

## **CENTRAL PARK BOULEVARD BRIDGE (PHASE 2) FUNDING AGREEMENT**

This Central Park Boulevard Bridge (Phase 2) Funding Agreement (the “Agreement”) is made and entered into as of May 15, 2017 (the “Effective Date”), by and between the City and County of Denver (the “City”), a home rule city and municipal corporation of the State of Colorado (the “State”), whose address is 1437 Bannock, Denver, Colorado 80202, and the Park Creek Metropolitan District, a Colorado special district (the “District”), whose address is 7350 E. 29<sup>th</sup> Avenue, Suite 200, Denver, Colorado 80238 (the City and District together, the “Parties,” or either of the Parties, a “Party”).

### **RECITALS**

WHEREAS, the City, the District, and Forest City Stapleton, Inc. (“FCS”), intend to enter into that certain Individual Facilities Development Agreement No. IC-4B (the “IFDA No. IC-4B”) related to the funding, design, acquisition, construction, enlargement operation, use, and/or maintenance and repair of certain bridge and roadway improvements to the Central Park Boulevard Bridge (Phase 2) and associated facilities and appurtenances (“Improvements”) over railways owned and operated by the Union Pacific Railroad and the Regional Transportation District at DOT No. 440-586X, Railroad Mile Post 633.25 Limon Subdivision, Denver, Colorado; and

WHEREAS, the City wishes to provide for the funding, design, acquisition and/or construction for all of the Improvements, which are considered Trunk Infrastructure as such term is defined in the Master Facilities Development Agreement (the “MFDA”) between the Parties and Forest City Enterprises, Inc.; and

WHEREAS, such funding by the City is expected to be reimbursed by the Denver Urban Renewal Authority (“DURA”) from Stapleton tax increment revenue in accordance with the provisions of Individual Facilities Development Agreement No. F-8 (the “IFDA No. F-8”), to which the Parties are parties, and the Second Supplemental Infrastructure Funding Agreement (the “Second Supplemental Agreement”) dated as of May 15, 2017 between the City and DURA; and

WHEREAS, the location of the Improvements hereunder is generally illustrated in the attached Figure 1; and

WHEREAS, the City has budgeted, appropriated and encumbered the sum of \$8,400,000 (the “City CPB Funds”) for the funding, design, acquisition, construction and completion of the Improvements. Further, IFDA No. F-8 and the Fifth Supplement to Amended and Restated Master Redevelopment Agreement (the “Fifth Supplement”) between the District and DURA provide for additional funding for the completion of the Improvements, if such costs exceed the City CPB Funds, up to the maximum amount of \$840,000 payable as a reimbursement to the District from pledged revenues (to the extent available); and

WHEREAS, the District is willing to cooperate with and provide for the design, acquisition, construction, completion and transfer of the Improvements to the City in exchange for the City's funding in accordance with the provisions of this Agreement, IFDA No. IC-4B, IFDA No. F-8 and the Second Supplemental Agreement; and

WHEREAS, pursuant to the City's Charter, Article XIV, Section 18(2)(a) of the Colorado Constitution and Section 29-1-203, C.R.S., the City and the District may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each Party, including, among others, the funding and completion of the Improvements.

## AGREEMENT

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

1. **Coordination and Liaison:** The District shall coordinate all services under the Agreement with both (i) the Manager of Public Works (the "Manager") or the Manager's Designee and (ii) the Manager of Finance (the "CFO") or the CFO's Designee. The Manager's Designee and the CFO's Designee shall be designated to the District in writing.

2. **Funded Work Requirements:** The District shall diligently undertake, perform, and complete all of the following services and produce all of the following deliverables in accordance with the following terms and conditions (the "Funded Work Requirements"):

(a) **Scope of Work.** The District shall complete the scope of work ("Scope of Work") detailed in Exhibit A (Scope of Work) attached hereto and incorporated herein.

(b) **Authorized Uses of Funds.** The District may, not more than monthly, seek reimbursement from the City CPB Funds for any expenditures to complete the Scope of Work that qualify as "Actual Development Costs" (as that term is defined in the Third Supplement to School Funding Agreement and the Amended and Restated School Funding Agreement between DURA and Denver Public Schools found in Denver City Clerk File Nos. 2017-0045 and 2017-0045-001 respectively) in amounts not to exceed the Maximum Contract Amount (as defined in paragraph 3).

(c) **Payment and Invoicing Requirements.**

(i) The District intends to submit invoices for all Actual Development Costs to complete the Scope of Work to the Manager and the CFO with a copy to DURA on or before the second (2<sup>nd</sup>) business day of each month in accordance with Section 3.1 of the Second Supplemental Agreement. For purposes of this Agreement, a "business day" shall mean any day other than a Saturday, Sunday, legal holiday for federal or State purposes, or a day DURA or the City is otherwise closed for business. The first invoice shall include all Actual Development Costs incurred to complete and transfer to the City at least ninety percent (90%) engineering design documents for the Scope of Work. Invoices shall include contractor invoices and invoices for goods and services purchased by the District and otherwise describe in detail the Actual Development Costs for which the

District seeks reimbursement, the dates such costs were incurred, and the amounts thereof. Invoices shall be submitted to:

City and County of Denver  
Manager of Public Works  
201 West Colfax Avenue, Dept. 506  
Denver, Colorado 80202

Manager of Finance  
201 West Colfax Avenue, Dept. 1010  
Denver, Colorado 80202

(ii) By or before the seventeenth (17th) business day of such month, the City shall notify the District of any deficiencies in the invoice, including without limitation any deficiencies or ineligible costs reasonably determined by DURA in accordance with Section 3.1 of the Second Supplemental Agreement, and if any, the District shall resubmit a corrected invoice on or before the twentieth (20th) business day of the same month. The City will complete its review of any corrected invoice on or before the twenty-fifth (25th) business day of the same month, and DURA will complete its review in accordance with Section 3.1 of the Second Supplemental Agreement..

(iii) If there are no deficiencies in the invoice or resubmitted invoice, the City shall pay such invoice as required under D.R.M.C. Sections 20-107 through 20-118, as it may be amended for time to time (“Prompt Payment Ordinance”).

(iv) If DURA fails to respond within fifteen (15) business days from receipt of the invoice as provided in Section 3.1 of the Second Supplemental Agreement, such invoice shall be deemed approved, and the City shall make payment to the District and take such action with respect to DURA as authorized in the Second Supplemental Agreement.

(v) The District shall submit the written notices and certifications required under Section 3.1(e) of the Second Supplemental Agreement to the City and DURA.

(d) **Inspection and Monitoring.**

(i) The District shall allow the City and other appropriate agencies access to inspect the Improvements at reasonable times and subject to reasonable health and safety procedures established by the District or its contractors.

(ii) The District shall cooperate with and assist the City in conducting inspections and monitoring of the Improvements in accordance with the regulations of the Manager and applicable City ordinances.

(e) **Reporting and Submittal Requirements.**

(i) The District shall submit to the City all reports and notifications required by the regulations of the Manager.

(ii) Such submittals shall be directed to the Manager's Designee at the address above.

(f) **Recordkeeping.** The District shall, and shall require its contractors to, maintain, retain, and allow access to records related to the Improvements to the extent required by the regulations of the Manager.

(g) **Operation and Maintenance Requirements.** Operation and maintenance requirements for the Improvements shall be as set forth in IFDA No. IC-4B.

(h) **Insurance.** The District shall obtain and maintain and require its contractors to obtain and maintain insurance and surety bonds in accordance with its standard public works procurement policies and all statutory requirements, as more specifically set forth in Exhibit B (General Conditions) attached hereto and incorporated herein. The District shall cause its contractors to designate the District and the City as additional insureds on all insurance policies and as co-obligees on all performance and payment bonds written in connection with the Scope of Work.

(i) **Federal and State Requirements.** The District shall comply with all applicable City, State and federal laws in performing the Scope of Work, including without limitation requirements set forth in the District's Service Plan and the MFDA.

(j) **Compliance with City Contractual Requirements Generally.** Without limiting the foregoing, the District shall comply, and shall require its contractors and subcontractors, as applicable, to comply, with and/or to cooperate with and support the City in complying with all City ordinances and the Funded Work Requirements.

3. **Maximum Contract Amount:**

(a) The maximum contract amount for the Improvements funded by the City CPB Funds is \$8,400,000 (the "Maximum Contract Amount"). The City's payment obligation under this Agreement extends only to the Maximum Contract Amount. Any obligation under this Agreement other than the Maximum Contract Amount, 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. Except for the Maximum Contract Amount, the City does not, by this Agreement, irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not, and is not, intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(b) If the Actual Development Costs for the Improvements exceed the Maximum Contract Amount, the District shall complete the Scope of Work, and such excess costs

shall be funded in accordance with the provisions of IFDA No. F-8, the Fifth Supplement, and IFDA No. IC-4B.

4. **Effective Date and Term:** The Agreement will commence on the Effective Date, subject to the provisions of paragraph 25, and will expire on the date the later of (i) when all obligations hereunder have been funded, completed and accepted by the City pursuant to the terms of IFDA No. IC-4B (ii) and the warranty periods have expired (together the “Expiration Date”), unless earlier terminated as provided herein (the “Term”).

5. **Status of Parties:** The Parties agree that the status of each Party shall be that of an independent governmental organization and it is not intended, nor shall it be construed, that either Party, or any Party’s employee or contractor, is an employee, officer, or agent of the other Party under Chapter 18 of the Denver Revised Municipal Code, or any other law for purposes of unemployment compensation, workers’ compensation, or for any purpose whatsoever.

6. **When Rights and Remedies Not Waived:** In no event shall any acceptance by either Party hereunder constitute or be construed to be a waiver by such Party of any breach of term, covenant, or condition or any default which may then exist on the part of the other Party, and the rendering of any such acceptance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to either Party with respect to such breach or default; and no approval or assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of this Agreement shall be construed as a waiver of any succeeding or other breach.

7. **Examination of Records:** Without limiting any of the Funded Work Requirements, the District agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, at any time after the commencement of this Agreement, with written notice, have access to and the right to examine any directly pertinent books, documents, papers, and records of the District, as well as any contractors performing work pursuant to, or in furtherance of, this Agreement involving transactions related to this Agreement, provided such examination is performed at no cost to the District.

8. **Venue, Governing Law, and Agreements:**

(a) This Agreement is expressly subject to the terms and conditions of the MFDA, IFDA No. IC-4B, IFDA No. F-8, the Second Supplemental Agreement, the Fifth Supplement, the City Charter, Revised Municipal Code, and rules and regulations of the City, and all applicable State and federal laws.

(b) Each and every term, condition, or covenant herein is subject to, and shall be construed in accordance with, the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. 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 as if fully set out herein by this reference.

(c) Venue for any action arising hereunder shall be in the Denver District Court in the City and County of Denver, Colorado.

9. **Use, Possession, or Sale of Alcohol or Drugs:** The District, 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 barring the District from City facilities or participating in City operations.

10. **Assignment:** The City is not obligated or liable under this Agreement to any party other than the District. Any assignment by either Party of its rights, obligations, or interests under this Agreement is expressly prohibited without the prior written consent of the other Party. Consent for the City must be provided by the Manager and the CFO.

11. **No Discrimination in Employment:** In connection with the performance of work under this Agreement, the District 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, and the District further agrees to insert the foregoing provision in all subcontracts hereunder.

12. **Liability:**

(a) The District shall be responsible for any and all claims, damages, liability, and court awards, including costs, expenses, and attorney fees, incurred as a result of any action or omission of the District or its officers, employees, and agents in connection with the subject matter of this Agreement.

(b) The City shall be responsible for any and all claims, damages, liability, and court awards, including costs, expenses, and attorney fees, incurred as a result of any act or omission by the City, or its officers, employees, and agents in connection with the subject matter of this Agreement.

(c) Nothing in this Section, or any other provision of this Agreement, shall be construed as a waiver of the notice requirements, defenses, immunities, limitations and protections which the City or the District may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., *et seq.*) or to any other defenses, immunities, limitations of liability or protections available to either of the Parties by law.

13. **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 District further agrees not to hire or contract for services 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.

14. **No Third Party Beneficiary:** The Parties expressly agree that 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 District, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement, including without limitation, donors, contributors, contractors, subcontractors, subconsultants, and suppliers. The City and the District expressly intend that any person other than the City or the District receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15. **Disputes, Defaults, Remedies and Termination:**

(a) All disputes between the City and the District arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager or the CFO as defined in this Agreement.

(b) An event of default shall have occurred if either Party fails to perform any responsibility, obligation, or agreement to be performed in accordance with the provisions of this Agreement and such failure of performance continues for a period of thirty (30) days following written notice of default from the other Party, or such additional period of time as may be reasonably be required to cure such default, provided, however, that the curative action is commenced within such thirty (30)-day period and is diligently and continuously pursued to completion.

(c) Except as provided in subsection (d) of this paragraph 15, the exclusive remedy of the non-defaulting Party shall be to seek declaratory judgment, injunctive relief, and/or specific performance of the defaulting Party or terminate this Agreement. Neither Party shall be entitled to damages or a monetary award whether in the form of actual damages, punitive damages, an award of attorneys' fees or costs, or otherwise.

(d) This Agreement may be terminated for cause consisting of a material breach or default by either Party, but only after the non-defaulting Party has given written notice to the defaulting Party specifying the breach or default, and the defaulting Party has failed or refused to remedy, or to commence and diligently undertake action to cure, such breach or default within thirty (30) days after receipt of such notice.

(e) Notwithstanding any other provision of this Agreement or the Funded Work Requirements, in the event of any termination of this Agreement for any reason the Party terminating the Agreement shall provide notice to the other Party immediately upon receipt of notice or knowledge of such event. Upon receipt of such notice by the District, the District may, in its discretion, immediately stop work until the issue is resolved to the City and the District's mutual satisfaction. If the issue is not resolved within one hundred twenty (120) days following receipt of such notice, the Parties may pursue such remedies as are provided herein.

16. **Severability:** The Parties agree that if any part, term, or provision of this Agreement is held by the courts 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.

17. **Amendments:** 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 funding agreement properly executed by each of the Parties. City Council approval of amendments hereto is not required unless required by the Charter. This Agreement, and any amendments in writing hereto, shall be binding upon the Parties, their successors, and permitted assigns. The Parties acknowledge that there are certain restrictions on amending this Agreement contained in IFDA No. F-8.

18. **Legal Authority:**

(a) The Parties assure each other that they possess the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this Agreement.

(b) The person or persons signing and executing this Agreement on behalf of each Party represents that he/she or they have been fully authorized by the their respective Party, as applicable, to execute this Agreement on behalf of such Party and to validly and legally bind such Party to all the terms, performances, and provisions herein set forth.

19. **Electronic Signatures and Electronic Records:** The Parties consent to the use of electronic signatures by each Party. This Agreement and any other documents requiring a signature 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 this 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, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature, or that it is not in its original form, or is not an original.

20. **Force Majeure:** No Party shall be liable for any delay or failure to perform as required by the terms of this Agreement, to the extent such delay or failure to perform is caused by any reason beyond the control of such Party, or by reason of any of the following occurrences: strikes, labor disturbances or disputes, breach of any construction contract, judicial proceedings, failure of any governmental approval required for full performance, riots, civil disorder or commotion, war, fire, floods, earthquakes, environmental conditions, acts of God, explosion or similar occurrences; provided that such Party shall exercise commercially reasonable efforts to provide the best possible alternative performance in order to mitigate such occurrence.

