultant's direct personnel, consultant and reimbursable expenses pertaining to this Project and records of accounts between the City and the Design Consultant shall be kept on a generally recognized accounting basis. The Design Consultant agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the Design Consultant, involving transactions related to this Agreement.

**5.5 Assignment and Subcontracting.** The City is not obligated or liable under this Agreement to any party other than the Design Consultant named herein. The Design Consultant understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting. Any attempt by the Design Consultant to assign or subcontract its rights hereunder without such prior written consent of the City shall, at the option of the City, automatically terminate this Agreement and all rights of the Design Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the City. In the event any such subcontracting shall occur, with the City's approval, such action shall not be construed to create any contractual relationship between the City and such subcontractor, and the Design Consultant named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

**5.6 No Discrimination in Employment.** In connection with the performance of work under this Agreement, the Design Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. The Design Consultant agrees to insert the foregoing provision in all subcontracts hereunder.

**5.07 Insurance.**

- (a) **General Conditions:** Design Consultant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Design Consultant shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for eight (8) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Design Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Design Consultant. Design Consultant shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Design



Consultant. The Design Consultant shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- (b) **Proof of Insurance:** Design Consultant shall provide a copy of this Agreement to its insurance agent or broker. Design Consultant may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Design Consultant certifies that the certificate of insurance attached as **Exhibit F**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may
- (c) **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Design Consultant and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- (d) **Waiver of Subrogation:** For all coverages required under this Agreement, Design Consultant's insurer shall waive subrogation rights against the City.
- (e) **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Design Consultant. Design Consultant shall include all such subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Design Consultant agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
- (f) **Workers' Compensation/Employer's Liability Insurance:** Design Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Design Consultant expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Consultant's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Consultant executes this Agreement.
- (g) **Commercial General Liability:** Design Consultant shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- (h) **Business Automobile Liability:** Design Consultant shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- (i) **Professional Liability (Errors & Omissions):** Design Consultant shall maintain

limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

(j) **Additional Provisions:**

- (a) For Commercial General Liability, the policy must provide the following:
  - (i) That this Agreement is an Insured Contract under the policy;
  - (ii) Defense costs are outside the limits of liability;
  - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
  - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (b) For claims-made coverage:
  - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- (c) Design Consultant shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Design Consultant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**5.8 Defense & Indemnification.**

- (a) The Design Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of Design Consultant or the Design Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.
- (b) Design Consultant's obligation to defend and indemnify may be determined after Design Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the parties. Design Consultant's duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.
- (c) Design Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
- (d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Design Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- (e) This defense and indemnification obligation shall survive the expiration or termination of

this Agreement.

**5.9 Colorado Governmental Immunity Act.** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

**5.10 Contract Documents; Order of Precedence.** This Agreement consists of Sections 1 through 5, which precede the signature page, and the following attachment, which is incorporated herein and made a part hereof by reference:

|           |                                                                          |
|-----------|--------------------------------------------------------------------------|
| Exhibit A | CCD Request for Qualification for Architectural and Engineering Services |
| Exhibit B | Bryan Construction Response                                              |
| Exhibit C | Project Site                                                             |
| Exhibit D | Key Personnel                                                            |
| Exhibit E | Scope of Services                                                        |
| Exhibit F | ACORD Certificate of Insurance                                           |

In the event of an irreconcilable conflict between a provision of Sections 1 through 5 and the listed attachments, or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in descending order:

Sections 1 through 5  
Exhibit E  
Exhibit A  
Exhibit B

**5.11 When Rights and Remedies Not Waived.** In no event shall any payment by the City constitute a waiver of any breach of covenant or default which may then exist on the part of the Design Consultant. No assent, expressed or implied, to any breach of the Agreement shall be held to be a waiver of any later or other breach.

**5.12 Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

**5.13. Conflict of Interest.**

- (a) The parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described herein, and the Design Consultant further agrees not to hire or contract for services with any employee or officer of the City which would be in violation of the Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.
- (b) The Design Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Design Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Design Consultant by placing the Design Consultant's own interests, or the interests of any party with whom the Design Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Design Consultant written notice which describes the conflict. The Design Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

**5.14 No Third Party Beneficiaries.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Design Consultant, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the parties that any person other than the City or the Design Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**5.15 Time is of the Essence.** The parties agree that in the performance of the terms, conditions and requirements of this Agreement by the Design Consultant, time is of the essence.

**5.16 Taxes, Charges and Penalties.** The City and County of Denver shall not be liable for the payment of taxes, late charges, or penalties of any nature except as provided in the City's Prompt Payment Ordinance.

**5.17 Proprietary or Confidential Information.**

- (a) City Information: The Design Consultant acknowledges and accepts that, in performance of its work under the terms of this Agreement, the Design Consultant



may have access to Proprietary Data or confidential information which may be owned or controlled by the City and that the disclosure of such data or information may be damaging to the City or third parties. As such, the Design Consultant agrees that all information provided or otherwise disclosed by the City to the Design Consultant be held in confidence and used only in the performance of its obligations under this Agreement. The Design Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Design Consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall mean geographic materials or Geographic Information Systems ("GIS") data owned by the City and County of Denver including but not limited to maps, computer programs, aerial photography, methodologies, software, diagnostics and documents; or any other materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Design Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

- (b) Design Consultant's Information: The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise the Design Consultant of such request in order to give the Design Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Design Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Design Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Design Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

**5.18 Use, Possession or Sale of Alcohol or Drugs.** The Design Consultant, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Design Consultant from City facilities or participating in City operations.

**5.19 No Employment of Illegal Aliens to Perform Work Under the Agreement.**

(a) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

(b) The Design Consultant certifies that:

- (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this

Agreement.

- (c) The Design Consultant also agrees and represents that:
- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Design Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
  - (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Design Consultant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
  - (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Design Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three- day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
  - (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Design Consultant is liable for any violations as provided in the Certification Ordinance. If Design Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Design Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.

**5.20 Disputes.** All disputes between the City and Design Consultant regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Director.

**5.21 Waiver of C.R.S. 13-20-802, et seq.** The Design Consultant specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes (also designated C.R.S. 13-20-802 *et seq.*) relating to design defects in the Project under this Agreement.

**5.22 Survival of Certain Contract Provisions.** The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto,

which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement, (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Design Consultant's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period."

**5.23 Advertising And Public Disclosure.** The Design Consultant shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without first obtaining the written approval of the Director, which will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by the City. The Director shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of the City, including without limitation the Mayor, the Director, City Council or the Auditor.

**5.24 Legal Authority.** Design Consultant represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Design Consultant represents and warrants that he has been fully authorized by Consultant to execute this Agreement on behalf of Design Consultant and to validly and legally bind Design Consultant to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Design Consultant or the person signing the Agreement to enter into this Agreement.

**5.25 Notices.** Notices, bills, invoices or reports required by this Agreement shall be sufficiently delivered if sent in the United States mail, postage prepaid, to the Parties at the following addresses:

to the City:

Executive Director of Public Works  
201 West Colfax Avenue, Dept.  
601  
Denver, Colorado 80202

to the Design Consultant:

Bryan Construction Inc.  
7025 Campus Drive Colorado  
Springs, Colorado 80920

The addresses may be changed by the Parties by written notice.

**5.26 Severability.** It is understood and agreed by the parties hereto that, if any part, term, or provision of this Agreement, except for the provisions of this Agreement requiring prior appropriation and limiting the total amount to be paid by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

**5.27 Agreement as Complete Integration-Amendments.** This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other

amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories to the original Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

**5.28 Electronic Signatures and Electronic Records.** Design Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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**Contract Control Number:** PWADM-201632008-00

**Contractor Name:** FEDERAL CONTRACTING, INC. DBA BRYAN  
CONSTRUCTION, INCORPORATED

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at  
Denver, Colorado as of February 01, 2017.

