

(Local \$CDOTWRK)  
**PROJECT BR 0061-083 (18838)**  
REGION 6/(JH/wma)

Routing # 13 HA6 47059  
SAP # 331000563  
**FOR CDOT TRACKING PURPOSES (subject to change).**

Rev 10/03

## CONTRACT

**THIS CONTRACT** made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and the City and County of Denver, State of Colorado, 201 West Colfax Avenue, Dept 611, Denver, Colorado, 80202, CDOT Vendor #: 2000018, hereinafter referred to as the “Contractor” or the “Local Agency.”

### RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project to CDOT by Local Agency in Fund Number 400, Function 3301, GL Acct. 4511000010, WBS Element 18838.20.10, (Contract Encumbrance Amount: \$0.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. Local Agency will provide funds to CDOT for the Design/Build project which replaces US 6 Bridges over Bryant Street, the Platte River, the Burlington Northern and Santa Fe Railway line. The Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process.
5. The Local Agency will make funds available for project BR 0061-083 (18838), which shall consist of CDOT performing the Design/Build project which replaces US 6 Bridges over Bryant Street, the Platte River, the Burlington Northern and Santa Fe Railway line, referred to as the “Project” or the “Work.” Such Work will be performed in Denver, Colorado, specifically described in Exhibit A.
6. The Local Agency has funds available and desires to provide \$8,000,000.00 in funding for the work.
7. The Local Agency is prepared to provide \$8,000,000.00 in funding required for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized

representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to expend its funds for the work under the project.

8. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and their local ordinance or resolution.

9. The parties hereto desire to agree upon the division of responsibilities with regard to the project.

**THE PARTIES NOW AGREE THAT:**

**Section 1. Scope of Work**

The Project or the Work under this contract shall consist of CDOT performing the Design/Build project which replaces US 6 Bridges over Bryant Street, the Platte River, the Burlington Northern and Santa Fe Railway line, in Denver, Colorado, as more specifically described in **Exhibit A**.

**Section 2. Order of Precedence**

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. This contract
2. Exhibit A (Scope of Work)
3. Exhibit C (Contract Modification Tools)
4. Other Exhibits in descending order of their attachment.

**Section 3. Term**

This contract shall be effective upon approval of the State Controller or designee. The term of this contract shall continue through the completion and final acceptance of the Project by the Local Agency, State and FHWA.

**Section 4. Project Funding Provisions**

A. The Local Agency is prepared to provide \$8,000,000 in funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to expend its funds for the project.

B. The Local Agency will provide \$ \$8,000,000.00 which is to be funded as follows:

2013 Local Agency Funds	\$3,000,000.00
2014 Local Agency Funds	\$1,000,000.00
2015 Local Agency Funds	\$1,000,000.00
2016 Local Agency Funds	\$1,000,000.00

2017 Local Agency Funds	\$1,000,000.00
2018 Local Agency Funds	\$1,000,000.00
Total Funds:	\$8,000,000.00

C. The maximum amount payable by the Local Agency under this contract shall be \$8,000,000.00, unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state and Local Agency sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

### **Section 5. Project Payment Provisions**

The Local Agency will reimburse the State for incurred costs, up to \$8,000,000.00, relative to the project following the Local Agency's review and approval of such charges, subject to the terms and conditions of this contract.

B. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:

1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.

C. The State will prepare and submit to the Local Agency, no more than monthly, charges for costs incurred relative to the project. The State's invoices shall include a description of the amounts of

services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format.

## **Section 6. State and Local Agency Commitments**

The Local Agency Contract Administration Checklist in Exhibit D describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Local Agency Contract Administration Checklist in Exhibit D.

### **A. Design [if applicable]**

1. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the responsible party shall comply with the following requirements, as applicable:
  - a. Perform or provide the Plans, to the extent required by the nature of the Work.
  - b. Prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, CCD Standards, and as approved by CDOT.
  - c. Prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction.
  - d. Include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
  - e. Stamp the Plans produced by a Colorado Registered Professional Engineer.
  - f. Provide final assembly of Plans and contract documents.
  - g. Be responsible for the Plans being accurate and complete.
  - h. Make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

### **B. Construction [if applicable]**

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Local Agency Contract Administration Checklist. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract

payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

2. If the State is the responsible party:
  - a. It shall appoint a qualified professional engineer, licensed in the State of Colorado, as the State Agency Project Engineer (SAPE), to perform that administration. The SAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
  - b. If bids are to be let for the construction of the project, the State shall, in conjunction with the Local Agency, advertise the call for bids and upon concurrence by the Local Agency will award the construction contract(s) to the low responsive, responsible bidder(s).
    - (1) In advertising and awarding the bid for the construction of a federal-aid project, the State shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the State/contractor shall incorporate Form 1273 (Exhibit H) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).
    - (2) The Local Agency has the option to concur or not concur in the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare its concurrence or non-concurrence within 3 working days after said bids are publicly opened.
  - c. If all or part of the construction work is to be accomplished by State personnel (i.e. by force account), rather than by a competitive bidding process, the State will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

