

RESOLUTION NO. 25-40

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES,
COLORADO, APPROVING A CONSTRUCTION MANAGER SERVICES
AGREEMENT BETWEEN THE CITY OF CASTLE PINES AND KRAEMER NORTH
AMERICA, LLC FOR THE I-25/HAPPY CANYON INTERCHANGE PROJECT
(PROJECT NO. 2025-PW-011)**

WHEREAS, the City of Castle Pines, Colorado (the “City”) is authorized to enter into contracts for the performance of general municipal governance and services; and

WHEREAS, the City issued a Request for Proposals (RFP) in July 2025 for construction manager services associated with the I-25/Happy Canyon Interchange Project (Project No. 2025-PW-011) (the “Services”); and

WHEREAS, the City received three (3) proposals in response to the RFP within the time the Project was advertised; and

WHEREAS, the City Council, after consideration of the proposals submitted and the recommendations of City staff, finds it in the best interests of the City to award the Services to Kraemer North America, LLC, a Delaware limited liability company (the “Contractor”); and

WHEREAS, the City desires to enter into a construction manager services agreement with the Contractor to provide preconstruction phase construction manager services for the I-25/Happy Canyon Interchange Project (the “Agreement”); and

WHEREAS, the CM Preconstruction Fee, as defined in the Agreement, for the performance of the Services is Two-Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00); and

WHEREAS, the City Council desires to approve the Agreement and further desires to authorize the City Manager to execute the Agreement on behalf of the City once in final form.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:

Section 1. The City Council hereby: (a) approves the Agreement with the Contractor in substantially the same form as attached hereto and incorporated herein as **Exhibit A**; (b) authorizes the City Attorney, in consultation with the City Manager, to make or negotiate such changes as may be needed to the Agreement so long as any changes do not substantially increase the obligations of the City; and (c) authorizes the City Manager to execute the Agreement on behalf of the City when the Agreement is in its final form.

Section 2. If any section, paragraph, clause, or provision of this Resolution is held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability

of such section, paragraph, clause, or provision shall not affect any of the remaining sections, paragraphs, clauses, or provisions of this Resolution.

Section 3. **Effective Date.** This Resolution shall take effect upon its approval by the City Council.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 7 IN FAVOR, 0 AGAINST AND 0 ABSENT ON THIS 23RD DAY OF SEPTEMBER 2025.



ATTEST:

Tobi Duffey

Tobi Duffey, MMC, City Clerk

Tracy Engerman

Tracy Engerman (Nov 12, 2025 14:53:25 MST)

Tracy Engerman, Mayor

APPROVED AS TO FORM:

Linda Michow

Linda Michow (Oct 9, 2025 10:27:27 MDT)

Linda C. Michow, City Attorney

EXHIBIT A
CONSTRUCTION MANAGER SERVICES AGREEMENT BETWEEN THE CITY OF
CASTLE PINES AND KRAEMER NORTH AMERICA, LLC FOR THE I-25/HAPPY
CANYON INTERCHANGE PROJECT (PROJECT NO. 2025-PW-011)

CITY OF CASTLE PINES

CONSTRUCTION MANAGER SERVICES AGREEMENT
(Project #2025-PW-011)

DATE: _____, 2025.

PARTIES: **CITY OF CASTLE PINES**, a Colorado municipal corporation, with a principal office address of 7437 Village Square Lane, Suite 200. Castle Pines, CO 80108 ("City").

KRAEMER NORTH AMERICA, LLC, a Delaware limited liability company, with a principal office address of 1 Plainview Rd, Plain, WI 5357 ("Contractor").

RECITALS:

- A. The City issued a Request for Proposal (#2025-PW-011) seeking qualified firms with expertise in CM Services for the Project.
- B. Contractor timely submitted its proposal.
- C. City wishes to engage Contractor to provide the CM Services more fully described in the following Agreement and Exhibits.