SEAL



**CITY AND COUNTY OF DENVER**

ATTEST:

Debra Johnson  
Debra Johnson, Clerk and Recorder,  
Ex-Officio Clerk of the City and  
County of Denver

By Michael B Hancock  
Michael B Hancock, Mayor

APPROVED AS TO FORM:

Attorney for the City and County of  
Denver

By Jason Moore  
Jason Moore, Assistant City  
Attorney

REGISTERED AND COUNTERSIGNED:

By Brendan J Hanlon  
Brendan Hanlon, CFO of Finance

By Timothy M O'Brien  
Timothy M. O'Brien, Auditor





Contract Control Number: PWADM-201632008-00

Contractor Name: FEDERAL CONTRACTING, INC. DBA BRYAN  
CONSTRUCTION, INCORPORATED

By:  \_\_\_\_\_

Name: Vincent C. Shoemaker  
(please print)

Title: President  
(please print)

ATTEST: [if required]

By:  \_\_\_\_\_

Name: Doug Woody  
(please print)

Title: Executive Manager  
(please print)



**EXHIBIT H**  
**Equal Employment Opportunity Provisions**

**RULES AND REGULATIONS**  
**REGARDING**  
**EQUAL EMPLOYMENT OPPORTUNITY**

Promulgated and adopted by the Manager of Public Works pursuant to and by authority of Article III, Division 2, Chapter 28 of the Revised Municipal Code of the City and County of Denver, and for the purpose of insuring that contractors, subcontractors and suppliers soliciting and receiving compensation for contract work from or through the City and County of Denver provide equal opportunity in employment without regard to race, color, creed, sex, national origin, age, religion, marital status, political opinion or affiliation or mental or physical handicap and meet certain requirements for the hiring, training, promotion, and treatment during employment of members of ethnic groups subject to differential treatment, including persons of African descent (Black), Spanish-surnamed (Hispanic), Asian-American and American Indian Groups.

**RULE I - DEFINITIONS**

- A. "City" means the City and County of Denver.
- B. "Manager" shall mean the Manager of Public Works for the City and County of Denver.
- C. "Contract" means a contract entered into with the City and County of Denver, financed in whole or in part by local resources or funds of the City and County of Denver, for the construction of any public building or prosecution or completion of any public work.
- D. "Contractor" means the original party to a contract with the City and County of Denver, also referred to as the "general" or "prime" contractor.
- E. "Director" means the Director of the Division of Small Business Opportunity.
- F. "Subcontractor" means any person, company, association, partnership, corporation, or other entity, which assumes by subordinate agreement some or all of the obligations of the general or prime contractor.
- G. The phrase "Bidding Specifications" as used in Article III, Division 2 of Chapter 28 of the Revised Municipal Code shall include BID CONDITION, INVITATION TO BID, and NOTICE OF PROPOSAL.
- H. "Affirmative Action Program" means a set of specific and result-oriented procedures or steps to which a contractor commits himself to apply every good faith effort to employ members of ethnic minority groups, to include persons of African descent (Black), Spanish surnamed (Hispanic), Asian-American, American Indians, and persons with mental or physical handicap.
- I. "Division of Small Business Opportunity" means the City agency established pursuant to Article III, Division 1 of Chapter 28 of the Denver Revised Municipal Code.

## **RULE II - NOTICE OF HEARING**

When results of conciliation efforts are unsatisfactory to the Manager and he is informed in accordance with Article III, Division 2 of Chapter 28 of the Revised Municipal code that a contractor or subcontractor has apparently failed to meet affirmative action and equal employment opportunity requirements after a reasonable period of notice to correct deficiencies, the Manager will, prior to imposition of any sanctions, afford the general contractor a hearing in order to determine whether the contractor or his subcontractors have failed to comply with the affirmative action and equal employment opportunity requirements of Article III, Division 2 of Chapter 28 of the Revised Municipal Code or of the contract. Written notice of such hearing shall be delivered personally or sent by certified mail, return receipt requested, to the contractor and to any subcontractor involved, at least ten (10) days prior to the date scheduled for the hearing.

## **RULE III - HEARING**

- A. Contractors will appear at hearings and may be represented by counsel, and may present testimony orally and other evidence.
- B. Hearings shall be conducted by one or more hearing examiners designated as such by the Manager.
- C. The Director of the Division of Small Business Opportunity may participate in hearings as a witness.
- D. Hearings shall be held at the place specified in the notice of hearing.
- E. All oral testimony shall be given under oath or affirmation and a record of such proceedings shall be made.
- F. All hearings shall be open to the public.
- G. The hearing officer shall make recommendations to the Manager who shall make a final decision.

## **REGULATIONS**

### **REGULATION NO. 1 - ORDINANCE:**

The Rules and Regulations of the Manager shall be inserted in the bidding specifications for every contract for which bidding is required.

### **REGULATION NO. 2 - EXEMPTIONS:**

Each contract and subcontract, regardless of the dollar amount, shall be subject to affirmative action requirements unless specifically exempted in writing individually by the Manager. Exemptions apply only to "affirmative action" in equal employment opportunity, and are not to be construed as condonation in any manner of "discrimination" or "discriminatory practices" in employment because of race, color, creed, sex, age, national origin, religion, marital status, political opinion or mental or physical handicap.

### **REGULATION NO. 3 - DIRECTOR OF CONTRACT COMPLIANCE:**

The Director of the Division of Small Business Opportunity shall perform the duties assigned to such official by Article III, Division 2 Chapter 28 of the Revised Municipal Code and by the Manager. (1) The Director of the Division of Small Business Opportunity or designated representatives shall inform bidders and contractors of affirmative action procedures, programs, and goals in accordance with the Ordinance at pre-bid and pre-construction conference; (2) make regular on-site inspections; (3) supply contractors and subcontractors with report forms to be completed by them when requested, and furnished to the Director of the Division of Small Business Opportunity; and (4) review payroll records, employment records and practices of general contractors and their subcontractors and suppliers during the performance of any contract. The Director of the Division of Small Business Opportunity shall promptly report apparent affirmative action deficiencies to the Manager.

### **REGULATION NO. 4 - GOALS AND TIMETABLES:**

In general, goals and timetables should take into account anticipated vacancies and the availability of skills in the market place from which employees should be drawn. In addition, where discrimination in employment by a general contractor or any of his subcontractors is indicated, a corrective action program will take into account the need by the general contractor and his subcontractors to correct past discriminatory practices and reach goals of minority manpower utilization on a timely basis through such recruiting and advertising efforts as are necessary and appropriate.



**REGULATION NO. 5 - AWARD OF CONTRACTS:**

It shall be the responsibility of the Director of the Division of Small Business Opportunity to determine the affirmative action capability of bidders, contractors and subcontractors and to recommend to the Manager the award of contracts to those bidders, contractors and subcontractors and suppliers who demonstrate the ability and willingness to comply with the terms of their contract.

**REGULATION NO. 6 - PUBLICATION AND DUPLICATION:**

Copies of these Rules and Regulations as amended by the Manager from time to time, shall as soon as practicable and after Notice being published will be made a part of all City Contracts.

**REGULATION NO. 7 - NOTICE TO PROCEED:**

Prior to issuance of the Notice to Proceed, a sign-off will be required of the Director of the Division of Small Business Opportunity or his designee.

**REGULATION NO. 8 - CONTRACTS WITH SUBCONTRACTORS:**

To the greatest extent possible, the contractor shall make a good faith effort to contract with minority contractors, subcontractors and suppliers for services and supplies by taking affirmative actions, which include but are not limited to the following:

1. Advertise invitations for subcontractor bids in minority community news media.
2. Contact minority contractor organizations for referral of prospective subcontractors.
3. Purchase materials and supplies from minority material suppliers.

**REGULATION NO. 9 - AGENCY REFERRALS:**

It shall be no excuse that the union with which the contractor or subcontractor has an agreement providing for referral, exclusive or otherwise, failed to refer minority employees.

**REGULATION NO. 10 - CLAUSES:**

The Manager shall include the appropriate clauses in every contract and the contractor shall cause to be inserted in every subcontract the appropriate clauses:

1. APPENDIX A: City and County of Denver Equal Opportunity Clause - ALL CONTRACTS funded only with City and County of Denver monies.
2. APPENDIX B: Equal Opportunity Clause (11246) - ALL FEDERAL ASSISTED.
3. APPENDIX C: Section 3 - Assurance of Compliance - HUD ASSISTED PROJECTS.
4. APPENDIX D: Section 3 - Clause - HUD ASSISTED PROJECTS.

All amendments to the appendices shall be included by reference.

**REGULATION NO. 11 - SHOW CAUSE NOTICES:**

When the Manager has reasonable cause to believe that a contractor has violated Article III, Division 2 of Chapter 28 of the Denver Revised Municipal Code, he may issue a notice requiring the contractor to show cause, within fifteen (15) days why enforcement procedures, or other appropriate action to insure compliance, should not be instituted.