## **Section 7. ROW Acquisition and Relocation**

CDOT will acquire the 690 Federal property in its entirety. If the State disposes of any portion of the 690 Federal property after acquiring it, the State will retain ownership of a portion of the property sufficient to allow for construction of improvements to Federal Boulevard as defined by the Federal, 5<sup>th</sup> Avenue to Howard Place Planning Environmental Linkage Study. Prior to this project being advertised for bids, the Responsible Party will certify in writing that all Right of Way has been

acquired in accordance with the applicable State and federal regulations, or that no additional Right of Way is required.

Any acquisition/relocation activities must comply with all federal and state statutes, regulations, CDOT policies and procedures, 49 CFR Part 24, the government wide Uniform Act regulation, the FHWA Project Development Guide and CDOT's Right of Way Operations Manual.

Allocation of Responsibilities can be as follows:

- Federal participation in Right of Way acquisition (3111 charges), relocation (3109 charges) activities, if any, and Right of Way incidentals (expenses incidental to acquisition/relocation of Right of Way – 3114 charges);
- Federal participation in Right of Way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in Right of Way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Operation Manual. The manual is located at [http://www.dot.state.co.us/ROW\\_Manual/](http://www.dot.state.co.us/ROW_Manual/).

### **Section 8. Utilities**

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing that all such clearances have been obtained.

### **Section 9. Railroads**

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.

5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

### **Section 10. Environmental Obligations**

The State shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

### **Section 11. Maintenance Obligations**

The Local Agency will maintain and operate the improvements behind the curb constructed under this agreement, for Federal Boulevard, at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

CDOT shall own and maintain new Water Quality facilities that are built by the project. Ownership and maintenance of new or expanded facilities within Local Agency ROW will be determined at a later date and included in a forthcoming Maintenance and Operations agreement.

### **Section 12. Record Keeping**

The State shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The State shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The State shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the Local Agency and FHWA to inspect the project and to inspect, review and audit the project records.

### **Section 13. Termination Provisions**

This contract may be terminated as follows:

- A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the

covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

#### **Section 14. Legal Authority**

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

#### **Section 15. Representatives and Notice**

The State will provide liaison with the Local Agency through the State's Region Director, Region 6, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 6 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to the State:

If to the Local Agency:



Kevin Sullivan  
CDOT Region 6  
2000 South Holly Street  
Denver, Colorado 80222  
(303) 972-9112

George Delaney  
Chief Operation Officer  
Denver Dept. of Public Works  
Office of the Manager  
201 West Colfax Avenue  
Denver, Colorado 80202  
(720) 865-8630

### **Section 16. Successors**

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

### **Section 17. Third Party Beneficiaries**

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

### **Section 18. Governmental Immunity**

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

### **Section 19. Severability**

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

### **Section 20. Waiver**

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

## **Section 21. Entire Understanding**

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

## **Section 22. Survival of Contract Terms**

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

## **Section 23. Modification and Amendment**

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

## **Section 24. Option Letters**

Reserved.

## **Section 25. Disputes**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official,

representative, or board on a question of law.

**Section 26. Local Agency Funding Availability**

A. Notwithstanding any other term or condition of this contract, it is expressly understood and agreed that the obligation of the Local Agency for all or any part of any payment obligations set out herein, whether direct or contingent, shall only extend to payment of monies duly and lawfully appropriated for the purpose of this contract by the City Council of the Local Agency and paid into the Treasury of the Local Agency. The Local Agency hereby represents to the State that the amount designated “Local Agency Commitment” in **Exhibit C** has been legally appropriated for the purpose of this contract by its City Council and paid into the Treasury of the Local Agency. The City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the City. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency’s Revised Municipal Code.

B. Notwithstanding any other term or condition of this contract, this contract is made for the fiscal year of the date of final execution of this contract (the “Contract Fiscal Year”). It is understood that funds appropriated by the Local Agency for this contract in the Contract Fiscal Year, as of the date of execution of this contract are the only funds which will be payable by the Local Agency hereunder during the Contract Fiscal Year.

**Section 27. Local Agency, State Not Agents of Each Other**

It is expressly understood and agreed that the State and the Local Agency shall not in any respect be deemed agents of each other, but shall be deemed to each be an independent contractor.