TERMS:

ARTICLE I
DEFINITIONS

- 1.1 "Agreement" or "Contract" is this written City of Castle Pines Construction Manager Services Agreement entered into by and between the City and the Contractor for the performance of the Work and payment therefore.
- 1.2 "Amendment" is a written amendment to this Agreement signed by the Contractor, and the City or its authorized agent, issued after the Effective Date of this Agreement, authorizing a change in the Work, the method or manner of performance, an adjustment in the Fixed Limit of Construction Cost, Contract Sum, the Contractor's CM Pre-Construction Fee, or the Term.

- 1.3 "Bid Package" means a substantially complete Plans, Specifications, and Estimate package from which a CAP proposal could be prepared for LLTP or any Construction Phase and which Bid Package may be advertised through the City low bid procurement process.
- 1.4 "Change Order(s)" means a written change signed by the Contractor and the City, issued after the execution of this Agreement, authorizing a change in the Work or the method or manner of performance. Change Orders may be executed using a form approved by the Contractor and City in accordance with the Standard Specifications. Change Orders cannot be used to change the Fixed Limit of Construction Cost, Contract Sum, CAP, Contactor's CM Preconstruction Fee or Term, which can only be changed by Amendment.
- 1.5 "CM Management Price Percentage" means the percentage to be applied to all Construction CAP proposals equal to the amount of profit, overhead, and construction general conditions as listed in Appendix C-1 of the Proposal.
- 1.6 "CM Services" means the services performed by Contractor as specified in Section 3.1.2.
- 1.7 "CM Construction Contract" means the contract between the City and the Contractor to perform construction activities for any approved Construction CAP.
- 1.8 "Constructability Report" means a written report that reviews each Bid Package at agreed upon Milestones for constructability and feasibility, which includes, but is not limited to, a brief cost and risk analysis with regards to constructability.
- 1.9 "Construction CAP" means the maximum amount for which all Work required for each Construction Phase, excepting LLTP, shall be accomplished (including the CM Management Price Percentage) and it shall be computed by the Contractor in accordance with the provisions of Section 9.5.
- 1.10 "Construction Phase" means the phase of Work performed by the Contractor in the construction of the Work from award of construction contracts for any Bid Package until the final acceptance of such Bid Package by the City. Construction Phase excludes all Design Services.
- 1.11 "Contract Documents" means, collectively, the following documents:
- 1.11.1 The exhibits of the Agreement that are attached hereto and incorporated herein:
- 1.11.1.1 Exhibit A, Contractor's Preconstruction Roles and Responsibilities ("Contractor's Preconstruction Roles and Responsibilities Matrix");

- 1.11.1.2 Exhibit B.1, Contractor's Certificate of Liability Insurance ("Certificate of Liability Insurance");
- 1.11.1.3 Exhibit B.2, Contractor's Certification ("Contractor's Certification"); and
- 1.11.1.4 Exhibit C, Contractor's CM Fee Proposal (Forms C-1, C-2, and Fee CM Required Information) (Dated September 10, 2025).

1.11.2 The following documents are incorporated by reference and made a part of the terms and conditions of this Agreement:

- 1.11.2.1 CDOT's Standard Specifications for Road and Bridge Construction ("Standard Specifications").
- 1.11.2.2 Request for Proposal (2025-PW-011) (including, but not limited to, Appendix D – Construction General Conditions) and Contractor's Proposal (Dated August 14, 2025) (collectively, the "Proposal"); and

1.11.3 Contract Amendment(s) (incorporating Bid Packages) Exhibits that will be attached hereto and incorporated by reference herein when executed:

- 1.11.3.1 Exhibit D.1, For the LLTP Bid Package including all CAP documents, Drawings, Plans and Specifications including addenda and Modifications (when approved by the City).
- 1.11.3.2 Exhibit D.2, Performance Bond ("Performance Bond");
- 1.11.3.3 Exhibit D.3, Payment Bond ("Payment Bond"); and
- 1.11.3.4 Exhibit D.4, Insurance Certificate ("Insurance Certificate").