21. **Notice:** A notice or demand made under this Agreement by either Party to the other Party shall be in writing and shall be deemed sufficiently given if delivered in person, by prepaid



overnight express mail, or national overnight courier service, or if forwarded by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

(a) To the District:

Park Creek Metropolitan District  
Attention: Chairman  
7350 East 29<sup>th</sup> Avenue, Suite 200  
Denver, Colorado 80238

With a copy to:

Paul R. Cockrel  
Collins Cockrel & Cole  
390 Union Boulevard, Suite 400  
Denver, Colorado 80228

(b) To the City:

Manager  
Department of Public Works  
201 West Colfax, Dept. 608  
Denver, Colorado 80202

Chief Financial Officer  
Department of Finance  
201 West Colfax Avenue, Dept 1010  
Denver, Colorado 80202

With a copy to:

Office of the City Attorney  
Attn: Municipal Operations  
201 West Colfax, Dept. 1207  
Denver, Colorado 80202

or to such other address with respect to either Party as such Party may from time to time designate in writing and forward to the other Party as provided in this Section. Notices shall be deemed given upon such personal, courier, or express mail delivery, or on the third business day following deposit in the U.S. Mail as provided herein.

22. **Time:** Unless the context indicates differently, all references herein to days shall be to business days (as defined in paragraph 2(c)(i)), and all references herein to periods of time shall be to consecutive days or continuous periods of time. If the day for any performance or event provided for herein is a Saturday, Sunday, or other day on which either national banks or the office of the Clerk and Recorder of the City are not open for the regular transaction of business, such day

shall be extended until the next day on which such banks and offices are open for the transaction of business. All times hereunder shall be of the essence.

23. **No Personal Liability:** No elected official, director, officer, agent, or employee of the City or the District shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement, or because of any breach hereof, or because of its or their execution, approval, or attempted execution of this Agreement.

24. **Appropriation:** Except for the Maximum Contract Amount, which has been budgeted, appropriated and encumbered by the City, any other obligation of the City under this Agreement is subject to the appropriation and encumbrance of such amounts by the Denver City Council for such purposes.

25. **Binding Effect:** This Agreement will not be effective and binding upon the Parties until executed by each Party.

**[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:**

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

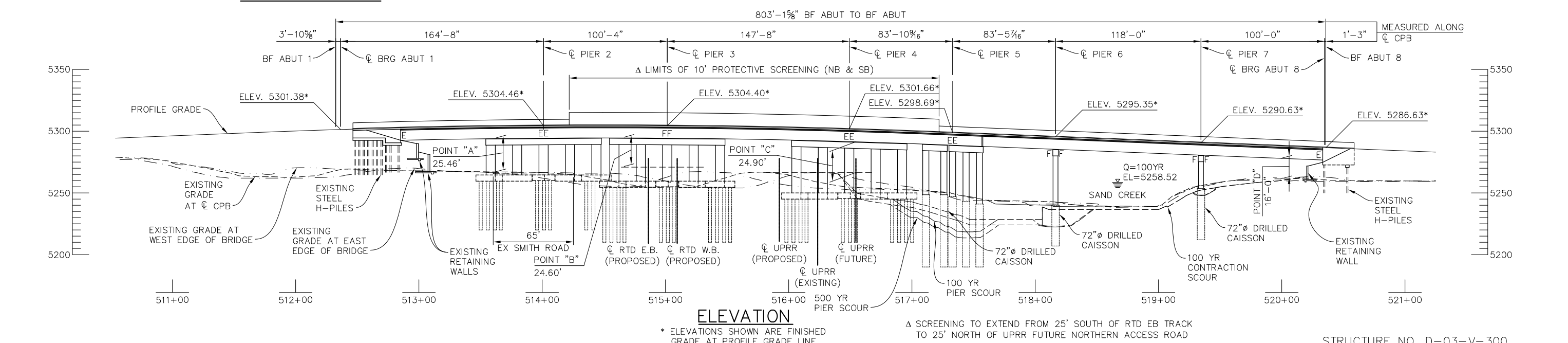
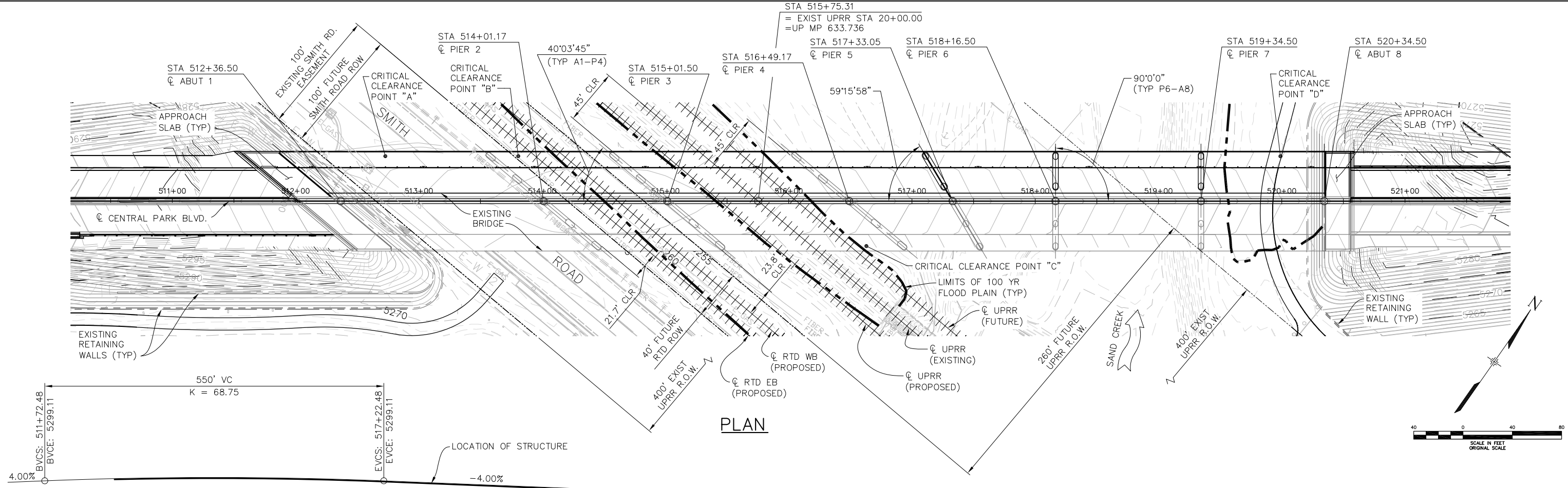
By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Figure 1**  
**Improvements**



REFERENCE DRAWINGS	COMPUTER FILE MANAGEMENT		
S333RFB1 S333RFC1 S333RFBG S333RFXducl S333RFXU11 S333RF_Matrix S333RPR1 S333RFG1_ultimate S333BRDR2	FILE NAME: S:\08.001.134 (Stapleton CPB Viaduct)\dwg\Bridge-PH2\S333BRGL01-PH2.dwg PCP FILE: Matrix(black).ctb PLOT DATE: March 05, 2013 - 11:07 AM THIS DRAWING IS CURRENT AS OF PLOT DATE AND MAY BE SUBJECT TO CHANGE.		
No.	DATE	DESCRIPTION	BY
REVISIONS			

ELEVATION	
* ELEVATIONS SHOWN ARE FINISHED GRADE AT PROFILE GRADE LINE	
Δ SCREENING TO EXTEND FROM 25' SOUTH OF RTD EB TRACK TO 25' NORTH OF UPRR FUTURE NORTHERN ACCESS ROAD	

City and County of Denver  
 201 W. Colfax  
 Denver, Colorado 80202  
 720-913-4500

**STAPLETON**  
 Matrix Design Group, Inc.  
 Integrated Design Solutions  
 1601 Blake Street, Suite 200  
 Denver, CO 80202  
 Phone 303-572-0200  
 Fax 303-572-0202

COLORADO REGISTERED PROFESSIONAL ENGINEER  
 35897

FOR AND ON BEHALF OF  
 MATRIX DESIGN GROUP, INC.  
 PROJECT NO. 08.001.134

STRUCTURE NO. D-03-V-300

**FOREST CITY STAPLETON**  
 7351 East 29th Avenue, Suite 301 Denver CO 80238

PILAR #2009-0059-33, SP-2009-011

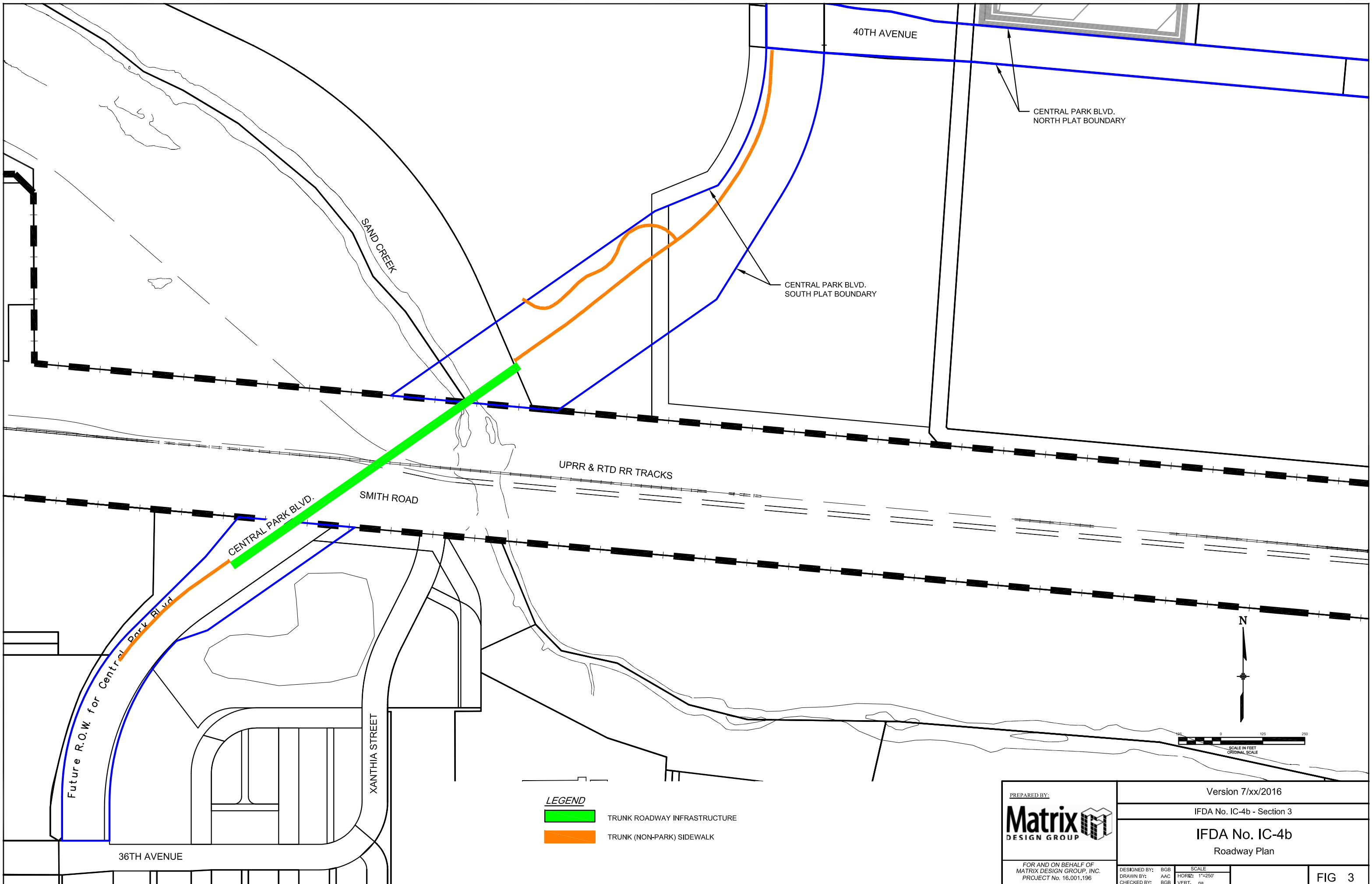
**CENTRAL PARK BLVD BRIDGE**  
**GENERAL LAYOUT - PHASE 2**



DESIGNED BY: MJB  
 DRAWN BY: BK  
 CHECKED BY: GG


SCALE  
 HORIZ: 1"=40'  
 VERT: 1"=40'

DATE ISSUED: FEBRUARY 2013

B5



**LEGEND**  
 TRUNK ROADWAY INFRASTRUCTURE  
 TRUNK (NON-PARK) SIDEWALK

PREPARED BY:  <b>Matrix</b> DESIGN GROUP	Version 7/xx/2016	
	IFDA No. IC-4b - Section 3	
<b>IFDA No. IC-4b</b> Roadway Plan		
FOR AND ON BEHALF OF MATRIX DESIGN GROUP, INC. PROJECT No. 16.001.196	DESIGNED BY: BGB DRAWN BY: AAC CHECKED BY: BGB	SCALE HORIZ: 1"=250' VERT: na
		<b>FIG 3</b>

**Exhibit A**  
**Scope of Work**



CPB Phase 2 Project Description  
D. Arbogast, AECOM  
1/26/17

The Central Park Boulevard (CPB) interchange on I-70 opened in 2014 along with the initial phase (partial laneage) of CPB connecting north and south Stapleton and points beyond. Since 2014, CPB has been constructed to its ultimate section north and south of the bridge over Sand Creek. The IC-4B Project (CPB Phase 2) will complete Central Park Boulevard over Sand Creek, the Union Pacific Railroad, RTD A Line and Smith Road. Roughly 400 feet of approach roadway both north and south will be widened from two to four lanes. The CPB bridge deck will be widened by additional two lanes to create the ultimate four lane bridge. The project includes lighting, landscaping and multi-modal walkways.

The project is identified as Master ID #2009-PROJMSTR-0000059, 2016-CIP-0000133. Plans were approved by CCD for the entire project knowing the project would be built in phases based on available funding. The previously approved plans have been re-reviewed for compliance with current standards and approved by CCD. CPB Bridge Phase 2 plans received approval on 7/28/16 and will be finalized to include coordination items required for RTD and UPRR approval (pending).

**Exhibit B**  
**District General Conditions**

**FOREST CITY STAPLETON, INC.**

**PHASE 1 OF THE INFRASTRUCTURE AND PARKS IMPROVEMENTS,  
STAPLETON REDEVELOPMENT PROJECT**

**CONTRACT  
GENERAL CONDITIONS**

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## **GENERAL CONDITIONS**

**1. DEFINITIONS.** Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1.1 **ADDENDA** -- Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.2 **AGREEMENT or CONTRACT** – The CONTRACT AND AGREEMENT by and between the Park Creek Metropolitan District/Forest City Stapleton, Inc. and Contractor.

1.3 **BID** -- The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4 **BIDDER** -- Any person, firm or corporation submitting a BID for the WORK.