**Section 28. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§26** applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state agreements/contracts and inclusion of agreement/contract performance information in a statewide contract management system.

The Local Agency’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency’s performance shall be part of the normal Agreement administration process and the Local Agency’s performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and

timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

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**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**CONTRACTOR:**  
**CITY AND COUNTY OF DENVER**  
Legal Name of Contracting Entity

**STATE OF COLORADO:**  
**JOHN W. HICKENLOOPER, GOVERNOR**

By \_\_\_\_\_  
**Timothy J. Harris, P.E., Chief Engineer  
for Donald E. Hunt, Executive Director  
Department of Transportation**

CDOT Vendor #:  
**20000018**

\_\_\_\_\_  
**Michael B. Hancock, Mayor**  
  
Date \_\_\_\_\_

**LEGAL REVIEW:**  
**JOHN W. SUTHERS, ATTORNEY GENERAL**

By \_\_\_\_\_

CORPORATIONS:  
(A corporate seal or attestation is required.)

Attest (Seal) By \_\_\_\_\_  
**Debra Johnson**  
Clerk and Recorder, City and County of Denver

**APPROVED AS TO FORM:**  
City Attorney for the  
CITY AND COUNTY OF DENVER

RECOMMENDED AND APPROVED:

By \_\_\_\_\_  
Assistant City Attorney

By \_\_\_\_\_  
Manager of Public Works

REGISTERED AND COUNTERSIGNED:

By: \_\_\_\_\_  
Manager of Finance

CONTRACT CONTROL NUMBER: \_\_\_\_\_

By: \_\_\_\_\_  
Dennis Gallagher, Auditor

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

**STATE CONTROLLER:**  
**DAVID J. MCDERMOTT, CPA**

By \_\_\_\_\_

Date \_\_\_\_\_

## Scope of Work 18838 US 6 Bridges Design-Build Project

This US 6 Bridges Design-Build Project (Project) replaces US 6 bridges over Bryant Street, the Platte River, I-25, and the Burlington Northern and Santa Fe Railway line. The Project includes the Federal Boulevard Interchange, with improvement limits from 5<sup>th</sup> to 7<sup>th</sup> Avenues; the reconstruction of Barnum East Park; the installation of a bicycle/pedestrian bridge over US 6, west of Federal Boulevard connecting Denver's Barnum and Barnum North Park, serving as mitigation of the 4(f) impacts identified in the Phase 1 Record of Decision for the I-25 Valley Highway Environmental Impact Statement (EIS) (relevant sections follow). Maintenance of the bicycle/pedestrian bridge shall be the responsibility of the City and County of Denver (CCD).

The inclusion of the Federal Interchange into the Project allows both the Colorado Department of Transportation (CDOT) and CCD to realize the benefits of minimizing impacts to the traveling public by reducing the overall construction schedule and optimizing overall expenditures. The main benefits of concurrent construction include:

- Overall duration of the Project will be significantly reduced
- Construction will eliminate the cost of temporary retaining walls related to an interim condition with additional potential to reduce overall project costs by, but not limited to, allowing temporary construction staging and a spoils area at Barnum East Park. This will reduce the closure period of Barnum East Park and provide water quality and/or detention savings/reduction in the right-of-way acquisition costs
- Reduction of additional/future construction phases

Without concurrent construction, access from northbound Federal Boulevard to eastbound US 6 would be closed, causing significant out-of-direction travel for an indefinite period of time.

The CCD will work with CDOT during the Project duration to determine the most effective post-construction water quality requirements for this Project.

Staff from Denver Public Works will participate in the development of Project contract documents to provide input on the following:

- Issues regarding timing
- Oversight and performance measures
- Any other coordination necessary to develop the contract documents.