1.11.4 The following documents will be incorporated by reference and made a part of the terms and conditions of this Agreement upon issuance by the City:

- 1.11.4.1 Exhibit E, Contractor Performance Evaluation Report ("Contractor Performance Evaluation Report");
- 1.11.4.2 Exhibit F, Notice to Proceed to Commence LLTP ("Notice to Proceed to Commence LLTP");
- 1.11.4.3 Exhibit G, Notice to Proceed to Commence CM Services ("Notice to Proceed to Commence CM Services");
- 1.11.4.4 Exhibit H, City Acceptance Letter for LLTP CAP or CM Services (each a "City Acceptance Letter");
- 1.11.4.5 Exhibit I, Notice of Substantial Completion for LLTP CAP or CM Services (each a "Notice of Substantial Completion"); and
- 1.11.4.6 Exhibit J, Notice of Final Settlement ("Notice of Final Settlement").

- 1.12 "Contract Sum" shall be defined as provided in Section 9.6.1.
- 1.13 "Contracting and Diversity Plan" means the plan developed by the Contractor which outlines the Contractor's expected approach to subcontracting, including promoting disadvantaged and small business participation, in the Construction Phases of the Project. The Contracting and Diversity Plan shall detail the opportunities that the Contractor has identified for possible participation by Emerging Small Businesses and DBEs. The Contracting and Diversity Plan shall be included in each Bid Package prepared by the Contractor and may be considered by the City when determining the goal for DBE participation to be applied to the relevant Construction Phase.
- 1.14 "Contractor" means the individual, joint venture, partnership, or corporation which has, been selected by the City by virtue of its in-house capabilities of budgeting, cost estimating, management and labor relations personnel, the required technical and professional services expertise to work with the City and the Design Consultant in order to help formulate the Project budget, furnish the Design Consultant with the information on construction technology and market conditions to help assure that the Project design stays within the Project budget, Fixed Limit of Construction Cost, and aggregate of LLTP CAPs and Construction CAPs (except for changes made pursuant to Article 10) and manage the procurement effort.
- 1.15 "Contractor's CM Preconstruction Fee" means the lump sum amount to be paid by the City to the Contractor for Work performed by Contractor through the Design Phase which is equal to the amount of the fees and costs for administrative costs, overhead and profit, including, but not limited to, all resources needed to perform the duties described in Exhibit C: Scoring Form C-1: CM Fee Proposal, Scoring Form C-2: CM Preconstruction Fee Form, and CM Fee Required Information.
- 1.16 "Cost Model" means the open and transparent model that the Contractor develops and uses through the Design Phase so that estimates and assumptions are communicated to the City, Design Consultant and Independent Cost Estimator.
- 1.17 "Critical Path Method" or "CPM" means a mathematically based algorithm for scheduling a set of project activities, which is an important tool for effective project management. It involves constructing a model of the project including a list of all activities required to complete the project (typically categorized within a work breakdown structure), the time (duration) that each activity will take to completion, and the dependencies between the activities. Using these values, CPM calculates the longest path of planned activities to the end of the project, and the earliest and latest that each activity can start and finish without making the project longer. This process determines which activities are "critical" (i.e., on the longest path) and which have "total float" (i.e., can be delayed without making the project longer).

- 1.18 "Date of Completion" is the date certified by the City when the Work, or designated portion thereof, is complete in accordance with the Contract Documents.
- 1.19 "Day" means calendar day unless specifically designated otherwise.
- 1.20 "DBE" means a business currently certified as a "Disadvantaged Business Enterprise" by the Colorado Unified Certification Program.
- 1.21 "DBE Program" means City's "Disadvantaged Business Enterprise Program" which has been developed in accordance with 49 CFR Part 26 and approved by the appropriate federal government operating agency.
- 1.22 "Design Consultant" means the legally approved professional Design Consultant, or group or association or professional corporation of such approved professional Design Consultants, engineers and consultants, who have contracted with the City to accomplish Design Services necessary for the Project.
- 1.23 "Design Phase" means the phase of Work in which CM Services and Design Services are performed.
- 1.24 "Design Services" means architectural and engineering services provided by the Design Consultant and/or the Contractor.
- 1.25 "Direct Cost of the Work" means those items included in any Construction CAP which, pursuant to the Construction General Conditions, are directly related to construction and not otherwise defined under such Construction Phase.
- 1.26 "Dispute Resolution" means the process through which the Parties (City and the Contractor) agree to resolve any issue related to this Agreement that may result in Disputes and Claims.
- 1.27 "Disputes and Claims" means all disputes and/or claims concerning contract price, time, payment, and/or interpretation of this Agreement. Disputes and Claims include, but are not limited to, any disagreement resulting from a delay, a Change Order, any Modification, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, interpretations of the Agreement provisions, Drawings, Plans, or Specifications or the existence of alleged differing site conditions.
- 1.28 "Drawings" means all Plans and Specifications approved by the City which have been prepared by the Design Consultant showing the work for the Project to be performed.