1.5 **BONDS** – Performance and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

1.6 **CHANGE ORDER** -- A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7 **CONSTRUCTION MANAGER** – The OWNER shall designate a CONSTRUCTION MANAGER to direct all construction related activities on the PROJECT under the direction of the OWNER and the DEVELOPMENT MANAGER. For purposes of the CONTRACT, the CONSTRUCTION MANAGER is M.A. Mortenson Company and Civil Technology, Inc.

1.8 **CONTRACT DOCUMENTS** -- The contract includes all Contract Documents listed in Exhibit S.

1.9 **CONTRACT PRICE** -- The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.10 **CONTRACT TIME** -- The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.11 CONTRACTOR -- The person, firm or corporation with whom the OWNER has executed the Agreement. Also referred to as TRADE CONTRACTOR.

1.12 DEVELOPMENT MANAGER – The OWNER has retained a DEVELOPMENT MANAGER to manage all phases of the PROJECT on its behalf. For purposes of this CONTRACT, the DEVELOPMENT MANAGER is Forest City Stapleton, Inc.

1.13 DISTRICT –The Park Creek Metropolitan District, a political subdivision of the State of Colorado and quasi-public body, which is the OWNER of the PROJECT. The DEVELOPMENT MANAGER and the CONSTRUCTION MANAGER are representatives of the DISTRICT.

1.14 DRAWINGS -- The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

1.15 ENGINEER – The OWNER shall designate the ENGINEER(S) to provide Engineering, DRAWINGS and SPECIFICATIONS for the PROJECT.

1.16 FIELD ORDER - A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.17 INSOLVENT – The CONTRACTOR shall be considered insolvent if the CONTRACTOR files a petition in bankruptcy or insolvency, or for reorganization or arrangement under the bankruptcy laws of the United States, or under any similar act of any state; or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes an assignment for the benefit of creditors, or admits in writing the inability to pay debts as they become due; or dissolution of the CONTRACTOR is instituted against the CONTRACTOR; or a receiver or trustee is appointed for all or substantially all of the property of the CONTRACTOR, and such proceedings are not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

1.18 MILESTONE – An event specified in the CONTRACT DOCUMENTS relating to an intermediate completion date or time prior to SUBSTANTIAL COMPLETION of all the WORK.

1.19 NOTICE OF AWARD -- The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.20 NOTICE TO PROCEED -- Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.

1.21 OWNER - A quasi-public body or authority for which the WORK is to be performed. For purposes of these CONTRACT DOCUMENTS, the "OWNER" shall mean the Park Creek Metropolitan District/Forest City Stapleton, Inc.. All references to the OWNER in the CONTRACT DOCUMENTS refer to the DISTRICT and/or its OWNER'S REPRESENTATIVES.

1.22 OWNER'S REPRESENTATIVE -- The OWNER shall designate its authorized representatives also known as the DEVELOPMENT MANAGER and/or the CONSTRUCTION MANAGER. The OWNER'S REPRESENTATIVE(s) are authorized to and can grant approval of matters or items involving the CONTRACT PRICE and payment therefore, including payment requests, CHANGE ORDERS, and claims only as follows: (1) less than \$10,000 – CONSTRUCTION MANAGER; (2) up to \$100,000 – DEVELOPMENT MANAGER; over \$100,000 -DISTRICT Board of Directors. The DEVELOPMENT MANAGER is authorized to and can grant approval of matters involving TIME and material CHANGES as provided hereinafter.

1.23 PROJECT -- The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.24 SHOP DRAWINGS -- All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.25 SPECIAL CONTRACT CONDITIONS – A section of the CONDITIONS of the CONTRACT, other than GENERAL CONDITIONS and SUPPLEMENTARY CONDITONS, which may be prepared to describe conditions unique to a particular PROJECT.

1.26 SPECIFICATIONS -- A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.27 SUBCONTRACTOR -- An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.

1.28 SUBSTANTIAL COMPLETION -- That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.29 SUPPLIER -- Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.30 WORK -- All labor necessary to produce the construction required by the CONTRACT DOCUMENTS and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.31 WRITTEN NOTICE -- Any notice to any party of the AGREEMENT relative to any part of this AGREEMENT in writing and considered delivered and the service thereof completed when posted by certified or registered mail to the said party at his last given address or delivered in person to said party or his authorized representative on the WORK.

## **2. DRAWINGS AND SPECIFICATIONS**

2.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

2.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, detailed DRAWINGS shall govern over general DRAWINGS and DRAWINGS shall govern over ELECTRONIC DRAWING files.

2.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS and SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities without correction by the ENGINEER shall be done at the CONTRACTOR's risk.

2.4 The OWNER will provide the CONTRACTOR with six complete sets of DRAWINGS and SPECIFICATIONS. Additional sets must be purchased from the CONSTRUCTION MANAGER at actual cost plus 10% handling fee per full sized set. The OWNER will provide the CONTRACTOR with one complete set of each change to the drawings as required.

## **3. ADDITIONAL DETAIL SPECIFICATIONS AND DETAIL DRAWINGS**

3.1 The CONTRACTOR may be furnished additional detail specifications and detail drawings by the ENGINEER as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

3.2 The additional drawings and specifications thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail DRAWINGS and instructions.



#### **4. SHOP DRAWINGS, AS-BUILTS, AND MANUALS**

4.1 The CONTRACTOR shall provide SHOP DRAWINGS (including submissions of samples and product data) to the ENGINEER as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER's approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

4.2 When submitted for the ENGINEER's review, SHOP DRAWINGS shall bear the CONTRACTOR's certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

4.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

4.4 The CONTRACTOR shall maintain one (1) set of DRAWINGS and SPECIFICATIONS in good condition at the site for recording "as-built" conditions. These DRAWINGS shall be provided to the CONSTRUCTION MANAGER with sufficient information to allow incorporation into final as-built DRAWINGS by the CONSTRUCTION MANAGER, using GPS coordinates on all critical underground work, before final payment for the WORK will be made.

4.5 The CONTRACTOR shall deliver all the manuals for the operation and maintenance of equipment installed pursuant to the CONTRACT DOCUMENTS. Final payment will not be made until these manuals have been received by the CONSTRUCTION MANAGER.

4.6 All SHOP DRAWINGS, and other materials requiring prior approval by the CONTRACT DOCUMENTS shall be submitted accompanied by a submittal form as shown in Exhibit A. Both the CONTRACTOR and the CONSTRUCTION MANAGER will maintain concurrent logs of submittals to assure the correct processing of submittals.

#### **5. MATERIALS, SUPPLIES AND EQUIPMENT**

5.1 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

5.2 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

5.3 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

5.4 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The CONTRACTOR warrants that he has good title to all materials and supplies used in the WORK free from all liens, claims, or encumbrances.

## **6. INSPECTION AND TESTING**

6.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards as required and defined in the CONTRACT DOCUMENTS.

6.2 The OWNER shall provide all inspection and testing services not required by others in the TECHNICAL SPECIFICATIONS including, without limitation, density and concrete testing.

6.3 The CONTRACTOR shall provide at his expense the testing and inspection services required by the TECHNICAL SPECIFICATIONS which is not otherwise provided by the OWNER. The CONTRACTOR shall be charged for all retesting due to failed tests.

6.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

6.5 Inspections, tests or approvals by the ENGINEER or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

6.6 The ENGINEER, the OWNER'S REPRESENTATIVES, and their representatives shall at all times have access to the WORK. In addition, authorized representatives and agents of the City and County of Denver, and any participating State agency shall be permitted to inspect all Work, materials, payrolls, records of personnel, invoices of materials, and other data and records as relevant to their inspection and approval of the WORK with or without prior notice. The CONTRACTOR shall provide proper facilities for such access and observation of the WORK and also for any inspection or testing thereof.

6.7 If any WORK is covered contrary to the written instructions of the ENGINEER, it must, if requested by the ENGINEER or CONSTRUCTION MANAGER be uncovered for inspection and replaced at the CONTRACTOR's expense.

6.8 If the ENGINEER or CONSTRUCTION MANAGER consider it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER or CONSTRUCTION MANAGER's request, will uncover, expose or otherwise make available for observation, inspection or testing as may be required, that portion of the WORK in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

6.9 Whenever reference is made in the CONTRACT DOCUMENTS to standard specifications, methods of testing materials, codes, practices and requirements, it shall be understood that the latest edition or revision in effect on the date of bid opening shall govern unless specified otherwise.

## **7. SUBSTITUTIONS**

7.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute shall be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

7.2 The CONTRACTOR shall recommend all proposed substitutions to the ENGINEER no later than 30 days after the BID due date and no less than 21 days prior to the installation of said material, article or piece of equipment.

7.3 The CONTRACTOR shall only recommend substitutions to the ENGINEER that are acceptable to the City and County of Denver

## **8. PATENTS**

8.1 The CONTRACTOR shall pay all applicable royalties and license fees associated with the use of a particular process, design or product. The CONTRACTOR shall defend all suits or claims for infringement of any patent rights and save the OWNER and its respective officers, directors, agents, representatives, and employees harmless from any liability or loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design or the product of a particular manufacturer or manufacturers is specified, unless the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, in which case he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

## **9. SURVEYS, PERMITS, REGULATIONS**

9.1 The OWNER shall furnish all surveys required under the CONTRACT DOCUMENTS (See Exhibit T).

9.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of destruction, he shall be charged with the resulting expense as per the SPECIAL CONDITIONS and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

9.3 Permits, licenses, or other authorizations of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SPECIAL CONDITIONS or as directed by the OWNER'S REPRESENTATIVES (See Exhibit M).

9.4 In no event shall any increases in permit rates, license fees or other authorizations of a temporary nature necessary for the prosecution of the WORK result in any increased liability on the part of the OWNER. The possibility and risk of any such increase is assumed by the CONTRACTOR.

9.5 Permits, licenses, easements, or other rights required for permanent structures or permanent changes in existing facilities shall, be secured and paid for by the responsible party as indicated in Exhibit M, unless otherwise specified. The CONTRACTOR shall perform the WORK as drawn and specified in accordance with all applicable local, state and federal rules, regulations, ordinances and standards. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the CONSTRUCTION MANAGER in writing, and any necessary changes shall be adjusted as provided in Section 12, CHANGES IN THE WORK. If the CONTRACTOR observes that any DRAWINGS or SPECIFICATIONS are a variance therewith, or if the CONTRACTOR performs

any WORK under any circumstances when he knew or should have known it to be contrary to any such laws, ordinances, codes, rules, or regulations, and without giving such notice to the CONSTRUCTION MANAGER, he shall bear all costs arising therefrom.

## **10. PROTECTION OF WORK, PROPERTY AND PERSONS**

10.1 The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2 The CONTRACTOR shall fully comply with the written "Zero Injury" safety program of the CONSTRUCTION MANAGER. A copy of the program shall be kept on file at the CONSTRUCTION MANAGER's office at all times.

10.3 The CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and orders of any public regulatory agency having jurisdiction over the WORK. He shall erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He shall notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR shall remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the acts or omissions of the OWNER or the OWNER's officers, directors, agents, representatives and employees, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

10.4 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the OWNER shall act to prevent threatened damage, injury or loss. He shall give the OWNER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

10.5 The CONTRACTOR shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the CONTRACT DOCUMENTS; and (iii) have been approved in writing by OWNER. Any Hazardous Materials allowed to be used on the PROJECT site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any

such Hazardous Materials shall be removed from the PROJECT site at the earlier of: (i) the completion of the WORK requiring the use of such Hazardous Materials; (ii) the completion of the WORK as a whole; or (iii) within twenty-four hours following the OWNER's demand for such removal. Such removal shall be undertaken by the CONTRACTOR at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the WORK, the PROJECT site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the CONTRACTOR at its sole cost and expense and in compliance with all applicable laws. The CONTRACTOR shall immediately notify the OWNER of any release or discharge of any Hazardous Materials on the PROJECT site. The CONTRACTOR shall provide the OWNER with copies of all warning labels on products which the CONTRACTOR or any of its SUBCONTRACTORS will be using in connection with the WORK, and the CONTRACTOR shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The CONTRACTOR shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the PROJECT site in accordance with all applicable laws and regulations. The CONTRACTOR shall immediately notify the OWNER of any citations, orders, or warnings issued or received by the CONTRACTOR, or of which the CONTRACTOR otherwise becomes aware, which relate to any Hazardous Materials on the PROJECT site. Without limiting any other indemnification provisions pursuant to law or specified in this CONTRACT, the CONTRACTOR shall indemnify, defend (at the CONTRACTOR's sole cost, and with legal counsel approved by OWNER), and hold the OWNER and OWNER's REPRESENTATIVES harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, or under, from, or about the PROJECT site, arising out of or relating to, directly or indirectly, the CONTRACTOR's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances or wastes, and any substances, materials, or wastes that are or become regulated under federal, state, or local laws governing public health and safety of the environment.

10.6 The CONTRACTOR shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss. The CONTRACTOR shall provide all facilities and shall follow all procedures required by the Occupational Safety and Health Act (OSHA), including but not limited to providing and posting all required posters and notices, and shall otherwise be responsible for all other mandatory safety laws.

10.7 The CONTRACTOR shall participate in mandatory training sessions concerning the Project Health and Safety Program conducted by the CONSTRUCTION MANAGER. The outline for such program is attached as Exhibit B and Exhibit U.

## **11. SUPERVISION BY CONTRACTOR**

11.1 The CONTRACTOR shall supervise and direct the WORK. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR shall employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR to the OWNER as the CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

## **12. CHANGES IN THE WORK**

12.1 The OWNER may at any time, as the need arises and after making appropriations therefor, order changes within the scope of the WORK, including without limitation expanding the PROJECT to include supplemental Work of the general type or nature described in the CONTRACT DOCUMENTS for other phases of District infrastructure improvements, without invalidating the AGREEMENT. Major changes may be made in the scope of the PROJECT, including any supplemental Work, without re-bidding such Work. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of such WORK, an equitable adjustment to the CONTRACT PRICE and/or the CONTRACT TIME shall be authorized by CHANGE ORDER. All CHANGE ORDERS will require the use of a CHANGE ORDER FORM, attached to these GENERAL CONDITIONS as Exhibit C.

12.2 The ENGINEER and/or the CONSTRUCTION MANAGER may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER or CONSTRUCTION MANAGER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event, he shall give the ENGINEER or CONSTRUCTION MANAGER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter, the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within twenty (20) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

12.3 Should the installed number of units of any one item designated vary by more than thirty-five percent (35%) from the number originally stated in the CONTRACT DOCUMENTS for that item and should this difference in number of installed units change the CONTRACT PRICE by more than ten percent (10%), the CONTRACTOR or the OWNER may request that the unit price of that particular item be renegotiated through an executed CHANGE ORDER. If the scope of the Project is expanded to include supplemental WORK that changes the CONTRACT PRICE by more than ten percent (10%), the Contractor or the Owner may

require that the unit price of the changed items of Work be re-negotiated through an executed Change Order. Unit cost for items completely deleted from the WORK may not be renegotiated.

### **13. CHANGES IN CONTRACT PRICE**

13.1 The CONTRACT PRICE may be changed only by a fully executed CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

(a) Unit prices previously approved.

(b) An agreed lump sum.