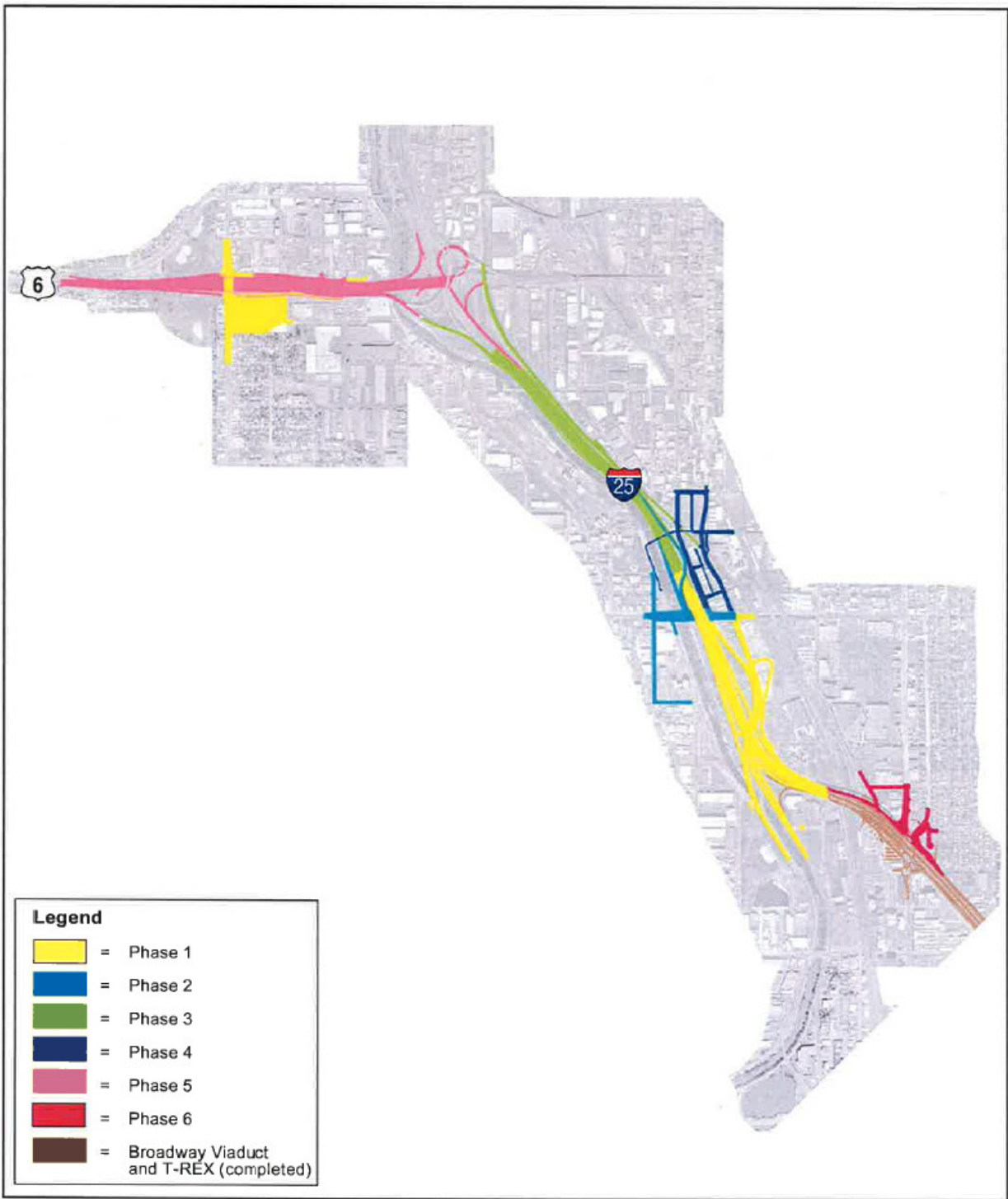
If the Design-Build Contract has an awarded price that is less than the Guaranteed Maximum Price (GMP) provided in the Request for Proposals, any differential realized will be kept in the Project budget to fully fund any other contingencies. At the time the Project has reached final acceptance, CDOT shall provide the non-Bridge Enterprise portion of the remaining Project funds to the CCD, not to exceed \$5.0 million. Any savings realized on portions of the Project funded by Bridge Enterprise, by State statute, must be returned to the Bridge Enterprise.



# Record of Decision

Colorado Department of Transportation  
Federal Highway Administration  
July 2007





**Phased Implementation Plan**





Figure 1-5 shows Phase 1 improvements to US 6. (As noted above, Phase 2 does not include any additional improvements to US 6.) For US 6, Phase 1 consists of the following improvements:

- Relocation of the on ramp from Federal Boulevard to eastbound US 6 from the south and east sides of Barnum East Park to the north side of Barnum East Park. This will result in a more standard diamond configuration for the US 6/Federal Boulevard interchange
- Conversion of 5th Avenue to two-way operation east of Federal Boulevard
- Reconstruction of Barnum East Park
- Construction of a south side slip ramp providing access to Bryant Street via the US 6/Federal Boulevard interchange
- Closure of the partial interchange at US 6 and Bryant Street, with Bryant Street access to be provided via the slip ramps and collector-distributor system included in the US 6/Federal Boulevard interchange
- Replacement of the Federal Boulevard bridge over US 6, along with associated improvements

Phase 1 was selected to provide improvements aimed at addressing the most critical needs in the I-25 and US 6 corridors. Specifically:

- On I-25, Phase 1 provides for the replacement of structurally-deficient structures at I-25 and Santa Fe Drive
- Also on I-25, Phase 1 provides lane continuity with four through lanes on I-25 to match the sections to the north and south
- On US 6, Phase 1 provides for closure of the Bryant Street interchange with standardization of the Federal interchange. These actions will enhance safety through this high accident area

Phase 2 was selected to provide additional operational and safety benefits at the I-25/Alameda Avenue interchange that would not be provided by Phase 1 alone.