**REGULATION NO. 12 - BID CONDITIONS - AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY:**

1. APPENDIX E: The Bid Conditions - Affirmative Action Requirements - Equal Employment Opportunity as amended and published by the U.S. Department of Labor Employment Standards Administration, Office of Federal Contract Compliance, shall be inserted verbatim for bidding specification for every non-exempt contract involving the use of Federal funds.

2. APPENDIX F: The Bid Conditions - Affirmative Action Requirements - Equal Employment Opportunity as published by the Department of Public Works, City and County of Denver, shall be inserted verbatim as bidding specifications for every non-exempt contract using City funds.

**CITY AND COUNTY OF DENVER  
DEPARTMENT OF PUBLIC WORKS**

**APPENDIX A**

**CITY AND COUNTY OF DENVER EQUAL OPPORTUNITY CLAUSE -  
ALL CONTRACTS**

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, religion, marital status, political opinion or affiliation, or mental or physical handicap. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex, age, national origin, religion, marital status, political opinion or affiliation, or mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, age, national origin, religion, marital status, political opinion or affiliation, or mental or physical handicap.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided, advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Each Contractor will comply with all provisions of Article III, Division 2 of Chapter 28 of the Revised Municipal Code, and the rules, regulations, and relevant orders of the Manager and the Director.
5. The Contractor will furnish all information and reports required by Article III, Division 2 of Chapter 28 of the Revised Municipal Code, and by rules, regulations and orders of the Manager and Director or pursuant thereto, and will permit access to his books, records, and accounts by the Manager, Director, or their designee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further City contracts in accordance with procedures authorized in Article III, Division 2, Chapter 28 of the Revised Municipal Code, or by rules, regulations, or order of the Manager.
7. The Contractor will include Regulation 12, Paragraph 2 and the provisions of paragraphs (1) through (6) in every subcontract of purchase order unless exempted by rules, regulations, or orders of the Manager issued pursuant to Article III, Division 2, Chapter 28 of the Revised Municipal Code, so that such provisions will be binding on each subcontractor or supplier. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The applicant further agrees to be bound by the above equal opportunity clauses with respect to its own employment practices when it participates in City contracts. The Contractor agrees to assist and cooperate actively with the Manager and the Director in obtaining compliance of subcontractors and suppliers with the equal opportunity clause and the rules, regulations and relevant orders of the Manager, and will furnish the Manager and the Director such information as they may require for the supervision of compliance, and will otherwise assist the Manager and Director in the discharge of the City's primary responsibility for securing compliance. The Contractor further agrees to refrain from entering into any contract or contract modification subject to Article III, Division 2 of Chapter 28

of the Revised Municipal Code with a contractor debarred from, or who has not demonstrated eligibility for, City contracts.

The Contractor will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Manager and Director. In addition, the Contractor agrees that failure or refusal to comply with these undertakings the Manager may take any or all of the following actions:

- A. Cancellation, termination, or suspension in whole or in part of this contract.
- B. Refrain from extending any further assistance to the applicant under the program with respect to which the failure occurred until satisfactory assurance of future compliance has been received from such applicant.
- C. Refer the case to the City Attorney for appropriate legal proceedings.

**SUBCONTRACTS:** Each prime Contractor or Subcontractor shall include the equal opportunity clause in each of its subcontracts.

**EXHIBIT I**  
**Prevailing Wage Schedules**



**DENVER**  
THE MILE HIGH CITY

**Office of Human Resources**  
Denver's Human Resource Agency

201 W. Colfax, Department 412  
Denver, CO 80202  
p: 720.913.5751  
f: 720.913.5720  
[www.denvergov.org/csa](http://www.denvergov.org/csa)

TO: All Users of the City of Denver Prevailing Wage Schedules  
FROM: Alena Duran, Associate Human Resources Professional  
DATE: Monday, June 6 2016  
SUBJECT: Latest Change to Prevailing Wage Schedules

Please be advised, prevailing wage rates for some building, heavy, and highway construction trades have not been updated by the United States Department of Labor (DOL) since March 1, 2002. The Career Service Board, in their meeting held on April 21, 2011, approved the use of the attached supplemental wage rates until prevailing wage rates for these classifications of work are again published by the United States Department of Labor.

The attached Prevailing Wage Schedule is effective as of **Friday June 3, 2016** and applies to the City and County of Denver for **BUILDING CONSTRUCTION PROJECTS** (does not include residential construction consisting of single family homes and apartments up to and including 4 stories) in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO160030  
Superseded General Decision No. CO20150030  
Modification No. 4  
Publication Date: 06/03/2016  
(4 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to, and individually registered in, a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program, which has received prior approval, by the DOL. Any employer, who employs an apprentice and is found to be in violation of this provision, shall be required to pay said apprentice the full journeyman scale.

For questions call (720) 913-5018

Attachments as listed above.

General Decision Number: CO160030 06/03/2016 CO30

Superseded General Decision Number: CO20150030

State: Colorado

Construction Type: Building

County: Denver County in Colorado.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

| Modification Number | Publication Date |
|---------------------|------------------|
| 0                   | 01/08/2016       |
| 1                   | 01/15/2016       |
| 2                   | 02/26/2016       |
| 3                   | 03/18/2016       |
| 4                   | 06/03/2016       |

ASBE0028-002 10/01/2012

|                                                                                                      | Rates    | Fringes |
|------------------------------------------------------------------------------------------------------|----------|---------|
| ASBESTOS WORKER/HEAT & FROST INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)..... | \$ 28.98 | 13.03   |

CARP0055-002 05/01/2015

|                                       | Rates    | Fringes |
|---------------------------------------|----------|---------|
| CARPENTER (Drywall Hanging Only)..... | \$ 25.00 | 6.19    |

CARP1607-001 06/01/2015

|                 | Rates    | Fringes |
|-----------------|----------|---------|
| MILLWRIGHT..... | \$ 31.00 | 11.88   |

\* ELEC0068-012 06/01/2016

|                                                | Rates    | Fringes |
|------------------------------------------------|----------|---------|
| ELECTRICIAN (Includes Low Voltage Wiring)..... | \$ 33.85 | 13.99   |

-----  
ELEV0025-001 01/01/2016

|                        | Rates    | Fringes    |
|------------------------|----------|------------|
| ELEVATOR MECHANIC..... | \$ 41.47 | 30.285+a+b |

FOOTNOTE:

- a. Vacation: 6%/under 5 years based on regular hourly rate for all hours worked. 8%/over 5 years based on regular hourly rate for all hours worked.
- b. PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving Day; and Christmas Day.

-----  
ENGI0009-017 10/23/2013

|                                  | Rates    | Fringes |
|----------------------------------|----------|---------|
| POWER EQUIPMENT OPERATOR (Crane) |          |         |
| 141 tons and over.....           | \$ 25.97 | 9.15    |
| 50 tons and under.....           | \$ 24.88 | 9.15    |
| 51 to 90 tons.....               | \$ 25.04 | 9.15    |
| 91 to 140 tons.....              | \$ 25.19 | 9.15    |

-----  
IRON0024-009 06/01/2015

|                             | Rates    | Fringes |
|-----------------------------|----------|---------|
| IRONWORKER, ORNAMENTAL..... | \$ 25.05 | 11.14   |

-----  
IRON0024-010 06/01/2015

|                             | Rates    | Fringes |
|-----------------------------|----------|---------|
| IRONWORKER, STRUCTURAL..... | \$ 25.05 | 11.14   |

-----  
PAIN0079-006 02/22/2016

|                                                                           | Rates    | Fringes |
|---------------------------------------------------------------------------|----------|---------|
| PAINTER (Brush, Roller and Spray; Excludes Drywall Finishing/Taping)..... | \$ 20.00 | 6.91    |