- 1.29 "Emerging Small Business" means any business certified by the State to participate in the ESB Program that has not otherwise lost such certification due to graduation or revocation.
- 1.30 "ESB Program" means State's "Emerging Small Business Program" which has been developed in accordance with 2 CCR 604-1 and approved by the State of Colorado Transportation Commission and is intended to provide assistance and increase opportunities for Emerging Small Businesses.
- 1.31 "Final Acceptance" or "Finally Complete" mean the stage in the progress of the Work for any LLTP Phase or Design Phase, after Substantial Completion, when all remaining items of Work for such phase have been completed, all requirements of the Contract Documents related to such phase are satisfied and the City Acceptance Letter for such phase can be issued. Portions of the phase may be separately and partially deemed Finally Complete at the discretion of the City when that portion of the phase reaches such stage of completion and a partial City Acceptance Letter for such phase can be issued.
- 1.32 "FIR" means the field inspection review which is the plan review where the Plans and Specifications are at the percent completed specified in the Bid Package.
- 1.33 "Fixed Limit of Construction Cost" is the dollar amount available for the total cost for performance of all LLTP CAPs and Construction CAPs as designed or specified by the Design Consultant.
- 1.34 "FOR" means the final office review which is the plan review where the Plans and Specifications are at the percent completed specified in the Bid Package.
- 1.35 "Health and Safety Plan" means a site-specific safety and health plan to protect workers, staff, and visitors that protects their health and safety.
- 1.36 "Independent Cost Estimate" means an estimate that is conducted with the Project design and construction information independent of the City, Design Consultant and the Contractor.
- 1.37 "Independent Cost Estimator" or "ICE" means the designee of the City tasked to perform the Independent Cost Estimate.
- 1.38 "Innovation Tracking and Performance Report" means a report that tracks all innovations offered by Contractor, City, and Design Consultant team members. It also tracks the performance of these innovations during any Construction Phase or LLTP of the Project.

- 1.39 "Instruments of Service" means all documents produced by the Design Consultant, including Plans, Specifications, Drawings, opinions, reports, and calculations, which have historically been treated as intellectual property belonging to the Design Consultant that created it.
- 1.40 "LLTP" means long lead-time procurements which must be ordered and/or procured in advance of the Construction Phase for which it shall be used.
- 1.41 "LLTP CAP" means the maximum amount for which any LLTP shall be procured and it shall be computed by the Contractor in accordance with the provisions of Section 9.5. The CM Management Price Percentage is not applied to any LLTP CAP proposals and shall be defined as Work under the Contractor's CM Preconstruction Fee.
- 1.42 "Key Personnel" means the listed personnel in the Project Management Team/Capability in "Contractor's Proposal" which is part of the Proposal that constitutes an agreement by the Contractor to make the personnel available to complete the Work at whatever level the Project requires pursuant to Section 1.3.
- 1.43 "Material Sourcing Plan" means the plan that details how the Contractor will handle bids from material vendors for any LLTP CAP or Construction CAP proposals. This plan is part of the open Cost Model required as part of any Bid Package development.
- 1.44 "Milestone" means a point in the Design Phase where Plans, Specifications, and estimates are at an agreed completion point. Milestone examples include FIR, FOR, and LLTP CAP or Construction CAP proposals.
- 1.45 "Modification" includes (1) a written Amendment to this Agreement signed by both parties, (2) a Change Order, or (3) a written interpretation issued by the City pursuant to Section 4.3.
- 1.46 "Notice" shall mean any communication in writing from either contracting Party to the other by such means of delivery that receipt cannot be properly denied. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set on the first page of this Agreement.
- 1.47 "Notice of Termination" means the delivered Notice that informs the Contractor that the Agreement between the City and the Contractor is being terminated for the convenience of the City or for default pursuant to Article 16.
- 1.48 "Opinion of Probable Construction Cost" or "OPCC" is the cost to complete the Work for a LLTP or a Construction Phase. This cost includes all labor, materials, equipment, bond