In cases where a project is implemented in more than one phase, care must be taken to ensure that the transportation system operates acceptably at the conclusion of each phase. This is referred to as “independent utility” – the ability of each phase to operate on its own. Additionally, it must be demonstrated that air quality conformity will not be jeopardized. In addition, any mitigation measures needed in response to project impacts must be implemented with the phase in which the impacts occur, rather than deferred to a later phase.

For the implementation of Phase 1 and 2, traffic analysis has been done to support the determination of independent utility. This is presented in **Section 2.3** of this ROD. Air quality conformity has been established through coordination with the Denver Regional Council of Governments (DRCOG) and the Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division (APCD). The results of this coordination are described in **Section 1.5** of this ROD. And finally, mitigation measures to be implemented with Phases 1 and 2 are detailed in **Section 5.0** of this ROD.



## 4.0 SECTION 4(F) PROPERTIES

Section 4(f) of the US Department of Transportation Act of 1966 (49 US Code [USC] Section 303 and 23 USC Section 138) mandates that the Secretary of Transportation shall not approve any transportation project requiring the use of publicly owned parks, recreation areas, wildlife and waterfowl refuges, or significant historic sites, regardless of ownership, unless:

- there is no prudent and feasible alternative to using that land, and
- the program or project includes all possible planning to minimize harm to the public park, recreation area, wildlife or waterfowl refuge, or significant historic site, resulting from that use

A Final Section 4(f) Evaluation was included in the Final EIS issued by FHWA and CDOT in November 2006. The Final Section 4(f) Evaluation analyzed possible avoidance alternatives and presented measures to minimize harm for each Section 4(f) use. The Preferred Alternative is described in **Sections 1.1** and **2.3** of this ROD. The Selected Alternative is a portion of the Preferred Alternative and is described in **Sections 1.3** and **2.5** of this ROD.

As described in the Final Section 4(f) Evaluation, three parks (i.e.; Barnum, Barnum East, and Barnum North Parks) are subject to Section 4(f) use with implementation of the Preferred Alternative. These facilities are all owned by the City and County of Denver. With the Selected Alternative, all three of these parks would be subject to Section 4(f) use. However, only a portion of the Preferred Alternative Section 4(f) use of Barnum North Park would occur with the Selected Alternative, with the remainder occurring in a later project phase. The Final Section 4(f) Evaluation documents that there are no prudent and feasible alternatives that meet the purpose and need of the project and avoid the use of these parks. The Final Section 4(f) Evaluation also described minimization of harm for each Section 4(f) use under the Preferred Alternative. The Preferred Alternative (and the Selected Alternative) avoids Section 4(f) use of any historic properties.

The DOI received a copy of the Draft EIS for review and deferred comments on the Draft Section 4(f) Evaluation until a Preferred Alternative was identified. The DOI received a copy of the Final EIS for review, which identified the Preferred Alternative and contained the Final Section 4(f) Evaluation. The DOI submitted comments regarding the Final EIS on December 14, 2006 (See **Appendix B**), and no comments regarding the Final Section 4(f) Evaluation were provided.

In comments on the Final EIS, the City and County of Denver raised some issues regarding the details of the mitigation to be implemented for impacts to Barnum East and Barnum North Parks (see **Appendix B** – letter from City and County of Denver). In response, FHWA and CDOT participated in further discussions with Denver resulting in a clarification of impacts and mitigation requirements (See additional correspondence between CDOT and the City and County of Denver included in **Appendix A**). The results of these discussions did not affect the finding made by FHWA in the Final Section 4(f) Evaluation, but rather serve to clarify the basis for a continued cooperative effort by CDOT and Denver to implement the measures identified to minimize harm to the parks.

The discussions between CDOT, FHWA and the City and County of Denver resulted in the clarification of the impacts and mitigation for Barnum North and Barnum East Parks as follows:

**LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION**

**Intentionally Omitted**

**SAMPLE IGA OPTION LETTER – not applicable**  
 (This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below AND cannot be used in place of exercising a formal amendment.