-----  
PAIN0079-007 02/22/2016

| Rates | Fringes |
|-------|---------|
|-------|---------|



|                                                                                                              |          |         |
|--------------------------------------------------------------------------------------------------------------|----------|---------|
| DRYWALL FINISHER/TAPER.....                                                                                  | \$ 21.05 | 6.91    |
| -----                                                                                                        |          |         |
| PAIN0419-001 07/01/2015                                                                                      |          |         |
|                                                                                                              | Rates    | Fringes |
| SOFT FLOOR LAYER (Vinyl and<br>Carpet).....                                                                  | \$ 16.70 | 10.09   |
| -----                                                                                                        |          |         |
| PAIN0930-002 07/01/2015                                                                                      |          |         |
|                                                                                                              | Rates    | Fringes |
| GLAZIER.....                                                                                                 | \$ 30.52 | 8.12    |
| -----                                                                                                        |          |         |
| * PLUM0003-009 06/01/2016                                                                                    |          |         |
|                                                                                                              | Rates    | Fringes |
| PLUMBER (Excludes HVAC Duct,<br>Pipe and Unit Installation).....                                             | \$ 38.43 | 15.19   |
| -----                                                                                                        |          |         |
| PLUM0208-008 06/01/2015                                                                                      |          |         |
|                                                                                                              | Rates    | Fringes |
| PIPEFITTER (Includes HVAC<br>Pipe and Unit Installation;<br>Excludes HVAC Duct<br>Installation).....         | \$ 35.35 | 13.39   |
| -----                                                                                                        |          |         |
| SFCO0669-002 01/01/2016                                                                                      |          |         |
|                                                                                                              | Rates    | Fringes |
| SPRINKLER FITTER (Fire<br>Sprinklers).....                                                                   | \$ 34.43 | 19.50   |
| -----                                                                                                        |          |         |
| SHEE0009-004 07/01/2015                                                                                      |          |         |
|                                                                                                              | Rates    | Fringes |
| SHEET METAL WORKER (Includes<br>HVAC Duct Installation;<br>Excludes HVAC Pipe and Unit<br>Installation)..... | \$ 32.85 | 14.63   |
| -----                                                                                                        |          |         |
| SUCO2013-006 07/31/2015                                                                                      |          |         |
|                                                                                                              | Rates    | Fringes |
| BRICKLAYER.....                                                                                              | \$ 21.96 | 0.00    |
| CARPENTER (Acoustical Ceiling<br>Installation Only).....                                                     | \$ 22.40 | 4.85    |
| CARPENTER (Metal Stud                                                                                        |          |         |

|                                                                                                                    |          |      |
|--------------------------------------------------------------------------------------------------------------------|----------|------|
| Installation Only).....                                                                                            | \$ 17.68 | 0.00 |
| CARPENTER, Excludes<br>Acoustical Ceiling<br>Installation, Drywall<br>Hanging, and Metal Stud<br>Installation..... | \$ 21.09 | 6.31 |
| CEMENT MASON/CONCRETE FINISHER...                                                                                  | \$ 20.09 | 7.03 |
| LABORER: Common or General.....                                                                                    | \$ 14.49 | 5.22 |
| LABORER: Mason Tender - Brick...                                                                                   | \$ 15.99 | 0.00 |
| LABORER: Mason Tender -<br>Cement/Concrete.....                                                                    | \$ 16.00 | 0.00 |
| LABORER: Pipelayer.....                                                                                            | \$ 16.96 | 3.68 |
| OPERATOR:<br>Backhoe/Excavator/Trackhoe.....                                                                       | \$ 20.78 | 5.78 |
| OPERATOR: Bobcat/Skid<br>Steer/Skid Loader.....                                                                    | \$ 19.10 | 3.89 |
| OPERATOR: Grader/Blade.....                                                                                        | \$ 21.50 | 0.00 |
| ROOFER.....                                                                                                        | \$ 16.56 | 0.00 |
| TRUCK DRIVER: Dump Truck.....                                                                                      | \$ 17.34 | 0.00 |
| WATERPROOFER.....                                                                                                  | \$ 12.71 | 0.00 |

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

**Office of Human Resources**

**Supplemental rates**  
**(Specific to the Denver projects)**  
**Supp #101, Date: 11-19-2015**

| <b><u>Classification</u></b>                            |                                  | <b><u>Base</u></b> | <b><u>Fringe</u></b> |
|---------------------------------------------------------|----------------------------------|--------------------|----------------------|
| Boilermakers                                            |                                  | \$30.97            | \$21.45              |
| Iron Worker, Reinforcing                                |                                  | \$18.49            | \$3.87               |
| Paper Hanger                                            |                                  | \$20.15            | \$6.91               |
| Power Equipment Operators<br>(Concrete Mixers):         |                                  |                    |                      |
|                                                         | Less than 1 yd                   | \$23.67            | \$10.67              |
|                                                         | 1 yd and over                    | \$23.82            | \$10.68              |
|                                                         | Drillers                         | \$23.97            | \$10.70              |
|                                                         | Loaders over 6 cu yd             | \$23.82            | \$10.68              |
|                                                         | Oilers                           | \$22.97            | \$10.70              |
| Mechanic                                                |                                  | \$18.48            |                      |
| Plasters                                                |                                  | \$24.60            | \$12.11              |
| Plaster Tenders                                         |                                  | \$10.79            | -                    |
| Laborers: Concrete Saw                                  |                                  | \$13.89            | -                    |
| Tile Setter-Tile Finisher-Floor<br>Grinder-Base Grinder |                                  | \$20.24            | \$8.14               |
| Power Equipment Operators:                              |                                  |                    |                      |
|                                                         | Loader up to and incl 6 cu<br>yd | \$23.67            | \$10.67              |
|                                                         | Motor Grader                     | \$23.97            | \$10.70              |
|                                                         | Roller                           | \$23.67            | \$10.67              |
| Truck Drivers                                           | Flatbed                          | \$19.14            | \$10.07              |
|                                                         | Semi                             | \$19.48            | \$10.11              |
|                                                         |                                  |                    |                      |

- Caulkers—Receive rate prescribed for craft performing operation to which caulking is incidental i.e. glazier, painter, brick layer, cement mason.
- Use the “Carpenters, Excludes Acoustical Ceiling Installation, Drywall Hanging, and Metal Stud Installation” rates published by the Federal Davis-Bacon rates for batt insulation, pre-stress concrete and tilt up concrete walls.
- Use the “Laborer—Common”, for General Housekeeping, Demolition, Final Cleanup and Indoor Fence Installer.
- Cleanup incidental to the craft performing work can’t be classified as Laborer-Common.
- See Denver City Auditor’s Office Prevailing Wage Clarification of Determinations 2015 Prevailing Wage Section Clarification of Determinations for list of complete classification uses at [Denvergov.org/Auditor](http://Denvergov.org/Auditor).

**EXHIBIT J**  
**CITY AND COUNTY OF DENVER**  
**DEPARTMENT OF PUBLIC WORKS**

**PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned **FEDERAL CONTRACTING, INC. dba BRYAN CONSTRUCTION, INCORPORATED, 7025 Campus Drive, Colorado Springs, Colorado 80920**, a corporation organized and existing under and by virtue of the laws of the State of **Colorado**, hereafter referred to as the "Contractor", and Western Surety Company, a corporation organized and existing under and by virtue of the laws of the State of South Dakota, and authorized to transact business in the State of Colorado, as Surety, are held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", in the penal sum of **Three Million Forty Five Thousand Nine Hundred Thirty One and No/100 Dollars (\$3,045,931.00)**, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden Contractor has entered into a written contract with the aforesaid City for furnishing all labor and tools, supplies, equipment, superintendence, materials and everything necessary for and required to do, perform and complete the construction of **CONTRACT NO. 201736311 DENVER COUNTY JAIL BUILDING 24 LEVELS 6 AND 7 BUILD OUT**, Denver, Colorado, and has bound itself to complete the project within the time or times specified or pay liquidated damages, all as designated, defined and described in the said Contract and Conditions thereof, and in accordance with the Plans and Technical Specifications therefore, a copy of said Contract being made a part hereof;

NOW, THEREFORE, if the said Contractor shall and will, in all particulars well and truly and faithfully observe, perform and abide by each and every Covenant, Condition and part of said Contract, and the Conditions, Technical Specifications, Plans, and other Contract Documents thereto attached, or by reference made a part thereof and any alterations in and additions thereto, according to the true intent and meaning in such case, then this obligation shall be and become null and void; otherwise, it shall remain in full force and effect;

PROVIDED FURTHER, that if the said Contractor shall satisfy all claims and demands incurred by the Contractor in the performance of said Contract, and shall fully indemnify and save harmless the City from all damages, claims, demands, expense and charge of every kind (including claims of patent infringement) arising from any act, omission, or neglect of said Contractor, its agents, or employees with relation to said work; and shall fully reimburse and repay to the City all costs, damages, and expenses which it may incur in making good any default based upon the failure of the Contractor to fulfill its obligation to furnish maintenance, repairs or replacements for the full guarantee period provided in the Contract Documents, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if said Contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing it or its subcontractors with labor and materials, rental machinery, tools or equipment used or performed in the prosecution of work provided for in the above Contract and that if the Contractor will indemnify and save harmless the City for the extent of any and all payments in connection with the carrying out of such Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, gasoline, lubricating oils, fuel oils, grease, coal, or any other supplies or materials used or consumed by said Contractor or its subcontractors in performance of the work contracted to be done, or fails to pay any person who supplies rental machinery, tools or equipment, all amounts due as the result of the use of such machinery, tools or equipment in the prosecution of the work, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law;

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to contracts with others in connection with this project, or the work to be performed thereunder, or the Technical Specifications and Plans accompanying the same, shall in any way affect its obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or contracts, or to the work, or to the Technical Specifications and Plans.