(c) The actual cost for labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work. In addition, there shall be added an amount to be agreed upon but not to exceed ten percent (10%) of the actual cost of the WORK and the CONTRACTOR shall not add more than five percent (5%) to work completed by its 2nd Tier SUBCONTRACTOR's or SUPPLIER's. Such additions shall cover the cost of general overhead and profit.

13.2 The amount of funds which have been approved for the purpose of this AGREEMENT to date is equal to or in excess of the CONTRACT PRICE. The OWNER upon reasonable written request, will advise the CONTRACTOR in writing of the total amount of approved funds which remain available for payment for all WORK under the AGREEMENT.

13.3 The issuance of any CHANGE ORDER or other form of order or directive by the OWNER which would cause the aggregate payable under the AGREEMENT to exceed the amount approved for the AGREEMENT is expressly prohibited.

13.4 In no event shall the issuance of any CHANGE ORDER or other form of order or directive by the OWNER be considered valid or binding if it requires additional compensable WORK to be performed, which WORK will cause the CONTRACT PRICE to exceed the amount approved for this AGREEMENT, unless and until such time as the CONTRACTOR has been advised in writing by the OWNER that lawful appropriation sufficient to cover the entire cost of such additional WORK, has been made.

13.5 It shall be the responsibility of the CONTRACTOR to verify that the amounts already approved for this AGREEMENT are sufficient to cover the entire cost of such WORK, and any WORK undertaken or performed in excess of the amount approved is undertaken or performed in violation of the terms of the CONTRACT DOCUMENTS without the proper authorization for such WORK, and at the CONTRACTOR's own risk.



13.6 The CONTRACTOR shall provide documentation detailing the reason for each change in the CONTRACT PRICE in a manner acceptable to the CONSTRUCTION MANAGER. Acceptable documentation includes but is not limited to changes in the Drawings and Specifications by the ENGINEER, Request For Information responses and, written Field Order. Receipt of documentation from CONTRACTOR shall not authorize any change to the CONTRACT PRICE and shall still be subject to the terms of Section 12 and Section 13. Documentation shall be submitted with each CHANGE ORDER request.

13.7 Changes in the WORK completed prior to a fully executed CHANGE ORDER shall be at the CONTRACTOR's own risk.

#### **14. TIME FOR COMPLETION**

14.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS.

14.2 The CONTRACTOR shall proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is considered by both PARTIES to be reasonable amount of time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK. The CONTRACT TIME is attached to these GENERAL CONDITIONS as Exhibit O.

14.3 No extension of CONTRACT TIME shall be allowed for delays caused by circumstances under CONTRACTOR's control or reasonably foreseeable by CONTRACTOR. Extensions of TIME to complete performance may be authorized for any actual delay caused by: (a) a material change in the Project WORK or an increase in the quantity of such WORK requested by the OWNER or the OWNER's REPRESENTATIVE; (b) adverse weather or climatic conditions not reasonably foreseeable; (c) acts of God; (d) detrimental acts of the OWNER; (e) acts of another contractor in the performance of related WORK under a separate contract with the OWNER; (f) delays resulting from the intervention of governmental agencies in the performance of WORK on the Project, if not caused by the CONTRACTOR, acts or omissions in performing the WORK; or (g) other extraordinary circumstances beyond the CONTRACTOR's reasonable control. Foreseeable weather delays or failures in delivery of equipment or materials shall not constitute cause for extension of TIME to complete performance or for an adjustment of the CONTRACT PRICE. If alterations or additions are made to the WORK by the OWNER in accordance with the terms of this Agreement, the CONTRACTOR shall submit in writing each resultant claim for an extension of the TIME for completion, and shall deliver such claim to the OWNER within seven (7) days after each occurrence of the event giving rise to the claim. No change in the TIME for completion shall be made for any minor alteration or addition to the WORK. If the CONTRACTOR is obstructed or delayed in the commencement, prosecution, or completion of any part of the WORK by any other causes which are, in the opinion of the OWNER, beyond the control of the

CONTRACTOR, then the TIME for completion of the WORK so delayed shall be extended for a period equivalent to the TIME lost. No extension of TIME shall be made, however, unless a claim for an extension of TIME is submitted by the CONTRACTOR to the OWNER in writing within seven (7) working days after the date that such cause for delay occurred.

## **15. CORRECTION OF WORK**

15.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER, the CONSTRUCTION MANAGER, or the City and County of Denver for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expenses of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

15.2 All removal, corrective, and replacement WORK shall be done at the CONTRACTOR's expense. If the CONTRACTOR does not take action to promptly remove and correct such rejected WORK within five (5) days after receipt of WRITTEN NOTICE, the OWNER may remove and correct such WORK and store the materials at the expense of the CONTRACTOR, and the CONTRACTOR shall promptly reimburse the OWNER for the entire cost and expense incurred by the OWNER in conjunction therewith.

## **16. DIFFERING SITE CONDITIONS**

16.1 The CONTRACTOR shall within five (5) days of the occurrence or before such conditions are disturbed, notify the OWNER by WRITTEN NOTICE of:

16.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

16.1.2 Unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

16.2 OWNER shall promptly investigate such conditions upon WRITTEN NOTICE and if he finds that such conditions do so materially differ and cause an increase or decrease in the CONTRACT PRICE, or in the CONTRACT TIME, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

16.3 Notwithstanding the foregoing, the CONTRACTOR acknowledges that prior to entering into this AGREEMENT it has taken steps reasonably necessary to ascertain the nature

and location of the WORK, and that it has investigated and satisfied itself as to the general and local conditions which can affect the WORK or the CONTRACT PRICE, including but not limited to (a) conditions bearing upon transportation, disposal, handling, and storage of materials; (b) the availability of labor, water, electric power, and roads; (c) uncertainties of weather; (d) the conformation and the surface and subsurface conditions of the site; and (e) the character of equipment and facilities needed preliminary to and during WORK performance. The CONTRACTOR also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site. Any failure of the CONTRACTOR to take the actions described and acknowledged in this paragraph shall not relieve the CONTRACTOR from responsibility for estimating properly the difficulty and cost of successfully performing the WORK, or for proceeding to successfully perform the WORK without additional expenses to the OWNER. No claim under Section 16.2 herein shall be allowed for any conditions that the actions described and acknowledged in this paragraph would have revealed to the CONTRACTOR.

16.4 The OWNER assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR based on the information made available by the OWNER. Nor does the OWNER assume responsibility for any understanding reached or representation made concerning conditions which can affect the WORK by any of its officers or agents before the execution of the CONTRACT DOCUMENTS, unless that understanding or representation is expressly stated in the CONTRACT DOCUMENTS.

16.5 CONTRACTOR acknowledges and agrees that all materials, data, reports, studies, maps and other information delivered or made available to CONTRACTOR are provided as a convenience only and that any reliance on or use of such materials, data or information by CONTRACTOR shall be at the sole risk of the CONTRACTOR, except as otherwise expressly stated in terms and conditions of the CONTRACT DOCUMENTS. CONTRACTOR rather shall rely on its own inspection and investigations and neither the OWNER or the OWNER's REPRESENTATIVES nor their agents, partners, affiliate, or consultants shall have any liability to CONTRACTOR for any inaccuracy in or omission from any reports, materials, data, or information prepared by, for or at the request of the OWNER.

## **17. SUSPENSION OF WORK, TERMINATION AND DELAY**

17.1 Suspension. The OWNER may suspend the WORK or any portion thereof by WRITTEN NOTICE to the CONTRACTOR which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date as directed by the OWNER. Any increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension which is not due to the fault or negligence of the Contractor shall be determined and paid by the OWNER.

17.2 Termination for Default. The CONTRACTOR shall be considered in default of the AGREEMENT, if the CONTRACTOR (i) fails to perform in an adequate or workmanlike

manner or proceeds in willful violation of the requirements of the CONTRACT DOCUMENTS as determined by the OWNER, (ii) is executing his responsibilities in bad faith or contrary to the intent of the Agreement, (iii) is not fully performing to complete the WORK within the CONTRACT TIME; (iv) is INSOLVENT; or (v) repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, (vi) repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment (vii) disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK, (viii) disregards the authority of the ENGINEER or OWNER'S REPRESENTATIVES, or (ix) otherwise violates any provision of the CONTRACT DOCUMENTS. If the CONTRACTOR is in default of the AGREEMENT, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of seventy-two (72) hours from delivery of a WRITTEN NOTICE, declares a CONTRACTOR default, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, require CONTRACTOR to assign all SUBCONTRACTS to OWNER and finish the WORK by whatever method he may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR shall promptly pay the difference to the OWNER. Such costs incurred by the OWNER shall be determined by the CONSTRUCTION MANAGER and incorporated in a CHANGE ORDER. Where the CONTRACTOR's services have been so terminated by the OWNER said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR shall not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

17.3 Termination for Critical Work Delay. In the event the CONSTRUCTION MANAGER deems a portion of the WORK as Critical to the PROJECT the CONTRACTOR shall pursue all reasonable means to complete such portion of the WORK within the time frame established by the CONSTRUCTION MANAGER at no additional cost to the OWNER. If the CONTRACTOR fails to complete the Critical portion of the WORK within the established time frame, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of forty-eight (48) hours from delivery of a WRITTEN NOTICE, declare a CONTRACTOR default, terminate that portion of the WORK from the AGREEMENT. In such case, the CONTRACTOR shall not be entitled to receive any further payment for that portion of the WORK. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing that portion of the WORK, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR shall promptly pay the difference to the OWNER. Such costs incurred by the OWNER shall be determined by the CONSTRUCTION MANAGER and incorporated in a CHANGE ORDER. Where the CONTRACTOR's services for that portion of the WORK have been so terminated by the OWNER said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may

thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR shall not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

17.4 Termination for Convenience. The OWNER may, for its convenience or in the event OWNER does not have adequate funds available to pay for further WORK under the CONTRACT and without cause, terminate the CONTRACT and the WORK, or any portion thereof, at any time giving WRITTEN NOTICE to the CONTRACTOR stating the extent to which the WORK is terminated and the date upon which such termination becomes effective. In the event of such termination for convenience, the CONTRACTOR shall submit to the ENGINEER a payment request following the procedures set forth in Section 18 covering the PROJECT WORK actually and properly performed by the CONTRACTOR to the date of termination, less the sums already paid by the OWNER to or on behalf of the CONTRACTOR. OWNER shall pay CONTRACTOR the amount of such payment amount approved by ENGINEER, less the amount of any claims that the OWNER has against the CONTRACTOR. Upon such termination, the payment by the OWNER shall not include, and the Contractor waives any claim for, damages, including consequential damages, and loss of profits on WORK not performed by the CONTRACTOR. If any termination for cause or default is later determined to have been improper, the termination shall be automatically converted to and deemed to be a termination for convenience and the CONTRACTOR shall be limited in its recovery to the compensation provided for in this Section 17.3.

17.5 Termination by CONTRACTOR. If, through no act or fault of the CONTRACTOR the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the OWNER fails to act within 30 days on any partial pay request approved by the CONSTRUCTION MANAGER, or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the CONSTRUCTION MANAGER pursuant to Section 18, or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In lieu of terminating the CONTRACT, if the OWNER has failed to act on a request for payment or has failed to make any payment as aforesaid, the CONTRACTOR may, upon ten (10) days written notice to the OWNER, stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

## **18. PAYMENTS TO CONTRACTOR**

18.1 At least ten (10) days before the end of each month, the CONTRACTOR shall submit to the CONSTRUCTION MANAGER a partial payment request using the Application for Payment Form and the Minority Business Progress Report (Exhibit D and Exhibit E) completed and signed by the CONTRACTOR covering the WORK performed during the period covered by

the partial payment request and supported by such documentation as the CONSTRUCTION MANAGER may reasonably require.

18.2 Each partial payment request shall be accompanied by duplicate sets of verified Contractor's Certification of Payment (Exhibit F) and by verified Partial Release of Contractor (Exhibit G) forms from each subcontractor and supplier. Each partial payment request shall also be accompanied by:

- (a) a written schedule of values or unit prices, as applicable, which sets out the quantities and costs included in the PROJECT, and
- (b) an estimate of the percentage of completion of each line item of cost or unit price items, as applicable, for which the OWNER is liable to pay the CONTRACTOR (Exhibit D).
- (c) a list of subcontractor and materials invoices covered under the partial payment request for all SUBCONTRACTORS and SUPPLIERS and shall be based on the approved schedule of values or unit prices, as applicable, and the percent of the work complete and approved by the CONSTRUCTION MANAGER.
- (d) confirmation in a form satisfactory to the OWNER demonstrating that the CONTRACTOR and its SUBCONTRACTORS are in compliance with all laws of the City and County of Denver and federal, State, and local agencies applicable to companies contracting with the OWNER, including without limitation City and County of Denver codes relating to non-discrimination, payment of prevailing wages and equal employment opportunity. This information may include certified payrolls, reports, estimates, records and other data.

18.3 If the CONTRACTOR disputes a SUBCONTRACTOR's and/or SUPPLIER's entitlement to a portion of the previous month's payment, the CONTRACTOR need not submit a Contractor's Certificate of Payment or Partial Release for CONTRACTORS from such SUBCONTRACTOR and/or SUPPLIER. However, in lieu of such submittal, the CONTRACTOR shall submit to the CONSTRUCTION MANAGER a copy of the written communication from the CONTRACTOR to such SUBCONTRACTOR and/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 and/or SUPPLIER.

18.4 If the OWNER or CONSTRUCTION MANAGER receives WRITTEN NOTICE that a SUBCONTRACTOR or SUPPLIER of the CONTRACTOR has not received payment on a timely basis by the CONTRACTOR and the CONTRACTOR does not dispute the monies due as stated in section 18.3 then the OWNER at its sole discretion may issue payment directly to the SUBCONTRACTOR or SUPPLIER via a "Joint Check" for all future payment applications.

18.5 If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment request shall also be accompanied by such supporting documentation, satisfactory to the OWNER, as shall establish the OWNER's title to the material and equipment and protect his interest therein, including evidence of adequate insurance covering such material and equipment.

18.6 The partial payment request completed shall constitute a representation by the CONTRACTOR to the OWNER that the work has progressed to the point indicated; the quality of the work covered by the partial payment request is in accordance with the CONTRACT DOCUMENTS; each obligation covered by the estimate and the payments requested will be used to discharge such obligation unless previously discharged; and the CONTRACTOR is entitled to payment in the amount requested.

18.7 The CONTRACTOR warrants that:

- (a) title to WORK covered by a request for payment will pass to the OWNER by incorporation into the completed WORK;
- (b) WORK covered by previous requests for payment is free and clear of liens, claims including those under the Colorado Public Works Act C.R.S. 38-26-101, et seq., the Colorado Mechanics Lien Law C.R.S. 38-22-1 et seq., and all others under Federal, State, and local law, security interests or encumbrances, hereinafter referred to as "liens", except for any interest created by retainage; and
- (c) no WORK covered by a request for payment will have been acquired by the CONTRACTOR, or any other person or entity performing work at the work site or furnishing materials or equipment for the PROJECT, that is subject to an agreement under which an interest therein or an encumbrance there on is retained by the seller or otherwise imposed by the CONTRACTOR or such other person or entity.

18.8 The CONSTRUCTION MANAGER shall, within ten (10) days after receipt of each partial payment request, either indicate in writing his approval of payment and present the partial payment request to the OWNER or return the partial payment request to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment request.