<b>Date:</b>	<b>State Fiscal Year:</b>	<b>Option Letter No.</b>	<b>CLIN Routing #</b>
--------------	---------------------------	--------------------------	-----------------------

**Contractor / Local Agency :** \_\_\_\_\_

**A. SUBJECT:** (Choose applicable options listed below AND in section B and delete the rest)

1. Option to renew (for an additional term) applies to Highway and Signal maintenance contracts ONLY; this renewal cannot be used to make any change to the original scope of work;
2. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
3. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
4. Option to update funding (a new Section 4. Project Funding Provisions must be referenced with the option letter and shall be labeled Revision 1 to Section 4. Project Funding Provisions (future changes for this option shall be labeled as follows: Revision 2, etc.)

**B. REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:

**(Insert the following language for use with Options #1):**

In accordance with Paragraph(s) \_\_\_\_\_ of contract routing number (*insert FY, Agency code, & CLIN routing #*), between the State of Colorado, Department of Transportation, and (*insert contractor's name*) the state hereby exercises the option for an additional term of (*insert performance period here*) at a cost/price specified in Paragraph/Section/Provision \_\_\_\_\_ of the original contract, AND/OR an increase in the amount of goods/services at the same rate(s) as specified in Paragraph \_\_\_\_\_ of the original contract.

**(Insert the following language for use with Option #2):**

In accordance with the terms of the original contract (*insert FY, Agency code & CLIN routing #*) between the State of Colorado, Department of Transportation and (*insert contractor's name here*), the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The contract is now increased by (*indicate additional dollars here*) specified in Paragraph/Section/Provision \_\_\_\_\_ of the original contract.

**(Insert the following language for use with Option #3):**

In accordance with the terms of the original contract (*insert FY, Agency code & CLIN routing #*) between the State of Colorado, Department of Transportation and (*insert contractor's name here*), the State hereby exercises the option to add an overlapping phase in (*indicate Fiscal Year here*) that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*). Total funds for this contract remain the same (*indicate total dollars here*) as referenced in Paragraph/Section/Provision/Exhibit \_\_\_\_\_ of the original contract.

**(Insert the following language for use with Option #4):**

In accordance with the terms of the original contract (*insert FY, Agency code & CLIN routing #*) between the State of Colorado, Department of Transportation and (*insert contractor's name here*), the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The contract is now (*select one: increased and/or decreased*) by (*insert dollars here*) specified in Paragraph/-Section/-Provision/Exhibit \_\_\_\_\_ of the original contract. A new Section 4. Project Funding Provisions is made part of the original contract and replaces the original Section 4. Project Funding Provisions.

**(The following language must be included on all options):**

The amount of the current Fiscal Year contract value is (*increased/decreased*) by (\$ *amount of change*) to a new contract value of (\$ \_\_\_\_\_) to satisfy services/goods ordered under the contract for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision \_\_\_\_\_ is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$\_\_\_\_\_).

The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

**APPROVALS:**

**For the Local Agency :**

**Legal Name of Local Agency**

\_\_\_\_\_

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

**Print Name of Authorized Individual**

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Title: Official Title of Authorized Individual**

\_\_\_\_\_

**State of Colorado:**

**JOHN W. HICKENLOOPER, GOVERNOR**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Executive Director, Colorado Department of Transportation**

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.**

**State Controller  
David J. McDermott, CPA**

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

**Date:** \_\_\_\_\_

**Issuance date: July 1, 2008**

## **LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. BR 0061-083	STIP No. SDR 7102	Project Code 18838	Region 6
Project Location US 6 Bridges Design-Build			Date 07/02/2012
Project Description US 6 Bridges Design-Build			
Local Agency City and County of Denver CDOT Resident Engineer Matthew Pacheco		Local Agency Project Manager Jennifer Hillhouse CDOT Project Manager Kevin Sullivan	
<p><b>INSTRUCTIONS:</b> This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>TIP / STIP AND LONG-RANGE PLANS</b>			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
<b>PROJECT DEVELOPMENT</b>			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement		X
5.4	Conduct Design Scoping Review Meeting	N/A	N/A
5.5	Conduct Public Involvement	X	X
5.6	Conduct Field Inspection Review (FIR)	N/A	N/A
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)		X
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)		X
5.9	Obtain Utility and Railroad Agreements		X
5.10	Conduct Final Office Review (FOR)	N/A	N/A
5.11	Justify Force Account Work by the Local Agency	N/A	N/A
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items		X
5.13	Document Design Exceptions - CDOT Form 464		X
5.14	Prepare Plans, Specifications and Construction Cost Estimates		X
5.15	Ensure Authorization of Funds for Construction		X