IN WITNESS WHEREOF, said Contractor and said Surety have executed these presents as of this

5<sup>th</sup> day of September, 2017.



Federal Contracting, Inc. dba  
Bryan Construction, Incorporated  
Contractor

By: [Signature]  
~~President~~ Chief Executive Officer  
Scott A. Bryan  
Western Surety Company  
Surety

By: [Signature]  
Attorney-In-Fact Angela M. Tindol

Attest:  
[Signature]  
Secretary

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

APPROVED AS TO FORM:  
Attorney for the City and County of Denver

By: [Signature]  
Assistant City Attorney

APPROVED FOR THE CITY AND COUNTY OF DENVER

By: [Signature]  
MAYOR

By: [Signature]  
MANAGER OF PUBLIC WORKS  
h

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Mona D Weaver, Angela M Tindol, Anuj Jain, Charles M Mc Daniel, Sheila J Montoya, John Browning, Tanna G Prince, Individually**

of Denver, CO, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 10th day of June, 2015.



WESTERN SURETY COMPANY

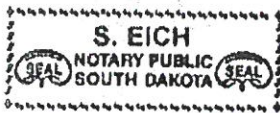
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 10th day of June, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

February 12, 2021



S. Eich, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary



**EXHIBIT K**

**Final/Partial Lien Release Form**

**FINAL/PARTIAL RELEASE AND CERTIFICATE OF PAYMENT  
(SUBCONTRACTOR/SUPPLIER)**

\_\_\_\_\_  
(PROJECT NO. and NAME)

Date: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(NAME OF CONTRACTOR)

Subcontract #: \_\_\_\_\_.

\_\_\_\_\_  
(NAME OF SUBCONTRACTOR/SUPPLIER)

Subcontract Value: \$ \_\_\_\_\_.

Last Progress Payment: \$ \_\_\_\_\_.

Date: \_\_\_\_\_.

Total Paid to Date: \$ \_\_\_\_\_.

Date of Last Work: \_\_\_\_\_.

Check Applicable Box:

MBE     WBE

The Undersigned hereby certifies that all costs, charges or expenses incurred by the undersigned or on behalf of the undersigned for any work, labor or services performed and for any materials, supplies or equipment provided on the above referenced Project or used in connection with the above referenced Subcontract (the "Work Effort") have been duly paid in full.

The Undersigned further certifies that each of the undersigned's subcontractors and suppliers that incurred or caused to be incurred, on their behalf, costs, charges or expenses in connection with the undersigned's Work Effort on the above referenced Project have been duly paid in full.

In consideration of \$\_\_\_\_\_ representing the Last Progress Payment referenced above and in further consideration of the Total Paid to Date, also referenced above, and other good and valuable consideration received and accepted by the undersigned this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the Undersigned hereby releases and discharges the City and County of Denver (the "City"), the above referenced City Project, the City's premises and property and the above referenced Contractor from all claims, liens, rights, liabilities, demands and obligations, whether known or unknown, of every nature arising out of or in connection with the performance of the work effort.

As additional consideration for the payments referenced above, the undersigned agrees to defend, indemnify and save and hold harmless the City, its officers, employees, agents and assigns and the above-referenced Contractor from and against all costs, losses, damages, causes of action, judgments under the subcontract and expenses arising out of or in connection with any claim or claims against the City or the Contractor which arise out of the Undersigned's performance of the Work Effort and which may be asserted by the Undersigned or any of its suppliers or subcontractors of any tier or any of their representatives, officers, agents, or employees.

It is acknowledged that this release is for the benefit of and may be relied upon by the City and the referenced Contractor.

The foregoing shall not relieve the undersigned of any obligation under the provisions of the Undersigned's subcontract, as the subcontract may have been amended, which by their nature survive completion of the Undersigned's work effort including, without limitation, warranties, guarantees, insurance requirements and indemnities.

STATE OF COLORADO    ) ss.  
CITY OF \_\_\_\_\_)

\_\_\_\_\_  
(Name of Subcontractor)

Signed and sworn before me this  
day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

\_\_\_\_\_  
Notary Public/Commissioner of Oaths  
My Commission Expires

Title: \_\_\_\_\_

**EXHIBIT L**

**Notice to Proceed Form**



**Denver Public Works**

Engineering Division  
Capital Projects Management – Dept. 506  
Right-of-Way Services – Dept 507  
Traffic Engineering Services – Dept 508  
Policy and Planning – Dept. 509

201 West Colfax Ave, Dept 614  
Denver, CO 80202  
[www.work4denver.com](http://www.work4denver.com)

Current Date

**NOTICE TO PROCEED  
(SAMPLE)**

Name  
Company  
Street  
City/State/Zip

**CONTRACT NO. «CONTRACT NO», «PROJECT NAME»**

In accordance with General Contract Condition 302 of the Standard Specifications for Construction, General Contract Conditions, 2011 Edition, you are hereby authorized and directed to proceed on \_\_\_\_\_ with the work of constructing contract number «Contract No», as set forth in detail in the contract documents for the City and County of Denver.

With a contract time of \_\_\_\_\_ calendar days, the project must be complete on or before \_\_\_\_\_.

If you have not already done so, you must submit your construction schedule, in accordance with General Contract Condition 306.2.B, to the Project Manager within 10 days. Additionally, you must submit your tax exempt certificate, and copies of your subcontractors' certificates, in accordance with General Contract Condition 323.5, to the Project Manager as soon as possible. Failure to submit these certificates will delay processing of payment applications.

Sincerely,


Lesley B. Thomas  
City Engineer

cc:



# EXHIBIT M

## Contractor's Certification of Payment Form

| <br><b>DENVER</b><br><small>THE MILE HIGH CITY</small>                                                                                                                                       | City and County of Denver              |                    |                             |                                                          | Office of Economic Development                               |                                             |                                                     |                     |                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------|-----------------------------|----------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------|-----------------------------------------------------|---------------------|------------------------------|
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          | Compliance Unit                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               | Division of Small Business Opportunity |                    |                             |                                                          | 201 W. Colfax Ave., Dept. 907                                |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          | Denver, CO 80202<br>Phone: 720.913.1999<br>Fax: 720.913.1903 |                                             |                                                     |                     |                              |
| <b>Contractor's/Consultant's Certification of Payment (CCP)</b>                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
| Prime Contractor or Consultant:                                                                                                                                                                                                                                               |                                        |                    | Phone:                      |                                                          | Project Manager:                                             |                                             |                                                     |                     |                              |
| Pay Application #:                                                                                                                                                                                                                                                            |                                        |                    | Pay Period:                 |                                                          | Amount Requested: \$                                         |                                             |                                                     |                     |                              |
| Project #:                                                                                                                                                                                                                                                                    |                                        |                    | Project Name:               |                                                          |                                                              |                                             |                                                     |                     |                              |
| Current Completion Date:                                                                                                                                                                                                                                                      |                                        |                    | Percent Complete:           |                                                          | Prepared By:                                                 |                                             |                                                     |                     |                              |
| (I) - Original Contract Amount: \$                                                                                                                                                                                                                                            |                                        |                    |                             |                                                          | (II) - Current Contract Amount: \$                           |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        | A                  | B                           | C                                                        | D                                                            | E                                           | F                                                   | G                   | H                            |
| Prime/Subcontractor/Supplier Name                                                                                                                                                                                                                                             | M/W/B/<br>DBE/<br>NON                  | Original<br>Amount | Contract<br>Amount<br>(A/I) | % Bid<br>Current Contract Amount<br>Including Amendments | %<br>Revised<br>(C/II)                                       | Requested Amount of this<br>Pay Application | Amount Paid on the<br>Previous Pay<br>Application # | Net Paid<br>To Date | Paid %<br>Achieved<br>(G/II) |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
|                                                                                                                                                                                                                                                                               |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
| <b>Totals</b>                                                                                                                                                                                                                                                                 |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
| The undersigned certifies that the information contained in this document is true, accurate and that the payments shown have been made to all subcontractors and suppliers used on this project and listed herein. Please use an additional form, if more space is necessary. |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
| Prepared By (Signature):                                                                                                                                                                                                                                                      |                                        |                    |                             |                                                          |                                                              | Date:                                       |                                                     |                     |                              |
| Page of                                                                                                                                                                                                                                                                       |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |
| COMP-FRM-027 rev 022311                                                                                                                                                                                                                                                       |                                        |                    |                             |                                                          |                                                              |                                             |                                                     |                     |                              |