18.9 The OWNER shall within thirty (30) days after receipt of a partial payment request approved by the CONSTRUCTION MANAGER, pay the CONTRACTOR a progress payment on the basis of such approved partial payment request less any amount retained pursuant to Section 18.10, if the CONTRACTOR is satisfactorily performing the WORK.

18.10 The OWNER shall retain five percent (5%) of the value of WORK completed under each partial payment request, if satisfactory progress is being made on the WORK. If satisfactory progress is not being made, additional amounts may be retained by the OWNER as it considers necessary for satisfactory completion of the CONTRACT. The circumstances in which the OWNER will not consider the CONTRACTOR to be making satisfactory progress on the WORK include, but are not limited to, any of the following:

- (a) Failure to repair or replace defective WORK.
- (b) Claims against the CONTRACTOR or litigation relating to the PROJECT.
- (c) Failure to obtain permits and licenses.
- (d) Failure to comply with applicable laws.
- (e) Failure to pay prevailing wages and failure to make the required reports.
- (f) Failure to satisfy affirmative action and equal employment opportunity requirements.
- (g) Failure to maintain an adequate rate of progress on the WORK.
- (h) Failure to maintain a clean and orderly work site.
- (i) Failure to satisfactorily replace and/or repair owner property destroyed or damaged during the progress of the WORK.
- (j) Failure to deliver "as-built" construction DRAWINGS and operation and maintenance manuals.
- (k) Failure to make payments to SUBCONTRACTORS or SUPPLIERS as required by law.
- (l) The CONTRACTOR becomes INSOLVENT.
- (m) Failure to cure any violation of the CONTRACT DOCUMENTS within ten (10) days or such other time period specified in a WRITTEN NOTICE to the CONTRACTOR from the OWNER.

NO retainage will be released for any phase of the WORK prior to satisfactory completion and final acceptance of all WORK in conformance with the CONTRACT DOCUMENTS; provided, however, that the OWNER may, in its sole discretion, authorize a final payment for such phase of the WORK, if (i) such phase of the WORK has been satisfactorily and fully completed; (ii) the CONTRACTOR has submitted to the OWNER a written request for final payment, including release of retainage, for such phase of the WORK, which is based upon satisfactory and substantial reasons; (iii) the CONTRACTOR has provided the written approval of the surety on all Bonds for the release of retainage; and (iv) final settlement has been completed for such phase of the WORK in accordance with Section 18.20 and C.R.S. 38-26-107. Upon satisfactory completion and final acceptance of the WORK, final settlement will be made in full, including retained percentages, less deductions authorized under the CONTRACT DOCUMENTS subject to compliance with Sections 18.20 and 18.21.

18.11 CONTRACTOR may withdraw the whole or any portion of the sums retained pursuant to Section 18.10 if the CONTRACTOR deposits acceptable securities in an amount at least equal in value to the amount withdrawn into an escrow account pursuant to an escrow agreement in form and substance satisfactory to the OWNER consistent with the requirements



of C.R.S. 24-91-106. CONTRACTOR shall take such action necessary to authorize the OWNER to negotiate such securities and receive payment due from such negotiation. Acceptable securities shall mean United States bonds, United States treasury notes or bills, general obligation or revenue bonds of the State of Colorado or any subdivision of the State, or certificates of deposit from a state or national bank or a savings and loan association insured by the federal deposit insurance corporation or the federal savings and loan association having its office in the State. Any deductions by OWNER from retained amounts shall come first from retained amounts for which acceptable securities have not been deposited and then from the proceeds of such securities.

18.12 Prior to SUBSTANTIAL COMPLETION, the OWNER with the concurrence of the CONTRACTOR may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

18.13 The OWNER, its CONTRACTORS and other on site contractors shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

18.14 If the OWNER fails to make payment within thirty (30) days after receipt and approval by OWNER of an request for payment approved by the CONSTRUCTION MANAGER, there shall be added to each such payment interest at five percent ( 5% ) per annum compounded annually commencing on the first day after such payment is due and continuing until such payment is received by the CONTRACTOR.

18.15 Approval of a request for payment or actual payment by the OWNER shall not foreclose the right of the OWNER to examine the books and records of the CONTRACTOR to determine the correctness and accuracy of any item within three (3) years after final acceptance of all the work.

18.16 Application for any release of retainage pursuant to Section 18.10 shall be accompanied by Final Release of Contractor forms from the CONTRACTOR and from each SUBCONTRACTOR or SUPPLIER involved in that phase of the WORK in the form contained in Exhibit H, and any substitute security required by the OWNER.

18.17 The final request for payment shall also be accompanied by Final Release of Contractor forms from each SUBCONTRACTOR and SUPPLIER in the form required by the OWNER contained in Exhibit H.

18.18 Receipt of Contractor's Certifications of Payment or CONTRACTOR's forms by the OWNER hereunder shall not act to impair the OWNER's rights and obligations imposed by C.R.S 38-26-107 or other statute.

18.19 Upon satisfactory completion and acceptance of the WORK, the CONSTRUCTION MANAGER shall issue a certificate attached to the final request for Payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The final request for Payment will include all extra WORK properly authorized and performed. All prior estimates and payments shall be subject to correction in the final estimate and payment.

18.20 Final settlement will not be made by the OWNER until after proper legal advertisement has been made in conformance with the Colorado Public Works Act, C.R.S. 38-26-107. At the time set for final settlement, there shall be deducted from the final estimate all previous payments made to the CONTRACTOR under the CONTRACT and all damages and all other amounts chargeable to the CONTRACTOR under the terms of the CONTRACT DOCUMENTS or under applicable law. The balance, if any, shall be paid to the CONTRACTOR within sixty (60) days after the WORK is satisfactorily completed and accepted by the OWNER; provided that prior to delivery to the CONTRACTOR of the final payment, the CONTRACTOR shall furnish:

- (a) Proof satisfactory to the OWNER in documentary form that all claims, liens, or other obligations incurred by the CONTRACTOR and all his subcontractors in connection with the performance of the WORK have been properly paid and settled in the form of a Final Release (Exhibit H).
- (b) All sales tax reports, properly certified, and
- (c) All manuals for the operation of equipment and all necessary as-built DRAWINGS called for by the CONTRACT have been received.

18.21 When final settlement is made, the OWNER shall withhold from payment any funds that may be required to withhold pursuant to C.R.S. 38-26-107 or that it may in the determination of the OWNER be necessary to withhold, and final payment will not be made until in the determination of the OWNER all conditions of law have been met. At the time of delivery to the CONTRACTOR of the final payment, the CONTRACTOR shall execute and give to the OWNER a Final Receipt, (Exhibit H), for the same.

## **19. ACCEPTANCE OF FINAL PAYMENT AS RELEASE**

19.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted in writing by the CONTRACTOR for all things done or furnished in connection with this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND and Payment BOND.

## **20. INSURANCE**

20.1 Within ten (10) calendar days following the date of the NOTICE TO APPARENT LOW BIDDER, the CONTRACTOR shall furnish the OWNER with valid duplicate original Certificates of Insurance (Exhibit K) and/or, at the OWNER's option, a certified copy of the insurance policies and any and all endorsements or riders thereto, evidencing compliance with all requirements contained in this Section 20, all in form and substance satisfactory to the OWNER and OWNER's REPRESENTATIVES.

20.2 The OWNER will not be obligated however, to review such certificates or other evidence of insurance, or to advise CONTRACTOR of any deficiencies in such documents and receipt thereof shall not relieve CONTRACTOR from, nor be deemed a waiver of, the OWNER's right to enforce the terms of CONTRACTOR's obligations hereunder. The OWNER reserves the right to examine any policy required under this CONTRACT.

20.3 All insurances required by the CONTRACT shall be obtained at the sole cost and expense of the CONTRACTOR; shall be maintained with insurance carriers properly licensed to do business in all states required by the terms of this CONTRACT, and acceptable in all respects, to the OWNER; shall be "primary" and non-contributing to any insurances maintained by OWNER and OWNER's REPRESENTATIVES except as otherwise specifically provided herein; shall contain a Waiver of Subrogation (as applicable) in favor of the OWNER and OWNER's REPRESENTATIVES, so that in no event, shall the insurance carriers have any right of recovery against the OWNER and/or OWNER's REPRESENTATIVES, their agents or employees; shall contain a separation of insured provisions (severability of interest clause); shall provide WRITTEN NOTICE be given to the OWNER, and all Additional Insureds at least forty-five (45) days prior to the cancellation, non-renewal or restrictive modification of any such policies.

20.4 The CONTRACTOR shall cause all insurances to be in full force and effect as of the date of this CONTRACT and to remain in full force and effect throughout the term of this CONTRACT and as further required by this CONTRACT. The CONTRACTOR shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the time period such coverages are required to be in effect.

20.5 Not less than thirty (30) days prior to the expiration date or renewal date, the CONTRACTOR shall supply the OWNER, CONSTRUCTION MANAGER and any Additional Insureds, updated replacement Certificates of Insurance, amendatory riders, and endorsements, and/or certified copies of insurance policies, together with evidence of payment of the premium, that clearly evidence the continuation of all of the terms and conditions of the coverage, limits of protection, and scope of coverage as was provided by the expiring Certificates of Insurance, certified copies of insurance policies and amendatory riders or endorsements as originally supplied.

20.6 If the CONTRACTOR fails to purchase and maintain, or fails to require to be purchased and maintained, the liability insurance specified in this CONTRACT, OWNER and/or OWNER's REPRESENTATIVES may (but shall not be obligated to) purchase such insurance on the CONTRACTOR's behalf and shall be entitled to be repaid by the CONTRACTOR for any premiums paid therefor by CHANGE ORDER or may withhold Partial and or Final payment until liability insurance has been acquired by the CONTRACTOR pursuant to Section 18, or may terminate the CONTRACT pursuant to Section 17.

20.7 The CONTRACTOR shall select reputable and financially sound insurers to underwrite the required coverage acceptable to OWNER. In all instances, each insurer selected must be rated at least "A" (Excellent) Class "VII" in the most recently published Best's Insurance Report. If an insurer's rating falls below "A" (Excellent) Class "VII" during the term of the policy, the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OWNER and having an "A" (Excellent) Class "VII" rating in the most recently published Best's Insurance Report.

20.8 Upon written request of the OWNER or the OWNER's REPRESENTATIVE's, the CONTRACTOR shall provide, or shall cause to be provided, information on the status of aggregate limit erosion.

20.9 No act or omission of any insurance agent, broker or insurance company representative shall relieve CONTRACTOR of any of its obligation to perform under this CONTRACT or to maintain insurance coverage required hereunder.

20.10 CONTRACTOR shall procure and maintain in full force and effect throughout the term of this CONTRACT or as otherwise required under this CONTRACT such insurance as will protect against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONTRACTOR or by any SUBCONTRACTOR or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified below, or if greater, any coverages or limits of liability required by law (limits may be provided through a combination of primary and umbrella/excess policies):

- (a) Commercial General Liability Insurance or its coverage equivalent is to be provided under the Insurance Service Office's (ISO) most current form, with a combined single limit for Bodily Injury and Property Damage of not less than \$5,000,000, each occurrence, and \$5,000,000 aggregate (applicable on a per project basis) which insurance shall include a comparable limit with respect to Personal Injury and Advertising Injury. At the OWNER's sole discretion, by WRITTEN NOTICE, the Commercial General Liability Insurance or its coverage equivalent to be provided under the Insurance Service Office's (ISO) most current form, may be reduced on a per project basis to a combined single limit for Bodily Injury and Property Damage of not less than \$2,000,000, each

occurrence, and \$2,000,000 aggregate. Such insurance shall include the following coverages:

1. Premises Operations coverage, including coverage for any claims arising out of construction or demolition operations within fifty (50) feet of any railroad and for Independent Contractors, with aggregate limits of liability applying on a per location basis.
  2. Product Liability and Completed Operations coverage, with the provision that coverage shall extend for a period of at least two (2) years from the date of final completion and acceptance by the OWNER of all of CONTRACTOR's Work.
  3. Contractual Liability covering the liabilities assumed under this CONTRACT, including without limitation liability for the acts or omissions of CONTRACTORS and SUBCONTRACTORS, coverage for claims arising out of construction or demolition operations if the work is within fifty (50) feet of any railroad and indemnification of a municipality for liabilities assumed under any contract or other agreement with such municipality.
  4. Personal Injury and Advertising Injury coverage.
  5. Extended Bodily Injury coverage with respect to bodily injury resulting from the use of reasonable force to protect persons or property.
  6. Premises and Operations Medical Payments coverage.
  7. Explosion, Collapse, and Underground Property Damage coverage providing protection for property damage resulting from these hazards.
- (b) Worker's Compensation, and any other federal and/or state coverages, as required, including but not limited to, Occupational Disease Benefits, Voluntary Compensation and Disability Benefits, U.S. Longshoremen's and Harbor Workers' Compensation, Admiralty/Jones Act and Defense Base Act, for not less than the statutory limits, and if applicable, an "Other States Endorsements"; Employers' Liability Insurance or Stop-Gap Employers' Liability Insurance with limits of not less than by accident \$1,000,000 each accident, by disease \$1,000,000 policy limit, by disease \$1,000,000 each employee. Workers' Compensation coverage shall include a waiver of subrogation against OWNER and OWNER's REPRESENTATIVES.
- (c) Comprehensive Business/Automobile Liability Insurance to include uninsured/underinsured and medical payment protection covering any

automobile, including owned, leased, hired, and non-owned automobiles, with a combined single limit for Bodily Injury and Property Damage or not less than \$2,000,000 per accident.

- (d) If CONTRACTOR provides design and/or engineering services as part of the WORK, Professional Errors and Omissions insurance with limits of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. If such insurance is written on a claims made basis, the retroactive date shall be no later than the date of the NOTICE TO PROCEED. CONTRACTOR agrees to maintain such coverage for two years after final acceptance of the PROJECT by the OWNER.
- (e) Necessary property insurances to protect against the perils of fire and extended coverage, including vandalism, malicious mischief and theft, more commonly referred to as "All Risk" insurance, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms

20.11 The OWNER shall purchase or shall cause to be purchased, property insurance ("Builder's Risk Insurance") for all WORK at the site, excluding CONTRACTOR or SUBCONTRACTOR tools covered under Section 20.10 herein, materials or equipment not intended to be incorporated into the completed PROJECT, on a replacement cost basis with deductibles of no greater than \$25,000 per occurrence to be paid by the OWNER. Such insurance shall be written on an "all-risk" or equivalent policy form and shall include coverage against the perils of flood, windstorm, earthquake, theft, malicious mischief, and collapse, subject to policy terms, conditions and exclusions. This insurance shall include the interests of the OWNER, the OWNER's REPRESENTATIVES, CONTRACTORS and SUBCONTRACTORS of any tier in the WORK. The OWNER neither represents nor assumes responsibility for the adequacy of the Builders Risk Insurance to protect the interests of the CONTRACTOR. It shall be the obligation of the CONTRACTOR to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the WORK.