Exhibit D

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  Matthew Pacheco _____ 07/02/2012 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
<b>ADVERTISE, BID AND AWARD</b>			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	N/A	N/A
7.2	Advertise for Bids		X
7.3	Distribute "Advertisement Set" of Plans and Specifications		X
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement		X
7.5	Open Bids		X
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence		X
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract		X
7.10	Provide "Award" and "Record" Sets of Plans and Specifications		X
<b>CONSTRUCTION MANAGEMENT</b>			
8.1	Issue Notice to Proceed to the Contractor		X
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)		X
	Pre-survey		
	• Construction staking		X
	• Monumentation		X
	Partnering (Optional)	N/A	N/A
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)		X
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)		X
	HMA Pre-Paving (Agenda is in CDOT Construction Manual)		X
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents		X
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Matthew Pacheco _____ 303-972-9112 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer		X



**Exhibit D**

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications		X
	Construction inspection and documentation		X
8.6	Approve Shop Drawings		X
8.7	Perform Traffic Control Inspections		X
8.8	Perform Construction Surveying		X
8.9	Monument Right-of-Way		X
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates		X
	Provide the name and phone number of the person authorized for this task.		
	<u>Kevin Sullivan - CDOT</u> <u>303-972-9112</u> Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings		X
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders		X
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status		X
8.16	Prepare and Submit Monthly Progress Reports		X
8.17	Resolve Contractor Claims and Disputes		X
8.18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task.		X
	<u>Matthew Pacheco</u> <u>303-972-9112</u> CDOT Resident Engineer Phone number		
<b>MATERIALS</b>			
9.1	Conduct Materials Pre-Construction Meeting		X
9.2	Complete CDOT Form 250 - Materials Documentation Record		X
	• Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project		X
	• Update the form as work progresses		X
	• Complete and distribute form after work is completed		X
9.3	Perform Project Acceptance Samples and Tests		X
9.4	Perform Laboratory Verification Tests		X
9.5	Accept Manufactured Products		X
	Inspection of structural components:		
	• Fabrication of structural steel and pre-stressed concrete structural components		X
	• Bridge modular expansion devices (0" to 6" or greater)		X
	• Fabrication of bearing devices		X
9.6	Approve Sources of Materials		X
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/>		
	• Generate IAT schedule		X
	• Schedule and provide notification		X
	• Conduct IAT		X
9.8	Approve mix designs		
	• Concrete		X
	• Hot mix asphalt		X
9.9	Check Final Materials Documentation		X
9.10	Complete and Distribute Final Materials Documentation		X

**Exhibit D**

<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements		X
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist		X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280		X
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements		X
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire		X
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)		X
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report		X
<b>FINALS</b>			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter		X
11.3	Advertise for Final Settlement		X
11.4	Prepare and Distribute Final As-Constructed Plans		X
11.5	Prepare EEO Certification		X
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications		X
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)		X
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer		X
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		X
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist		X

- cc: CDOT Resident Engineer/Project Manager  
 CDOT Region Program Engineer  
 CDOT Region EEO/Civil Rights Specialist  
 CDOT Region Materials Engineer  
 CDOT Contracts and Market Analysis Branch  
 Local Agency Project Manager

**SUPPLEMENTAL FEDERAL PROVISIONS**

Supplemental Provisions for Contracts, Grants, and Purchase Orders for Federal Funds received pursuant to the Federal Funding Accountability and Transparency Act (FFATA) of 2006 and 2008. Amendments As of October 1, 2010

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below
  - 1.1. **“Award”** means an award of Federal Financial assistance that a non-Federal Entity receives or administers in the form of:
    - 1.1.1. Grants,
    - 1.1.2. Contracts,
    - 1.1.3. Cooperative agreements (which does not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a)),
    - 1.1.4. Loans,
    - 1.1.5. Loan Guarantees,
    - 1.1.6. Subsidies,
    - 1.1.7. Insurance,
    - 1.1.8. Food commodities,
    - 1.1.9. Direct appropriations, or
    - 1.1.10. Other financial assistance transactions that authorize the non-Federal Entities’ expenditure of Federal Funds.