## Instructions for Completing the Contractor/Consultant Certification of Payment Form

Office of Economic Development  
Division of Small Business Opportunity  
**Compliance Unit**  
201 W. Colfax Ave., Dept. 907  
Denver, CO 80202  
Phone: 720-913-1999  
Fax: 720-913-1803  
[dsbo@denvergov.org](mailto:dsbo@denvergov.org)

**Note:** The attached Contractor/Consultant Certification of Payment form must be completed by the Contractor/ Subconsultant and all subcontractors/subconsultant or suppliers used on the project at any tier and submitted with each pay application. The Contractor/Consultant is responsible for the accuracy of all information provided and is required to have each subcontractor/subconsultant or supplier fill out the appropriate forms. Please be sure to complete all information requested at the top of the form, including the name of the person who prepared this form.

If you reproduce this form, you must continue to list each of the originally listed firms, as well as any additional firms used during the performance period of the contract.

If you have any questions, please call the Compliance Unit of DSBO at 720.913.1999.

### Instructions for Completing the Contractor/Consultant Certification of Payment Form, per Column

**Contractor/Subcontractor or Subconsultant/Supplier Name:** In the space provided, list all subcontractors/ subconsultants and suppliers used on the project. For all M/W/S/DBEs use the exact name listed in the DSBO Directory.

**M/W/S/DBE/NON:** For each name listed, indicate whether the entity is a certified M/W/S/DBE.

**Column A:** Provide the contract amount, as listed at bid time, for the Contractor/Consultant and each subcontractor/subconsultant or supplier.

**Column B:** Provide the percentage portion of each listed subcontractor/subconsultant or supplier contract amount (Column A) compared to the total original contract amount in (I).

**Column C:** Provide the original contract amount (Column A) for each subcontractor/subconsultant or supplier plus any awarded alternate and/or change order amounts applicable. If an alternate/change order does not apply to the listed firm, re-enter the original contract amount (Column A).

**Column D:** Provide the percent portion of each listed subcontractor/subconsultant or supplier contract amount (Column C) compare to the current total contract amount in (II).

**Column E:** Provide the amount requested for work performed or materials supplied by each listed subcontractor/subconsultant or supplier for this pay application. The sum of the items in this column should equal the estimated amount requested for this pay application.

**Column F:** Provide the amount paid to each subcontractor/subconsultant or supplier on the previous pay application. Enter the previous pay application number in the column heading. The sum of the items listed in this column should equal the warrant amount paid to the Contractor/Consultant on the previous pay application. The amounts paid to the subcontractor/subcontractor or suppliers should be the actual amount of each check issued.

**Column G:** Provide the net paid to date for the Contractor/Subconsultant and each listed subcontractor/subconsultant or supplier.

**Column H:** Provide the percent portion of the net paid to date (Column G) for the Contractor/Subconsultant and each listed subcontractor/subconsultant or supplier of the current total contract amount in (II).

**EXHIBIT N**

**Final Receipt Form - Certificate of Final Release**



**Denver Public Works**

Engineering Division  
Capital Projects Management – Dept. 506  
Right-of-Way Services – Dept 507  
Traffic Engineering Services – Dept 508  
Policy and Planning – Dept. 509  
201 West Colfax Ave, Dept 614  
Denver, CO 80202  
[www.work4denver.com](http://www.work4denver.com)

Certificate of Contract Release  
(SAMPLE)

Date

Name  
Company  
Street  
City/State/Zip

RE: Certificate of Contract Release for  
«CONTRACT NO», «PROJECT NAME»

Received this date of the City and County of Denver, as full and final payment of the cost of the improvements provided for in the foregoing contract, \_\_\_\_\_ dollars and \_\_\_\_\_ cents (\$\_\_\_\_\_), in cash, being the remainder of the full amount accruing to the undersigned by virtue of said contract; said cash also covering and including full payment for the cost of all extra work and material furnished by the undersigned in the construction of said improvements, and all incidentals thereto, and the undersigned hereby releases said City and County of Denver from any and all claims or demands whatsoever, regardless of how denominated, growing out of said contract.

And these presents are to certify that all persons performing work upon or furnishing materials for said improvements under the foregoing contract have been paid in full and this payment to be made is the last or final payment.

\_\_\_\_\_  
Contractor’s Signature Date Signed

If there are any questions, please contact me by telephone at (720) 913-XXXX. Please return this document via facsimile at (720) 913-1805 and mail to original to the above address.

| DESCRIPTION                | DAY | week | month | one time |
|----------------------------|-----|------|-------|----------|
| AIR COMPRESSOR ELECTRIC    |     |      | 150   |          |
| AIRCOMPRESSOR LARGE        |     |      | 300   |          |
| AIRTOOL IMPACT WRENCH      |     |      | N/C   |          |
| AIRTOOL NAIL GUN           |     |      | N/C   |          |
| AIRTOOL STAPLER            |     |      | N/C   |          |
| BANDING TOOL W CART        |     |      |       |          |
| BOLTCUTTER                 |     |      |       |          |
| CAMERA SCOPE               |     |      | N/C   |          |
| CONCRETE BLANKET 12' X 25' |     | 15   | 28    | 47       |
| CONCRETE BLANKET 6' X 25'  |     | 15   | 28    | 47       |
| CHAIN SAW GAS              |     |      | 120   |          |
| COMPUTER                   |     |      | 65    |          |
| CONNEX 20'                 |     |      | 150   |          |
| CONNEX 40'                 |     |      | 275   |          |
| CONCRETE VIBRATOR          | 35  | 75   | 150   |          |
| COPY MACHINE               |     |      | 50    |          |
| CORE DRILL W/VACUME BASE   | 200 | 400  | 800   |          |
| DRUM DOLLY                 |     |      |       |          |
| ELECTRIC DEMO SAW 14"      |     |      | 320   |          |
| DEMO SAW GAS               | 76  | 160  | 320   |          |
| DRYWALL CART               |     |      | 62    |          |
| DRYWALL TEXTURE GUN        |     |      | 200   |          |
| ELECTRIC WHEEL BARROW      | 55  | 275  | 495   |          |
| 100 FOOT EXT CORD          |     |      | N/C   |          |
| 50 FOOT EXTENSION CORD     |     |      | N/C   |          |
| FAN 18"                    |     |      | N/C   |          |
| FAN 20"                    |     |      | N/C   |          |
| FAN 24"                    |     |      | N/C   |          |
| FAN 36"                    |     |      | 120   |          |
| FAN 48"                    |     |      | 130   |          |
| CARPET FAN                 |     |      | 85    |          |
| FULL BODY HARNESS          |     |      | N/C   |          |
| FIRE HOSE 1 1/2"           |     |      | N/C   |          |