20.12 The OWNER shall purchase or shall cause to be purchased, Contractors Pollution Liability insurance covering third-party bodily injury, property damage or environmental damage (including cleanup costs, both on and off the WORK site) arising from pollution conditions caused in the performance of the Work. CONTRACTORS and SUBCONTRACTORS of any tier shall be insured under such policy. Limits of liability shall not be less than \$5,000,000.

20.13 To the extent of coverage afforded by Builder's Risk Insurance or any other property or equipment floater insurance applicable to the WORK or the PROJECT or equipment used in performance of the WORK or the PROJECT, regardless of whether such insurance is owned by or for the benefit of CONTRACTOR; OWNER, OWNER's REPRESENTATIVES and CONTRACTOR waive all rights against each other and subcontractors, agents and employees each of the other, for loss or damage to the extent covered by such insurance, except such

rights as they may have to the proceeds of such insurance. If policies of insurance referred to in this paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed. If CONTRACTOR chooses to self-insure for loss or damage to owned or leased equipment, CONTRACTOR waives all rights against OWNER and OWNER's REPRESENTATIVES for such loss or damage.

20.14 CONTRACTOR shall endorse its Commercial General Liability (including completed operations coverage), Comprehensive Automobile Liability, and Umbrella/Excess Liability policies to add the OWNER, DEVELOPMENT MANAGER, CONSTRUCTION MANAGER, City and County of Denver (CCD), Denver Water, and Denver Urban Renewal Authority (D.U.R.A.) as "Additional Insureds" with respect to liability arising out of (a) operations performed for Additional Insureds by or for CONTRACTOR, (b) acts or omissions of Additional Insureds in connection with their general supervision of operations by or for CONTRACTOR and (c) claims for bodily injury or death brought against Additional Insureds by CONTRACTOR's employees, or the employees of CONTRACTOR's subcontractors of any tier, however caused, related to the performance of operations under the CONTRACT DOCUMENTS. Such insurance afforded to Additional Insureds under CONTRACTOR's policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by Additional Insureds.

20.15 The parties to this CONTRACT understand that the OWNER does not intend to waive by any provision of this CONTRACT the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq. as from time to time amended.

20.16 To the extent required to satisfy bonding requirements or insurance coverage requirements with respect to the PROJECT that are imposed on the OWNER by the City and County of Denver, Denver Water, the Denver Urban Renewal Authority, or other regulatory agency or third party by law or contract (including but not limited to requirements imposed as a condition of construction approval, site access, or funding approval) and upon request of the OWNER, CONTRACTOR shall (a) purchase such additional coverage or bonding and/or (b) include such additional insureds with respect to the insurance policies under this Section and/or additional obliges to the performance and payment BONDS under Section 21 below as are necessary to satisfy such requirements. If such additional coverage or bonding results in additional cost to the CONTRACTOR not covered under the CONTRACT PRICE, OWNER shall authorize an appropriate increase in the CONTRACT PRICE pursuant to Section 13 herein.

## **21. CONTRACT SECURITY**

21.1 The CONTRACTOR shall within ten (10) calendar days from the date of the NOTICE TO APPARENT LOW BIDDER, furnish the OWNER with a Performance BOND and Payment BOND each in a penal sum of the total CONTRACT PRICE using the forms in Exhibit J. The premium for such BONDS shall be included in the CONTRACT PRICE and shall be paid

by the CONTRACTOR. The penal sum of the BONDS shall be increased in the same amount as any increase in the CONTRACT PRICE. Such BONDS shall remain in full force and effect for a period of six (6) months following the date of final acceptance by the OWNER.

21.2 The CONTRACTOR shall furnish in conjunction with the Final Release of Contractor Form (Section 18) a Warranty BOND and Maintenance BOND each in the penal sum of the total CONTRACT PRICE. The premium for such BONDS shall be included in the CONTRACT PRICE and shall be paid by the CONTRACTOR. The penal sum of the BONDS shall be increased in the same amount as any increase in the CONTRACT PRICE. Such BONDS shall remain in full force and effect for a period of two (2) years following the date of final acceptance by the OWNER.

21.3 Such Payment BOND shall be conditioned upon CONTRACTOR at all times promptly making payments of all amounts lawfully due to all persons or furnishing CONTRACTOR or its SUBCONTRACTORS with labor, laborers, materials, rental machinery, tools, or equipment used or performed in the prosecution of the WORK and upon CONTRACTOR indemnifying and saving harmless the OWNER to the extent of any payments in connection with such work that OWNER may be required to make under the law.

21.4 Such Performance BOND shall be conditioned upon faithfully performing all obligations, covenants, terms, and conditions of the AGREEMENT, including, without limitation, all warranties and shall provide that, if the CONTRACTOR or the SUBCONTRACTORS fail to promptly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such CONTRACTOR or SUBCONTRACTOR in performance of the WORK or fail to pay any person who supplies laborers, rental machinery, tools, or equipment in the prosecution of the WORK, the surety will pay the same in an amount not exceeding the sum specified in the BOND together with interest at the rate of eight percent (8%) per annum.

21.5 Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company listed in the Department of Treasury Circular No. 570 with an underwriting limitation equal to or greater than the penal sum of the BONDS licensed to transact such business in the State of Colorado, and rated "A" or better by the A.M. Best Company. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared bankrupt or loses its right to do business in the State is to be performed, CONTRACTOR shall immediately substitute an acceptable BOND (or BONDS) in such form signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No payments shall be deemed due nor shall be made under this AGREEMENT until an acceptable BOND has been furnished to the OWNER.

21.6 The provisions of this Section 21 are intended to satisfy the requirement of C.R.S. 38-26-101 to 108. In the event of a material inconsistency between Section 21 and such statutory requirements, the statutory requirements will govern.



## **22. ASSIGNMENTS**

22.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party, which consent shall not be unreasonably withheld.

## **23. INDEMNIFICATION**

23.1 The CONTRACTOR agrees to, and shall, defend, release, indemnify, and save and hold harmless the OWNER and its respective directors, officers, agents, representatives, and employees (hereinafter all called "Parties Indemnified") from and against any and all damages to property or injuries to or death of any person or persons, and further shall, defend, indemnify and save and hold harmless the Parties Indemnified, from and against any and all claims, costs, demands, liabilities, awards, damages, losses, expenses, attorney's and consultant's fees, suits, actions, causes of action, or other legal or equitable proceedings of any kind or nature whatsoever (hereinafter all called "Claims or Damages"), of or by anyone whomsoever, including but not limited to claims arising out of and/or predicated upon negligence, breach of contract, tort, or strict liability, in any way resulting from, connected with, or arising out of the CONTRACTOR's operations or performance in connection herewith, including operations or performance of SUBCONTRACTORS and SUPPLIERS, and acts or omissions of officers, employees, or agents of the CONTRACTOR or its SUBCONTRACTORS or SUPPLIERS or anyone for whose acts any of them may be liable; provided however, that the CONTRACTOR need not indemnify the Parties Indemnified from damages solely and proximately caused by the negligence of the Parties Indemnified.

23.2 Insurance coverage specified elsewhere in this CONTRACT shall in no way lessen or limit the liability of the CONTRACTOR under the terms of the CONTRACT, including but not limited to this indemnification obligation, which shall survive termination of the CONTRACT. The CONTRACTOR shall procure and maintain at its own expense and cost any additional kinds and amounts of insurance that in its judgement may be necessary for its proper protection in the prosecution of the services under this CONTRACT. In the event any such claims or damages arise or are made, asserted or threatened against any of the Parties Indemnified, the OWNER shall have the right to withhold from any payments due or which may become due to the CONTRACTOR an amount the OWNER deems sufficient to protect and indemnify all of the Parties Indemnified from and against any and all such claims or damages.

23.3 In any and all claims against the Parties Indemnified, by any employee of the CONTRACTOR, any SUBCONTRACTOR anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

## **24. SEPARATE CONTRACTS**

24.1 The OWNER may perform additional WORK related to the PROJECT independently, or the OWNER may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other contractors who are parties to such CONTRACTS (or the OWNER, if performing the additional WORK independently), reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other contractor, the CONTRACTOR shall inspect and promptly report to the CONSTRUCTION MANAGER any defects in such WORK of other contractors that render it unsuitable for such proper execution and results. If, in the opinion of the OWNER, it appears that any activities of any participants, including the CONTRACTOR and other contractors, in the WORK, or progress of the overall PROJECT, is not proceeding at a reasonable pace, the OWNER shall have the authority to select those activities and course of action which it deems will permit proper progress on the PROJECT and will best serve the OWNER. The CONTRACTOR shall perform and coordinate the WORK called for in the CONTRACT in such a manner that it will not delay, disrupt, interfere with or damage any work performed by any other contractor, any subcontractor or by the OWNER. The CONTRACTOR shall remedy all damage, injury or loss to any property or work performed by any other contractor, any subcontractor or by the OWNER caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable.

24.2 If the performance of other or additional WORK by other contractors or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, WRITTEN NOTICE thereof shall be given to the CONTRACTOR prior to starting any such other or additional WORK. If the CONTRACTOR believes that the performance of such other or additional WORK by the OWNER or others entitles him to an extension of the CONTRACT TIME, he shall provide ten (10) days written notice prior to making a claim for an extension of CONTRACT TIME and/or CONTRACT PRICE, therefor as provided in Sections 13 and 14.

## **25. SUBCONTRACTING**

25.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

25.2 The CONTRACTOR may not make material changes to the list of SUBCONTRACTORS' or SBE/DBE SUBCONTRACT dollar amounts in the CONTRACT DOCUMENTS approved by the OWNER unless the SCOPE OF WORK is materially changed through no fault of the CONTRACTOR. Written approval of the CONSTRUCTION MANAGER or the OWNER'S REPRESENTATIVE shall be required for these changes.

25.3 The CONTRACTOR shall be fully responsible for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

25.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to require SUBCONTRACTORS to comply with the terms and conditions of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power to terminate any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

25.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER; provided, however, that all SUBCONTRACTS shall be assignable to OWNER in the event of default by CONTRACTOR at OWNER's request pursuant to Section 17.2

25.6 The CONTRACTOR shall make payments to each of his SUBCONTRACTORS of any amounts actually received which were included in the CONTRACTOR's payment request for such SUBCONTRACTOR pursuant to Section 18.1. The CONTRACTOR shall make such payments within seven calendar days of receipt of payment from the OWNER and shall retain no more of the value of the SUBCONTRACTOR's work than the OWNER is authorized to retain under Section 18. If the CONTRACTOR fails to make timely payments to the SUBCONTRACTOR, the CONTRACTOR shall pay the SUBCONTRACTOR interest at the rate of fifteen percent (15%) per annum on the amount of payment that was not made in a timely manner or the OWNER at its sole discretion may issue payment to the SUBCONTRACTOR by means of a "Joint Check" pursuant to Section 18.4. The CONTRACTOR shall require the SUBCONTRACTOR to pay all suppliers, sub-subcontractors, laborers, and any other persons who provide goods, material, labor, or equipment to the SUBCONTRACTOR any amounts actually received which were included in the SUBCONTRACTOR's request for payment to the CONTRACTOR, in the same manner regarding payments by the CONTRACTOR to the SUBCONTRACTOR pursuant to this Section, including payment of interest.

25.7 As provided in Section 23.1, the CONTRACTOR will indemnify, defend, and save the OWNER, and its respective officers, agents, engineers, representatives, and employees (hereinafter all called "Parties Indemnified") harmless from all claims growing out of the demands or claims of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, tools and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER's request, furnish satisfactory evidence, including, but not limited to, such documentation required under Section 18, that all obligations of the nature designated above have been paid, discharged or waived. If the CONTRACTOR fails to do so, the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such

demands or claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR nor his surety or any third party for any such payments made in good faith.

## **26. CONSTRUCTION MANAGER's AUTHORITY**

26.1 The CONSTRUCTION MANAGER, in consultation with the ENGINEER, shall act as a representative of the OWNER, unless the CONTRACTOR is otherwise notified by the OWNER, during the construction period. He shall decide questions, which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

26.2 The CONTRACTOR shall be held strictly to the intent of the CONTRACT DOCUMENTS including those regarding quality of materials, workmanship and execution of the WORK. The CONSTRUCTION MANAGER and ENGINEER shall be entitled to inspect the factory or fabrication plant of the source of material supply.

26.3 The CONSTRUCTION MANAGER, ENGINEER and OWNER shall not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

26.4 The CONSTRUCTION MANAGER in consultation with the ENGINEER shall promptly make decisions relating to interpretation of the CONTRACT DOCUMENTS.

26.5 All requests for additional information and/or clarification of the CONTRACT DOCUMENTS will be accomplished using the Request For Information (RFI) form (Exhibit L).

## **27. LAND AND RIGHTS-OF-WAY**

27.1 The OWNER shall be responsible for obtaining all land and rights-of-way necessary for carrying out for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

27.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of way acquired.

27.3 The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials not provided by the OWNER.

## **28. WARRANTIES AND GUARANTEES**

28.1 The CONTRACTOR warrants and guarantees that all WORK shall be performed in accordance with the highest standards of care and diligence practiced by major domestic general contracting firms of national stature in performing services and work of similar nature.

28.2 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of two (2) years following the date of final acceptance by the OWNER ("Final Acceptance Date") or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty or guaranty required by the CONTRACT DOCUMENTS. The CONTRACTOR warrants and guarantees for the Two Year Guaranty Period that the WORK and the PROJECT are free from all faults and defects, including those due to faulty materials or workmanship, and are in complete conformity with the CONTRACT DOCUMENTS. Both bonds must be maintained in full force for the two year warranty period under Section 21.1. The CONTRACTOR shall, at its sole cost and expense, promptly remedy and correct any defective or nonconforming WORK, including any damage to other work resulting therefrom, which appears within the said Two Year Guaranty Period. The OWNER will give written notice of observed defects or noncompliance with reasonable promptness. In the event that the CONTRACTOR shall fail or refuse to promptly remedy and make such corrections, repairs, adjustments or other WORK that may be made necessary due to such defective or nonconforming WORK, the OWNER may, in addition to its other rights and remedies, do so and charge the CONTRACTOR the cost thereby incurred. Neither the final acceptance nor final payment nor the entire use of the PROJECT shall constitute an acceptance of WORK not done in accordance with the CONTRACT nor relieve the CONTRACTOR of liability regarding any express or implied warranties or responsibility for defective or non-conforming WORK.

## **29. DISPUTES**

29.1 Unless mutually agreed in writing otherwise, all disputes or claims of any nature whatsoever relating to or arising out of the CONTRACT, including but not limited to those involving damages or time extensions for delay, equitable adjustments, or other claims for compensation by the CONTRACTOR, including but not limited to disputes going to the breach or default of this CONTRACT (hereinafter all called "Disputes") shall be resolved as follows:

29.1.1 The OWNER and the CONTRACTOR shall continue in good faith to attempt to resolve the Dispute for a period of not less than twenty five (25) days following the identification by either party and written notice to the other party of the Dispute;

29.1.2 In the event the dispute is not resolved within the twenty five (25) day period ("Negotiation Period") set forth above, it shall be decided by arbitration, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Demand for arbitration shall in no event be made on any dispute which would be barred by the applicable statute of limitations. Such arbitration may include by consolidation, joinder or in any other manner, at the OWNER's option, any other entities or person whom the OWNER believes to be substantially involved in a common question of fact or law. The award rendered by the arbitrator(s) shall be final and binding, and judgment may be entered upon such award in any court having jurisdiction thereof.