Award does *not* include:

    - 1.1.11. Technical assistance, which provides services in lieu of money;
    - 1.1.12. A transfer of title to Federally-owned property provided in lieu of money, even if the award is called a grant;
    - 1.1.13. Any classified award; or
    - 1.1.14. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111-5)
  - 1.2. **“Central Contractor Registration (CCR)”** means the Federal repository into which an Entity must provide information required for the conduct of business as a recipient.
  - 1.3. **“Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify business entities.
  - 1.4. **“Entity”** means all of the following as defined at 2 CFR part 25, subpart C;

## Exhibit E

- 1.4.1. A governmental organization, which is a State, local government, or Indian Tribe,
  - 1.4.2. A foreign public entity,
  - 1.4.3. A domestic or foreign non-profit organization,
  - 1.4.4. A domestic or foreign for-profit organization, and
  - 1.4.5. A Federal Agency, but only a subrecipient under an award or subaward to a non-Federal entity.
- 1.5. **“Subaward”** means a legal instrument to provide support for the performance of any portion of the substantive project or program funded by federal funds to a Prime Recipient that a Prime Recipient awards to a Subrecipient.
- 1.6. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes all award types in §1.1.
- 1.7. **“Contractor”** means the party or parties to the Contract other than the Prime Recipient and includes a grantee, subgrantee, Subrecipient, or a borrower. For purposes of FFATA reporting, Contractor is either a Subrecipient or a Vendor under this Contract.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282). Also referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State Agency or Institution of Higher Education that receives federal funds directly from a Federal Agency in the form of an award in §1.1.
- 1.10. **“Subrecipient”** means a non-Federal Entity receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.11. **“Supplemental Provisions”** means these Supplemental Provisions for Contracts, Grants, and Purchase Orders using Federal funds except those funds provided under the American Recovery and Reinvestment Act of 2009, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado Agency or Institution of Higher Education.
- 1.12. **“Total Compensation”** means the cash and noncash dollar value earned by the executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following
  - 1.12.1. Salary and bonus,
  - 1.12.2. Awards of stock, stock options, and stock appreciation rights. This amount shall equal the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments,
  - 1.12.3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees,
  - 1.12.4. Change in pension value, this amount shall equal the change in present value of defined benefit and actuarial pension plans,
  - 1.12.5. Above-market earnings on deferred compensation which is not tax-qualified, and
  - 1.12.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## Exhibit E

- 1.13. “Vendor”** means a dealer, distributor, merchant or other seller providing goods or services required for a project or program funded by Federal funds. A Vendor is not subject to all the terms and conditions of the Federal award, and all program compliance requirements do not pass through to a Vendor.
- 2. Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.**
- 3.1. CCR** - Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under this award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information
- 3.2. DUNS** – Contractor shall provide its DUNS number to its Prime Recipient, and shall update its information in Dun & Bradstreet at least annually after the initial registration, and more frequently if required by changes in its information.
- 4. Total Compensation** – Contractor shall include total compensation in CCR for each of its five most highly compensated executives for the preceding completed fiscal year if:
- 4.1.** the total Federal funding authorized to date under this award is \$25,000 or more, and
- 4.2.** in the preceding fiscal year, Contractor received:
- 4.2.1.** 80 percent or more of its annual gross revenues from Federal procurement contracts and subcontracts and Federal financial assistance subject to the Transparency Act, and
- 4.2.2.** \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and Federal financial assistance subject to the Transparency Act, and
- 4.3.** the public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.
- 5. Reporting.** Contractor shall include data elements in its CCR and report to its Prime Recipient Entity the data elements required in §7 if Contractor is a Subrecipient for the award types of grants, contracts, and cooperative agreements (which does not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a). No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions, as the cost of producing such reports shall be deemed included in the Contract price. The reporting requirements in §7 are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor’s obligations under this Contract. The State may provide written notice to Contractor of any such

## Exhibit E

change in accordance with §2 above, but such notice shall not be a condition precedent to Contractor's duty to comply with revised OMB reporting requirements. The Colorado Office of the State Controller shall provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>

6. **Effective Date and Dollar Threshold for Reporting** – The reporting requirements in §7 apply for new Federal grants, contracts, and cooperative agreements (except CRDA) as of October 1, 2010, if the initial award is \$25,000 or more. If the initial award is below \$25,000 but subsequent award modifications result in a total award of \$25,000 or more, the award is subject to the reporting requirements as of the date the award exceeds \$25,000. If the initial award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the award continues to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.
  - 7.1 **To CCR.** A Subrecipient shall register in CCR and report the following data elements in CCR:
    - 7.1.1 Subrecipient DUNS Number
    - 7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account
    - 7.1.3 Subrecipient Parent DUNS Number
    - 7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District
    - 7.1.5 Subrecipient Officers' Names of top 5 highly compensated officials if the criteria in §4 are met.
    - 7.1.6 Subrecipient Officers' Total Compensation of top 5 highly compensated officials if criteria in §4 met
  - 7.2 **To Prime Contractor.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the contract, the following data elements:
    - 7.2.1 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
8. **Vendor** – There are no Transparency Act reporting requirements for vendors.
9. **Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

City signs first, CDOT signs last



**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 \_\_\_\_\_