| DESCRIPTION                       | DAY | week | month | one time |
|-----------------------------------|-----|------|-------|----------|
| FIREHOSE 2" 50'                   |     |      | N/C   |          |
| FIREH212                          |     |      | N/C   |          |
| FIREHOSE 3" 50'                   |     |      | N/C   |          |
| FORKLIFT TRASH HOPPER             |     |      | 225   |          |
| FORKLIFT 10000 LB                 | 700 | 1400 | 2800  |          |
| FORKLIFT 8000 LB                  | 500 | 1100 | 2200  |          |
| CORDLESS FLASHLIGHT               |     |      |       |          |
| FORKLIFT BUCKET GRADEALL          |     |      | 225   |          |
| FORKLIFT JIB GRADEALL             |     |      | 225   |          |
| FLOOR POLISHER                    |     |      | 180   |          |
| GENERATOR 10000 WATT              |     |      | 350   |          |
| GENERATOR 25KW                    | 215 | 425  | 850   |          |
| GENERATOR 3000 WATT               |     |      | 300   |          |
| GENERATOR 40 KW                   | 225 | 500  | 1000  |          |
| GENERATOR 5000 WATT               |     |      | 300   |          |
| GENERATOR 6000 WATT               |     |      | 300   |          |
| GENERATOR 7KW                     |     |      | 300   |          |
| GENERATOR 8000 WATT               |     |      | 300   |          |
| GENERATOR PORTABLE LIGHT          | 140 | 300  | 700   |          |
| GROUT PUMP                        |     |      | 45    |          |
| ROLLING GROUT TUB                 |     |      |       |          |
| GROUND THAW HEATER ATTACHMENT     |     |      | 180   |          |
| GROUND THAW LARGE 8000SF          | 650 | 3500 | 8000  |          |
| GROUND THAW HOSE REPAIR KIT       |     |      |       |          |
| GROUND THAW SMALL 3000SF          | 650 | 2800 | 6500  |          |
| GROUND THAW SMALL 3000SF WITH GEN | 650 | 3000 | 7000  |          |
| PLATE COMPACTOR HAND              |     |      | NC    |          |
| HEATER 1.5 MILLION BTU            |     |      | 950   | 2400     |
| ELECT HEATER CHICKEN KOOP         |     |      | N/C   |          |
| HEATER PROPANE SALAMANDER         |     |      | 100   |          |
| HEATER MUSHROOM                   |     |      | 81    |          |
| heater propane SALAMANDER         |     |      | 100   |          |
| HEATER RED DAYTON                 |     |      | 25    |          |

| <b>DESCRIPTION</b>               | <b>DAY</b> | <b>week</b> | <b>month</b> | <b>one time</b> |
|----------------------------------|------------|-------------|--------------|-----------------|
| HEATER SPACE                     |            |             | N/C          |                 |
| HEPA NEGATIVE AIR MACHINE        | 165        | 325         | 650          |                 |
| HEPPA VACUME                     |            |             | 170          |                 |
| HEAT WAGON                       |            |             | 330          |                 |
| JACK HAMMER AIR                  | 125        | 250         | 500          |                 |
| JACK HAMMER ELECTRIC             | 85         | 185         | 380          |                 |
| GANGBOX                          |            |             | 35           |                 |
| TABLE JOINER                     |            |             | 110          |                 |
| LAMINATOR APACHE                 |            |             | 50           |                 |
| AUTO LASER                       | 60         | 115         | 225          |                 |
| LAWNMOWER                        |            |             | 50           |                 |
| LADDER EXTENSION 10 FOOT SECTION |            |             | 25           |                 |
| LADDER 16 FOOT EXTENSION         |            |             | 40           |                 |
| LADDER 20 FOOT EXTENSION         |            |             | 40           |                 |
| LADDER 24 FOOT EXTENSION         |            |             | 40           |                 |
| LADDER 28 FOOT EXTENSION         |            |             | 50           |                 |
| LADDER 30 FOOT EXTENSION         |            |             | 50           |                 |
| LADDER 32 FOOT EXTENSION         |            |             | 60           |                 |
| LADDER 40 FOOT EXTENSION         |            |             | 60           |                 |
| LADDER 10 FOOT STEP              |            |             | 20           |                 |
| LADDER 12 FOOT STEP              |            |             | 20           |                 |
| LADDER 4 FOOT STEP               |            |             | 20           |                 |
| LADDER 6 FOOT STEP               |            |             | 20           |                 |
| LADDER 8 FOOT STEP               |            |             | 20           |                 |
| LEAF BLOWER                      |            |             | 75           |                 |
| AUTO LEVEL/BUILDERS              |            |             | 150          |                 |
| 6 FOOT LEVEL                     |            |             | 45           |                 |
| MAGNETIC DRILL                   | 126        | 279         | 645          |                 |
| MAG DRILL BIT 3"                 |            |             |              | 200             |
| MAGDRILL BIT 5/8"                |            |             |              | 200             |
| MANOMMETER                       |            |             | 400          |                 |
| MICROWAVE OVEN                   |            |             | 15           |                 |
| MAN LIFT 60 FOOT                 | 525        | 1050        | 2200         |                 |

| DESCRIPTION                          | DAY | week | month | one time |
|--------------------------------------|-----|------|-------|----------|
| OMNIGUARD PRESSURE RECORDER          |     |      | 550   |          |
| POWDER ACTUATED GUN                  |     |      | 100   |          |
| PAINT SPRAYER                        |     |      | 225   |          |
| PALLET JACK                          |     |      | 100   |          |
| PUMP DISCHARGE HOSE 2" BLUE          |     |      | N/C   |          |
| PUMP DISCHARGE HOSE 3" BLUE          |     |      | N/C   |          |
| PLATE COMPACTOR GAS                  | 69  | 199  | 453   |          |
| PUMP SUCTION HOSE 2"                 |     |      | N/C   |          |
| PUMP SUCTION HOSE 3"                 |     |      | N/C   |          |
| POWERTOOL BISCUIT JOINER             |     |      | N/C   |          |
| POWER TOOL BAND SAW                  |     |      | N/C   |          |
| POWERTOOL BELT SANDER                |     |      | N/C   |          |
| POWERTOOL CORDLESS DRILL             |     |      | N/C   |          |
| POWERTOOL CORDLESS GRINDER           |     |      | N/C   |          |
| POWERTOOL CORDLESS OCILATING TOOL    |     |      | N/C   |          |
| POWERTOOL CORDLESS RIGHT ANGLE DRILL |     |      | N/C   |          |
| POWERTOOL CORDLESS SAWSALL           |     |      | N/C   |          |
| POWERTOOL CORDLESS KIT               |     |      | 150   |          |
| POWERTOOL CHOP SAW                   |     |      | 125   |          |
| POWERTOOL DRILL                      |     |      | N/C   |          |
| POWERTOOL DREMME                     |     |      | N/C   |          |
| POWERTOOL DRUM SANDER                |     |      | N/C   |          |
| POWERTOOL DRYWALL SCREW GUN          |     |      | N/C   |          |
| POWER TOOL GRINDER 4'                |     |      | N/C   |          |
| POWERTOOL GRINDER 5" W/VAC           |     |      | N/C   |          |
| POWERTOOL GRINDER 7"                 |     |      | N/C   |          |
| POWERTOOL GRINDER 8"                 |     |      | N/C   |          |
| POWERTOOL HAMMERDRILL                |     |      | 75    |          |
| POWERTOOL HANMMERDRILL LARGE         |     |      | 160   |          |
| POWERTOOL HAND SANDER                |     |      | N/C   |          |
| POWERTOOL IMPACT WRENCH              |     |      | N/C   |          |
| POWERTOOL JIGSAW                     |     |      | N/C   |          |
| POWER TOOL MITRE SAW                 |     |      | 145   |          |

| DESCRIPTION                       | DAY | week | month | one time |
|-----------------------------------|-----|------|-------|----------|
| POWER TOOL NAIL GUN               |     |      | 50    |          |
| POWER TOOL NAIL GUN FINISH        |     |      | 50    |          |
| POWERTOOL ORBITAL SANDER          |     |      | 50    |          |
| POWERTOOL PLANER                  |     |      | 65    |          |
| POWERTOOL PALM SANDER             |     |      | N/C   |          |
| POWERTOOL ROUTER                  |     |      | N/C   |          |
| POWER TOOL ROTOZIP                |     |      | N/C   |          |
| POWERTOOL 8" SANDER               |     |      | N/C   |          |
| POWERTOOL SKIL SAW                |     |      | N/C   |          |
| POWERTOOL SKILSAW WORMDRIVE       |     |      | N/C   |          |
| POWER TOOL SAWSALL                |     |      | N/C   |          |
| POWERTOOL SAWSALL RIGHT ANGLE     |     |      | N/C   |          |
| PREASURE WASHER GAS               | 70  | 140  | 275   |          |
| PORTABLE WATER TANK WITH PUMP     |     |      | 650   |          |
| 2WAY RADIO EACH                   |     | 35   | 70    |          |
| SAFTEY WINDOW ANCHOR              |     |      | N/C   |          |
| BAKER SCAFFOLD                    |     | 15   | 54    |          |
| PUMP JACK SCAFFOLD                |     |      | 50    |          |
| 5' SCAFFOLS SECTION               |     |      | 65    |          |
| SHOP VACUME                       |     |      | N/C   |          |
| AUGER BIT 24"                     | 45  | 90   | 160   |          |
| AUGER BIT 8"                      | 45  | 90   | 160   |          |
| SKIDSTEER CUNCRETE BUCKET         |     |      | 225   |          |
| SKIDSTEER FORK                    |     |      | 225   |          |
| SKIDSTEER HYDROLIC AUGER          |     |      | 850   |          |
| SKIDSTEER HYDROLIC BREAKER HAMMER |     |      | 950   |          |
| SKIDSTEER RIPPER ATTACHMENT       |     |      | 225   |          |
| SKIDSTEER SNOW BUCKET             |     |      | 225   |          |
| SKIDSTEER SNOW PLOW               |     |      | 225   |          |
| SKIDSTEER SWEEPER                 | 196 | 450  | 875   |          |
| SKIDSTEER TRACKED                 | 475 | 950  | 2100  |          |
| SKIDSTEER TRASH HOPPER            |     |      | 225   |          |
| SKIDSTEER WHEELED                 | 350 | 700  | 1400  |          |