29.1.3 All arbitration proceedings shall be held in Denver, Colorado.

29.1.4 The CONTRACTOR will carry on the WORK and maintain the progress schedule during any negotiation periods and during any arbitration proceedings, unless otherwise mutually agreed in writing between the OWNER and the CONTRACTOR.

**30. TAXES. General.** The taxes to which the CONTRACTOR may be subject to in performing the Work under this CONTRACT include, but are not limited to, sales and use taxes and the Denver Occupational Privilege Tax.

30.1 Sales and Use Tax. Construction and building materials sold to CONTRACTORS and SUBCONTRACTORS for use on structures, roads, streets, highways, and other public works owned by the Park Creek Metropolitan District at Stapleton Redevelopment are exempt from State, RTD, and Cultural Facilities District sales and use taxes. However, such materials will be subject to sales and use taxes imposed by the City and County of Denver.

30.2 Exemption Certificates – Sales and Use Tax. It is responsibility of the Contractor and its subcontractors to apply to the Colorado Department of Revenue ("CDOR") for a certificate, or certificates, of exemption indicating that their purchase of construction or building materials is for a public project, and to deliver to the CONSTRUCTION MANAGER copies of such applications as soon as possible after approval by the CDOR. BIDDERS shall not include in their bid amounts the exempt State, RTD, and Cultural Facilities District Sales and Use Taxes.

30.3 Denver Occupational Privilege Tax. Any employee working for a CONTRACTOR, or a SUBCONTRACTOR, who earns over \$500 working in Denver during a calendar month, is subject to the payment of the Employee Occupational Privilege Tax. The CONTRACTOR and any SUBCONTRACTOR must pay the Business Occupational Privilege Tax for each of its employees who is subject to such tax.

### **31. OWNERSHIP OF THE DOCUMENTS**

All documents such as reports, plans, and specifications prepared or furnished by the ENGINEER, or the ENGINEER's independent professional associates, subcontractors, and consultants, pursuant to this CONTRACT are instruments of public information and the property of the OWNER.

The CONTRACTOR understands such documents are not intended or represented to be suitable for reuse by the CONTRACTOR or others for purposes outside the specific scope and conditions of the design criteria and shall not reuse such documents. Any reuse without written verification or adaptation by the OWNER for the specific purpose intended will be at the CONTRACTOR's sole risk and without liability or legal exposure to the OWNER, ENGINEER, or to the ENGINEER's independent professional associates, subcontractor's and consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting there from. Any such verification or adaptation will entitle the OWNER and/or the ENGINEER to compensation at rates to be agreed upon by the OWNER, the ENGINEER, and the CONTRACTOR.

### **32. REVIEW AND AUDIT**

The CONTRACTOR will maintain and will require its SUBCONTRACTORS and SUPPLIERS to maintain books and records of all costs for the PROJECT and shall also maintain its customary fiscal records all in accordance with most current Generally Accepted Accounting Principles (GAAP). Such practices shall be consistently applied. The CONTRACTOR shall make all of such books and records available for audit by the OWNER with or without prior notice for a period of three (3) years following final payment to the CONTRACTOR.

### **33. NONDISCRIMINATION/EQUAL OPPORTUNITY**

In connection with the performance of WORK under this AGREEMENT, CONTRACTOR shall not refuse to hire, discharge, promote, or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, sex, creed or national origin and CONTRACTOR agrees to insert the foregoing provision in all SUBCONTRACTS hereunder. CONTRACTOR shall require its supervisory personnel and the supervisory personnel of its SUBCONTRACTORS to participate in mandatory training sessions conducted by the CONSTRUCTION MANAGER concerning laws that prohibit unlawful discrimination and their roles and responsibilities in responding to allegations of unlawful discrimination.

**34. PREVAILING WAGES**

CONTRACTOR shall require each of its SUBCONTRACTORS to, comply with the Denver Prevailing Wage Ordinance (DR49 § 20-76) as set forth in further detail in the Exhibit V.

**35. DENVER URBAN RENEWAL AUTHORITY (“DURA”) FIRST SOURCE PARTICIPATION** shall be applicable to the CONTRACTOR and its SUBCONTRACTOR’s as described in Exhibit R.

**36. COSTS, EXPENSES AND ATTORNEYS' FEES**

The CONTRACTOR shall promptly reimburse the OWNER for all costs, expenses and attorneys' fees suffered or incurred by the OWNER which arise out of or are related to any performance, non-performance or defective performance by the CONTRACTOR under this AGREEMENT. In any litigation or other proceeding, including arbitration, between the parties to this CONTRACT and arising out of the CONTRACT, the substantially prevailing party shall be entitled to recover all reasonable costs, expenses, attorney’s and expert witness fees and other costs of suit incurred by it in connection with such litigation or other proceedings, in connection with any appeals, and in collecting or otherwise enforcing any final judgment entered therein. If a party prevails on some aspects of such litigation or proceeding, but not on others, any award of costs and attorney’s fees shall be apportioned equitably.

**37. RIGHTS AND REMEDIES**

37.1 The rights and remedies available to the OWNER under the CONTRACT DOCUMENTS shall be in addition to and not a limitation of rights and remedies otherwise available by law.

37.2 No action or failure to act by the OWNER shall constitute a waiver of a right or duty afforded the OWNER under the CONTRACT DOCUMENTS, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder.

**38. SEVERABILITY**

If any provision of this AGREEMENT is held by a court to be invalid or unenforceable, the validity of the remaining provisions herein shall be unaffected and shall continue in full force and effect.

**39. RELATIONSHIP OF THE PARTIES**

CONTRACTOR shall perform the WORK as an independent contractor and not as an agent of the OWNER or the OWNER’s REPRESENTATIVES.

**40. GOVERNING LAW**



This AGREEMENT shall be construed in accordance with the laws of the State of Colorado. To the extent that jurisdiction is available, venue for any action arising out of, or in connection with, this AGREEMENT shall be in the Denver County District Court, unless otherwise agreed in writing by the parties.

The undersigned hereby acknowledges receipt of the Contract General Conditions and understands it is incorporated into this Contract Agreement.

CONTRACTOR: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**FOREST CITY STAPLETON, INC.**

**PHASE 1 OF THE INFRASTRUCTURE AND PARKS IMPROVEMENTS,  
STAPLETON REDEVELOPMENT PROJECT**

**SPECIAL CONTRACT CONDITIONS**

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## **SPECIAL CONTRACT CONDITIONS**

### **SC-1 CONSTRUCTION SPECIFICATIONS**

SC-1.1 "STANDARD CONSTRUCTION SPECIFICATIONS" shall apply to all Work under this Contract and shall refer to the following documents:

- (a) Colorado Department of Highways "Standard Specifications for Road and Bridge Construction," 2011, Sections 200 through 700 as amended by Colorado Department of Highways "Standard Special Provisions" and Project Specific Specifications listed in Exhibit S, Technical Specifications and all Addenda as of the date of Bid. References to "Divisions" or "CDOT" or "Department" in the Standard Specifications will be considered to mean any of the following as determined by the Park Creek Metropolitan District/Forest City Stapleton, Inc.; Owner, the Park Creek Metropolitan District., Colorado Department of Transportations, City and County of Denver, Denver Water.
- (b) "DETAILED CONSTRUCTION SPECIFICATIONS". Except as amended herein, all work performed under the terms of this Contract shall be governed by the applicable details and provisions of the latest editions of the following:
  - 1. Division of Highways M & S Standards
  - 2. Geotechnical Engineering Study prepared by Kumar and Associates
  - 3. City of Denver's Wastewater Management Division Standard Details
  - 4. City of Denver's Water Engineering Standards and Details
  - 5. Traffic Barricade Manual, City and County of Denver, Published August 1, 1992
  - 6. National Fire Protection Association Standards, as referenced in the Building Code of the City and County of Denver
  - 7. Building Code of the City and County of Denver - 2011 (International Building Code, 2009 Edition with City and County of Denver Amendments 2011)
  - 8. Manual of Uniform Traffic Control Devices (MLITCD), latest editions
  - 9. Metro Governments Paving Engineers Council (MGPEC)

10. NPDES Permit
11. SWMP and SWQP Permits
12. Colorado Department of Transportation Field Materials Manual
13. City and County of Denver, Department of Public Works, Waste Water Management Division, Sanitary Sewer Design Technical Manual – March 2008, Storm Drain - January 2006.
14. Urban Storm Drainage Criteria Manual – September 1992

SC-1.2 All documents are available for review at the CONSTRUCTION MANAGER's office. Compliance with the requirements of the forgoing list of Detailed Construction Specifications does not in any way limit or otherwise affect CONTRACTOR's obligations to perform the WORK in accordance with the requirements of all applicable local, state and federal rules, regulations, ordinances and other standards pursuant to GENERAL CONDITIONS Sections 2 and 3.

**SC-2 PRECONSTRUCTION MEETING.** Prior to issuance of Notice to Proceed and start of work, the CONTRACTOR, the design consultants, the CONSTRUCTION MANAGER and the OWNER shall meet at the site and resolve any and all questions of CONTRACTOR access to the site, protection of the public, storage space, disposal of debris, sequence of work, site safety topics (detailed in Exhibit B, Exhibit N and Exhibit Q), etc.

**SC-3 PERMITS AND RESPONSIBILITIES.** The CONTRACTOR shall provide and pay for all permits required by the CONTRACT DOCUMENTS. Responsibility for obtaining permits shall generally be in accordance with the schedule attached as Exhibit M. However, Exhibit M does not in any way limit or otherwise affect CONTRACTOR's obligations to secure all necessary permits for prosecution of the WORK in accordance with the requirements of all applicable local, state and federal rules, regulations, and ordinances.

~~**SC-4 GRAFFITI CONTROL.** The CONTRACTOR shall protect all new concrete items constructed under this AGREEMENT against graffiti and marking, of both human and animal origin. If graffiti cannot be adequately repaired to the satisfaction of the CONSTRUCTION MANAGER and ENGINEER, the CONTRACTOR shall remove and replace the unacceptable items at their expense.~~

**SC-5 PROTECTION OF PROPERTY.**

SC-5.1 The CONTRACTOR shall properly protect all existing trees, shrubs streets, power lines, survey monuments, monitoring wells and other utilities, and any and all public and private property from damage. In the event that any such property is damaged in the course of construction of the PROJECT, the CONTRACTOR shall immediately, at his expense,

restore any and all such damaged property to as good a state as previously existed. The CONTRACTOR shall give twenty-four (24) hours notice to residents prior to commencing work on sprinkler systems. Damaged trees will be replaced by the CONTRACTOR, at his expense, as directed by the CONSTRUCTION MANAGER.

SC-5.2 The CONTRACTOR is responsible for removing trash and debris off site on an ongoing basis as the WORK is completed.

SC-5.3 The CONTRACTOR is responsible for the security of its materials and equipment located on the project site during the term of this contract. For security issues, the CONTRACTOR may contact the Denver Police Department.

**SC-6 WATER CONTROL.** The CONTRACTOR shall be responsible for controlling the flow of all surface and underground water affecting the project, regardless of source. The CONTRACTOR shall ensure that no flooding on private property occurs. The work shall be considered as a subsidiary obligation of the CONTRACTOR and no separate measurement or payment for water control will be made.

**SC-7 DUMP SITE.** The CONTRACTOR shall be required to pay the prevailing rate for dumping trash, debris, and other unsalvageable materials offsite at a licensed disposal facility. The site and the entire Stapleton property is not available for any dumping by the CONTRACTOR.

**SC-8 PROTECTION OF MUNICIPAL SERVICE SYSTEMS.**

SC-8.1 The CONTRACTOR shall coordinate with all utility companies including, without limitation, which includes but is not limited to the following:

- (a) Xcel Energy during Xcel Energy's installation of streetlights and signal lights, and during Xcel Energy's installation of new primary Power and Gas distribution in the Right of Way.
- (b) CenturyLink during its installation of conduit banks and new trunk distribution system in the Right of Way.
- (c) Co49ast's installation of new distribution as needed.

SC-8.2 Utility Companies with possible utilities within the limits of the project are:

- 1. Telephone - CenturyLink, 49I/ World Comm., US Sprint
- 2. Offsite Street, Road, Alley - City and County of Denver Traffic Engineering
- 3. Offsite Sanitary Sewer - Denver Wastewater, Metro Wastewater Sanitation District
- 4. Offsite Water Line - Denver Water
- 5. Offsite Storm Sewer - Denver Wastewater

6. Onsite Sanitary and Storm Sewer - Construction Manager, Underground Consulting Solutions
7. Onsite Water Line - Construction Manager, Underground Consulting Solutions
8. Onsite Natural Gas and Electric - Xcel Energy Electric
9. Onsite/Offsite RTD - RTD
10. Onsite Parks - Denver Parks & Recreation
11. Private Lighting and Irrigation - Underground Consulting Solutions

SC-8.3 The work described in these plans and specifications will require full cooperation by the CONTRACTOR and the Utility Companies in conducting their respective operations so the utility work can be completed with minimum delay to all parties concerned. Other utility work, not described in these contract documents may occur at any time during the project. The CONTRACTOR shall cooperate with the utility contractors performing this work and will coordinate construction activities with the utility contractors.

SC-8.4 The CONTRACTOR shall be required to contact the utilities listed above a minimum of three (3) working days prior to beginning excavation of grading in the area of electric lines, gas lines, telephone lines, sewer lines, water lines, and/or cable TV lines. The CONTRACTOR shall submit a "Dig Permit" application to the CONSTRUCTION MANAGER prior to each excavation per Exhibit U.

SC-8.5 The location of utility facilities as shown on the plan and profile sheets, and herein described, were obtained from the best available data and are for information only. CONTRACTOR shall physically verify depths and locations if there is a possibility of damage to the utility from construction operations. The CONTRACTOR is responsible for the protection of existing utilities and for the protection of work by others. The CONTRACTOR is solely responsible for any cost associated with the negligent or willful damage to utilities and work by others.

SC-8.6 In the event that an unknown utility is encountered in any excavation, the CONTRACTOR shall stop any work affecting said utility, and immediately notify the OWNER in writing. The CONTRACTOR shall not recommence work without written direction from the OWNER of the utility. Any cost associated with damage, replacement, or asbestos abatement resulting from the CONTRACTOR proceeding without written direction will be the sole responsibility of the CONTRACTOR. (See also GENERAL CONDITIONS section 16)

SC-8.7 The City of Denver Police, Fire, and Traffic Engineers shall be notified by the CONTRACTOR two (2) weeks prior to street closings or restrictions.

SC-8.8 The summary of work listed below will be performed by the utility owners or their agents as follows:

1. Xcel Energy.-Electric: All work
2. Xcel Energy.-Gas: All work

3. CenturyLink: All work
4. AT&T Cable: All work
5. Denver Wastewater: Inspection of Contractor's work.
6. Metro Wastewater District: Inspection of Contractor's work.
7. Denver Water: Inspection of Contractor's work of Conduits over 16" in Diameter.