| DESCRIPTION                 | DAY | week | month | one time |
|-----------------------------|-----|------|-------|----------|
| SUMP PUMP 1" ELECT          |     |      | N/C   |          |
| SUMP PUMP 2 1/2" ELECT      |     |      | 95    |          |
| SUMP PUMP 2" ELECT          |     |      | 95    |          |
| SPEEDBUMP 9 FOOT            |     |      | N/C   |          |
| SELF RETRACTIN LANYARD      |     |      | 50    |          |
| SURVEY ROD                  |     |      | N/C   |          |
| ATV SIDE BY SIDE            |     |      | 400   |          |
| TABLE GRINDER               |     |      | 100   |          |
| TABLE SAW                   |     |      | 110   |          |
| TOW BEHIND AIRCOMPRESSOR    | 225 | 550  | 1180  |          |
| THEADOLITE                  |     |      | 450   |          |
| CUTTING TORCH               |     |      | 215   |          |
| TORCH CART                  |     |      | 75    |          |
| TRASH PUMP 2" GAS           | 84  | 245  | 390   |          |
| TRASH PUMP 3" GAS           | 108 | 321  | 460   |          |
| TRASHCART LARGE             |     |      | 75    |          |
| TRASHCART SMALL             |     |      | 75    |          |
| TRAILER DUMP GOOSENECK      | 250 | 500  | 950   |          |
| TRAILER ENCLOSED            |     |      | 230   |          |
| TRAILER FLAT BED            |     |      | 200   |          |
| TRAILER FLATBED GOOSE NECK  |     |      | 350   |          |
| TRIPOD                      |     |      | N/C   |          |
| TRAILER JOB                 |     |      | 200   |          |
| PICKUP TRUCK                |     |      | 1200  |          |
| PICKUP TRUCK DIESEL         |     |      | 1200  |          |
| PICKUP TRUCK DIESEL FLATBED |     |      | 1200  |          |
| TRAILER SEMI                |     |      | 275   |          |
| TRAILER RV                  |     |      | 450   |          |
| POWER TURTLE 50AMP          |     |      | 90    |          |
| UPRIGHT VACUME              |     |      | N/C   |          |
| CORDLESS VACUME             |     |      | N/C   |          |
| ENCLOSED CARGO VAN          |     |      | 1200  |          |
| SUV/CAR                     |     |      | 1200  |          |

| DESCRIPTION              | DAY | week | month | one time |
|--------------------------|-----|------|-------|----------|
| TEMP WATERMETER          |     |      | 75    |          |
| WATERKEY CURB            |     |      | N/C   |          |
| WATERKEY STREET          |     |      | N/C   |          |
| WALK BEHIND SOFT CUT SAW |     | 124  | 445   |          |
| WALK BEHIND SAW GAS      | 170 | 340  | 675   |          |
| WEED EATER               |     |      | 50    |          |
| WELDER STICK             |     |      | 125   |          |
| WELDER WIRE FEED         |     |      | 340   |          |
| WHEEL BARRALL            |     |      | N/C   |          |
| WATERPUMP 1" GAS         |     |      | 225   |          |
| WORK CART                |     |      | NC    |          |
| XRAY MACHINE             |     |      | 125   |          |
| TRUCK MOUNTED FUEL TANK  |     |      | 50    |          |
| WHEELED MAGNET 30"       |     |      |       |          |
| PORTABLE GAS MONITOR     | 50  | 100  | 200   |          |

## EXHIBIT P



## 2017 Labor Rate Schedule

| <b>Position</b>           | <b>Hourly<br/>Rate</b> | <b>Weekly<br/>Rate</b> | <b>Monthly<br/>Rate</b> |
|---------------------------|------------------------|------------------------|-------------------------|
| Project Executive         | \$ 93.62               | \$ 3,745               | \$ 16,227               |
| Safety Officer            | \$ 55.97               | \$ 2,239               | \$ 9,702                |
| Project Manager 1         | \$ 64.40               | \$ 2,576               | \$ 11,163               |
| Project Manager 2         | \$ 73.98               | \$ 2,959               | \$ 12,823               |
| Project Manager 3         | \$ 83.55               | \$ 3,342               | \$ 14,483               |
| Preconstruction Manager 1 | \$ 58.35               | \$ 2,334               | \$ 10,114               |
| Preconstruction Manager 2 | \$ 77.80               | \$ 3,112               | \$ 13,486               |
| Preconstruction Manager 3 | \$ 91.22               | \$ 3,649               | \$ 15,811               |
| Estimator 1               | \$ 41.41               | \$ 1,656               | \$ 7,178                |
| Estimator 2               | \$ 49.08               | \$ 1,963               | \$ 8,506                |
| Superintendent 1          | \$ 66.31               | \$ 2,653               | \$ 11,494               |
| Superintendent 2          | \$ 73.98               | \$ 2,959               | \$ 12,823               |
| Superintendent 3          | \$ 81.64               | \$ 3,266               | \$ 14,151               |
| Project Engineer 1        | \$ 41.41               | \$ 1,656               | \$ 7,178                |
| Project Engineer 2        | \$ 49.08               | \$ 1,963               | \$ 8,506                |
| Project Engineer 3        | \$ 56.74               | \$ 2,270               | \$ 9,835                |
| Project Administrator 1   | \$ 37.25               | \$ 1,490               | \$ 6,457                |
| Project Administrator 2   | \$ 41.03               | \$ 1,641               | \$ 7,112                |
| Project Administrator 3   | \$ 48.61               | \$ 1,944               | \$ 8,426                |
| Project Accountant 1      | \$ 37.25               | \$ 1,490               | \$ 6,457                |
| Project Accountant 2      | \$ 41.03               | \$ 1,641               | \$ 7,112                |
| Clerical                  | \$ 27.40               | \$ 1,096               | \$ 4,750                |
| Carpenter Foreman         | \$ 69.69               | \$ 2,787               | \$ 12,079               |
| Carpenter                 | \$ 59.78               | \$ 2,391               | \$ 10,362               |
| Labor Foreman             | \$ 53.18               | \$ 2,127               | \$ 9,217                |
| Laborer                   | \$ 39.97               | \$ 1,599               | \$ 6,928                |

## **EXHIBIT Q**

### **New Hire Requirements**

[TO BE NEGOTIATED BETWEEN PARTIES]

Bryan Construction, in agreement with Owner, will require all new hires to site to participate in PREA Awareness in addition to new-hire requirements. This will be over and above standard Bryan Constuction on-boarding procedures.

**EXHIBIT R**

**Self-Performed Work Proposal**

[TO BE NEGOTIATED BETWEEN PARTIES]

Bryan Construction is not proposing any Self-performed work.

**EXHIBIT S**

**Certificate of Insurance**



CERTIFICATE OF LIABILITY INSURANCE

2/1/2017

DATE (MM/DD/YYYY)

11/21/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER...

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed...

PRODUCER Lockton Companies 8110 E. Union Avenue Suite 700 Denver CO 80237 (303) 414-6000
INSURED 1410797 Bryan Construction, Inc. 7025 Campus Drive Colorado Springs, CO 80920-3164

COVERAGES CERTIFICATE NUMBER: 14389384 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED...

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation, and Contractors Pollution Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Denver County Jail, Denver, CO - The City and County of Denver, its elected and appointed officials, employees and volunteers are included as additional insured...

CERTIFICATE HOLDER

14389384
The City and County of Denver
Attn: Michael A Lopez, CCM
Webb Municipal Office Building
201 West Colfax Avenue
Denver, CO 80202

CANCELLATION See Attachments

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Charles M. McDaniel