**SC-9 CONSTRUCTION SCHEDULE, PERIODIC ESTIMATES, REPORTS, AND RECORDS CONSTRUCTION SCHEDULE**

SC-9.1 The CONSTRUCTION MANAGER has prepared the initial Project Schedule, which is included in Exhibit O. Within five (5) days of award, the CONSTRUCTION MANAGER will provide the CONTRACTOR with a partial schedule of the CONTRACTOR's activities in Primavera format. The CONTRACTOR shall be required to provide the following information for each activity:

- (a) Equipment pieces and hours to meet duration
- (b) Manhours
- (c) Cost
- (d) Check all logic ties

SC-9.2 Upon entering each CONTRACTOR's data, the CONSTRUCTION MANAGER will issue an updated baseline schedule which each CONTRACTOR will review and approve.

SC-9.3 Updates to the baseline schedule will be done by the CONTRACTOR on a bi-weekly basis. Updates will include actual start dates, actual finish dates, percent complete for activities in progress, actual manhours expended for completed Work and anticipated delivery dates for all materials not on site.

SC-9.4 The receipt of the schedule by the CONSTRUCTION MANAGER shall in no way constitute acceptance of the CONTRACTOR's anticipated schedule of construction activities. The CONSTRUCTION MANAGER reserves the right to change the schedule to achieve better coordination with any other construction, changes, differing site conditions, or other activities. The CONTRACTOR agrees that such changes in the schedule will not constitute cause for additional compensation to the CONTRACTOR.

SC-9.5 The CONTRACTOR shall also submit a two (2) week look ahead schedule each week.

**SC-10 DAILY REPORTS.** The CONTRACTOR shall submit daily logs of activities including:

- (a) Equipment on site and hours in use;
- (b) Manpower by trade;
- (c) Weather conditions;

- (d) Daily production by payment application item;
- (e) Materials testing performed;
- (f) Subcontractors onsite
- (g) Any other construction activities which occurred.

**SC-11      PROGRESS MEETINGS.** The CONTRACTOR or his on-site representative shall be required to regularly attend a weekly progress/coordination meeting with the CONSTRUCTION MANAGER.

**SC-12      REQUEST FOR INFORMATION.** All requests for additional information and/or clarification will be accomplished using a standard RFI (Request For Information) form. See Exhibit L.

**SC-13      CONTACT WITH THE PUBLIC.** Should the CONTRACTOR be approached by local residents, news agency or any other member of the public, CONTRACTOR shall refer all inquiries or comments to the CONSTRUCTION MANAGER.

**SC-14      HOURS OF OPERATION.** CONTRACTOR's hours of operation shall be Monday through Friday from 7:00 a.m. to 5:00 p.m., except Federal holidays. CONTRACTOR must request in writing, and obtain written permission from the CONSTRUCTION MANAGER, prior to performing any work outside of this time frame.

**SC-15      CONSTRUCTION YARD.** The OWNER will make available for the CONTRACTOR an area on the site to be used as a construction yard, shown in the CONTRACT DOCUMENTS. The CONTRACTOR shall, at all times, keep the work area, including storage areas, free from accumulation of waste materials. Upon completing the work, the CONTRACTOR shall leave the work area in a clean, neat and orderly condition, satisfactory to the CONSTRUCTION MANAGER. CONTRACTOR may bring office and tools trailers into the construction yard; provided, however, CONTRACTOR is responsible for all utility hook-ups and cost of utility consumption.

**SC-16      DUST CONTROL.** The OWNER will allow the CONTRACTOR to use designated water hydrants within the construction work zone(s) shown in the Plans for dust control purposes, at no cost to the CONTRACTOR. The CONTRACTOR shall exercise sound judgment in conserving such water usage.

**SC-17      REMOVALS.** The removal of any trees, street lights, and/or signal poles which interfere with the construction will be the responsibility of the OWNER unless indicated otherwise in the CONTRACT DOCUMENTS. It is the responsibility of the CONTRACTOR to notify the OWNER in advance in the event that such items shall require removal.



## **SC-18 MATERIALS MANAGEMENT**

SC-18.1 CONTRACTOR may encounter hazardous substances or other contaminated materials while performing the WORK. These materials include, but may not be limited to, residuals from airport fueling and maintenance operations such as petroleum constituents, glycol, and volatile and semi-volatile organic compounds used in maintenance operations.

SC-18.2 To insure worker safety and health and appropriate management of these materials, CONTRACTOR shall comply with the requirements contained herein. For purposes of determining the applicability of these requirements, "intrusive activities" shall mean those activities that involve the reasonable possibility for employee exposure to safety or health hazards:

SC-18.3 Site grading. In most instances, achieving final grades for development will require significant earth moving activity during which workers may encounter soils and groundwater that were contaminated by former airport operations.

SC-18.4 Excavation for utility installation. The installation of water, sewer and electrical and communications lines installed to service the development will require the excavation of material (soils and groundwater) potentially contaminated by former airport operations.

SC-18.5 Drilling activities. Geotechnical investigation and, depending on foundation requirements for new structures, caissons and drilled piers may be required for Site development. These activities will employ drill rigs that generate soil cuttings and/or ground water potentially contaminated by former airport operations.

SC-18.6 The following requirements shall apply during all intrusive activities on the Site:

SC-18.6.1 Health & Safety Planning. CONTRACTOR shall comply with the requirements identified in 29 C.F.R. § 1910 and 29 C.F.R. § 1926.65 and shall prepare of a site-specific safety and health program consistent with the Master Health and Safety Program for the Site prepared by Harding Lawson Associates, dated July 14, 2000, ("MSHP"). The MSHP requires specific training for all CONTRACTOR personnel conducting field activities that involve a reasonable possibility for exposure to safety or health hazards. The Master Safety and Health Program is incorporated herein by reference.

SC-18.7 Management of Contaminated Materials. CONTRACTOR shall comply with the requirements of the Materials Management Plan for the Site prepared by Harding Lawson Associates ("MMP") in the event they encounter hazardous substances or other contaminated materials during activities on the Site. The MMP provides specific requirements for the handling and disposition of contaminated soils and groundwater encountered during

construction and of personal protective equipment and other contaminated or potentially contaminated materials generated during CONTRACTOR' activities on the Site. The MMP is incorporated herein by reference.

SC-18.8 Reimbursement for Management of Contaminated Materials. Work related to the management of contaminated materials pursuant to the MMP shall be reimbursed based on personnel and equipment rates submitted by the CONTRACTOR on the forms attached as Exhibit P hereto. Such work shall be reimbursed according to the following "force account" procedures:

SC-18.9 CONTRACTOR, in consultation with the Materials Management Coordinator, shall prepare a Work Directive Authorization Form (WDAF). The WDAF shall describe the additional work required pursuant to the MMP as a result of encountering contaminated materials and designate the basis (i.e., time and expense, unit price or lump sum estimate) and estimated costs for reimbursement. A sample form is attached as Exhibit P.

SC-18.10 DEVELOPMENT MANAGER, the Materials Management Coordinator, and the CONTRACTOR as applicable, shall review such WDAF. In the event the WDAF is consistent with the MMP, the DEVELOPMENT MANAGER, the Materials Management Coordinator and the CONTRACTOR, shall sign the WDAF.

SC-18.11 CONTRACTOR shall prepare and submit to the Materials Management Coordinator for approval a Daily Force Account Report ("DFAR") at the end of each business day until the scope of work covered under the WDAF is complete. The DFAR shall include itemized tasks performed by individual, equipment requirements, and other expenses incurred pursuant to the MMP. A sample form attached as Exhibit P.

SC-18.12 The CONTRACTOR shall submit all approved DFAR's, along with the approved WDAF, with its request for payment to OWNER as part of the payment process authorized under the GENERAL CONDITIONS.

SC-18.13 CONTRACTOR shall not receive reimbursement from OWNER for any costs associated with work required for the management of contaminated materials (i) resulting from the spill or spread of hazardous substances introduced to the Site either by the CONTRACTOR or as a result of the CONTRACTOR's operations; (ii) caused by CONTRACTOR's failure to comply with the requirements of the MMP; or (iii) that are not documented in an approved DFAR or authorized under an approved WDAF.

SC-18.14 Materials Management Coordinator. Unless CONTRACTOR is otherwise notified in writing, the Materials Management Coordinator assigned to this contract shall be the CONSTRUCTION MANAGER.

**SC-19 INCLEMENT WEATHER.** For days lost due to inclement weather that is adjudged worse than the ten year average at Stapleton per the National Weather Service,

unsuitable for efficient performance, the CONTRACTOR may request a Contract Time Extension of one day for each day lost due to such conditions. The CONSTRUCTION MANAGER will not unreasonably withhold such extensions. The Owner will not pay extended overhead, rework of site, or any other costs associated with a weather related extension of the CONTRACT.

**SC-20 PREVAILING WAGE.** The OWNER and the CONTRACTOR expressly agree that it is the sole responsibility of the CONTRACTOR to at all times comply with the Prevailing Wage Requirements of Section 20-76 of the Denver Revised Municipal Code. The CONTRACTOR shall fully familiarize itself and comply with D.R.M.C. §20-76, et seq., Payment of Prevailing Wages. The OWNER will not make allowance for failure to define Work with the City.

**SC-20.1 POSTING OF THE APPLICABLE WAGE RATES.** The CONTRACTOR shall post in a prominent and easily accessible place at the Work site the schedule of wage rates to be paid by the CONTRACTOR and all SUBCONTRACTORS working under the CONTRACTOR.

**SC-20.2 RATE AND FREQUENCY OF WAGES PAID**

**SC-20.2.1** The CONTRACTOR and its SUBCONTRACTORS are responsible for being familiar with and paying every worker, mechanic and laborer employed under this CONTRACT, (“Workers”) in accordance with the rates and classifications established pursuant to D.R.M.C. §20-76, which may be necessary to complete the WORK, whether or not specifically bound herein.

**SC-20.2.2** Weekly, the CONTRACTOR and all of its SUBCONTRACTORS shall pay all Workers according to the rates and classifications established in the D.R.M.C. # 20-76. Increases in prevailing wages subsequent to the date of the CONTRACT for a period not to exceed one (1) year shall not be mandatory on either the CONTRACTOR or SUBCONTRACTORS. Future increases in prevailing wages on a CONTRACT whose Contract Time exceeds one (1) year shall be mandatory for the CONTRACTOR and SUBCONTRACTORS as of the yearly anniversary date of the CONTRACT. In no event shall any increases in prevailing wages over the amounts result in any increased liability on the part of the OWNER, and the possibility and risk of any such increase is assumed by the CONTRACTOR. Decreases in prevailing wages subsequent to the date of the CONTRACT for a period not to exceed one (1) year shall not be permitted. Decreases in prevailing wages on a CONTRACT whose Contract Time exceeds one (1) year shall not be effective except on or after the yearly anniversary date of the CONTRACT.

**SC-20.3 REPORTING WAGES PAID**

**SC-20.3.1** The CONTRACTOR and its SUBCONTRACTORS who are performing work that is covered by D.R.M.C. §20-76 or other controlling law shall furnish to the City with a

copy to the OWNER, each week during which Workers are employed under the CONTRACT, copies of the payroll records of all such Workers. These payroll records shall contain information showing the name, social security number, and wage classification of each Worker, the number of hours worked by each Worker, the hourly rate of pay of each Worker, the shift(s) and hours worked, the check number of funds paid for each Worker, the itemized deductions made from the pay of each Worker, and the gross and net amount of pay received by each worker for the week. Upon request, the CONTRACTOR shall provide other documentation deemed necessary by the OWNER. All copies of the payroll records shall be accompanied by sworn statements of the CONTRACTOR and SUBCONTRACTORS that: the copies are true and correct and are the payroll records of all mechanics, workers, and laborers employed under the CONTRACT; the payments were made to the workers as stated in the payroll records; and no deductions were made other than those set forth in the payroll records; and that all Workers employed on Work under the CONTRACT, either by CONTRACTOR or by any SUBCONTRACTOR, have been paid the Prevailing Wages as set forth in the CONTRACT DOCUMENTS.

SC-20.3.2 Three (3) sets of these payroll records are required. The original shall be transmitted to the Auditor of the City and County of Denver and a copy shall be sent to the Mayor's Office of Contract Compliance and to OWNER.

#### SC-20.4 FAILURE TO PAY PREVAILING WAGES

SC-20.4.1 No request for payment under the CONTRACT will be approved unless the party presenting such pay request, or in whose behalf it is presented, has filed the reports and statements described in this Title, or while any such CONTRACTOR or any SUBCONTRACTOR under it shall be in default in the payment of such wages as are required by these CONTRACT DOCUMENTS.

SC-20.4.2 If any laborer, mechanic, or worker employed by the CONTRACTOR or any SUBCONTRACTOR to perform work under the CONTRACT has been or is being paid less than the rate of wages required by the applicable Prevailing Wage Rate Schedule, OWNER by written Notice to the CONTRACTOR may suspend or terminate the CONTRACTOR's right to proceed with the WORK, or such part of the WORK as to which there has been a failure to pay the said wages. In the event of Termination, the OWNER may prosecute the WORK to Completion by CONTRACT or otherwise, and the CONTRACTOR or any Surety shall be liable to the OWNER for any excess costs occasioned thereby. See GENERAL CONDITIONS section 17 for further details.

SC-20.5 PREVAILING WAGE RATES. Wage rates for Heavy and Highway Construction Category apply to this project.

SC-20.5.1 All work that has specialized skills or that has safety concerns shall be performed by the appropriate level tradesman including but not limited to work on energized, or potentially energized, electrical circuits until the circuit has been positively identified as having

been de-energized; work on pressurized piping; work on potable waterlines; shoring and scaffolding; work involving handling refrigerants and hazardous materials; heavy equipment operation and work involving asbestos. Work not involving energized circuits, pressurized piping, etc. may be performed by personnel in demolition laborer classifications.

SC-20.5.2 Denver's prevailing wage rates shall be uniformly applied to all work of drayage or of construction, alteration, improvement, repair, maintenance or demolition. Without limiting the foregoing, the work of drayage shall include all work performed by drivers and workers in connection with the hauling and transport of materials and debris to and from the work site, where such work is party of any continuous hauling or transport effort either originating or terminating directly upon the site of the work. Such drivers and workers shall be paid at the then-current prevailing wage rates designated: TRUCK DRIVER, HEAVY AND HIGHWAY CONSTRUCTION PROJECTS, Prevailing Rate Schedule, for all time spent loading, hauling and unloading materials and debris, regardless of the location of such work.

SC-20.5.3 If the term of the CONTRACT extends for more than one year, the minimum City prevailing wage rates which CONTRACTOR and SUBCONTRACTORS shall pay during any subsequent yearly period or portion thereof shall be the wage rated in effect on the yearly anniversary date of the CONTRACT which begins such subsequent period. In no event shall any increases in prevailing wages after the first anniversary of the CONTRACT result in any increased liability on the part of the City or the OWNER and the possibility and risk of any such increase is assumed by all CONTRACTORS entering into such contract with the City or the OWNER.

**SC-21 TRAFFIC CONTROL.** The Contractor is responsible for maintaining traffic circulation in and around his work.

**SC-22 OVERLOT GRADING PLAN.** The CONTRACTOR shall haul and stockpile all spoil to a location designated by the Construction Manager.

The undersigned hereby acknowledges receipt of the Special Contract Conditions and understands it is incorporated into this Contract Agreement.

CONTRACTOR: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_