premiums, and actual costs of procurement or construction that the Contractor will use for the duration of such LLTP or Construction Phase to complete the Work. Each Opinion of Probable Construction Cost shall be produced in an open book process throughout the Design Phase of the Project so that the City, the Design Consultant, and the Independent Cost Estimator can make accurate assumptions, calculate prices, and determine the amount of risk in the Project.

- 1.49 "Pay Estimate" means a request for payment for Work completed on a monthly basis and pursuant to the Standard Specifications.
- 1.50 "Plans" includes the detailed plans and standard plans in any Exhibit D, in which calculated dimensions will govern over scaled dimensions.
- 1.51 "Procurement Review Report" means the report detailing any LLTP CAP plans, warranties, liquidated damages, procurement strategies, schedules, and details required for LLTPs.
- 1.52 "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, cost models, risk registers, communications, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.
- 1.53 "Project" is the total design and construction of the project as identified in Section 1 of the "City's Request for Proposal" which is part of the Proposal, of which the Work performed under the Contract Documents is a part, and may include construction by the City or by separate contractors.
- 1.54 "Project Management Software" means the contract-control/project-management software approved by the City.
- 1.55 "Project Manager" means a qualified individual authorized by the Contractor to be responsible for coordinating time, equipment, money, tasks, and people for all or specified portions of the Project.
- 1.56 "Project Schedule" means a schedule that is prepared by the Contractor that shall be used for coordination, for evaluation of progress, for evaluation of changes to the Agreement, and to ensure the timely completion of the Work as called for in the Contract Documents.
- 1.57 "Quality Control Plan" means the plan describing the Contractor's plans to ensure quality and compliance in construction.

- 1.58 "Risk Management Plan" means the plan which includes risk identification, assessment, and completion of a Risk Register detailing risks, mitigation, and the assigned responsibility for each risk.
- 1.59 "Risk Register" means a listing of risks and opportunities, risk assessments, and an evaluation of mitigation and responsibility for those risks.
- 1.60 "Samples" are physical examples which illustrate materials, equipment, or reasonable workmanship, and establish standards by which the Work shall be judged.
- 1.61 "Schedule of Bid Items" is part of the Contract Documents for any LLTP CAP or Construction CAP proposals, which includes an itemized description of the Work by division and section of the Specifications. The format will be an electrical EBS file submitted to the City by floppy disk, flash drive, CD, or electronic submittal.
- 1.62 "Shop Drawings" are drawings, diagrams, schedules, and other data specifically prepared for the Work by the Contractor or any Subcontractor of any tier, manufacturer, Supplier, or distributor, to illustrate some portion of the Work.
- 1.63 "Specifications" means the detailed, exact statement of particulars, especially statements prescribing materials and methods; and quality of Work for any LLTP or Construction Phase, which are attached in any Exhibit D and include, but are not limited to, Project special provisions and standard special provisions.
- 1.64 "Standard Specifications" means the current provisions in the Colorado Department of Transportation (CDOT) Standard Specifications for Road and Bridge Construction.
- 1.65 "State" means the State of Colorado.
- 1.66 "Subcontractor" means a person, firm, or corporation supplying labor and materials, or only labor, for all or any portion of the Work, under separate contract or agreement with the Contractor.
- 1.67 "Substantial Completion" or "Substantially Complete" mean the stage in the progress of the Work for any LLTP or Design Phase when the procurement or CM Services are sufficiently complete, in accordance with the Contract Documents as modified by any Amendment or Change Order, so that the Work, or at the discretion of the City, any designated portion thereof, is available for its intended use by the City and a Notice of Substantial Completion for such phase can be issued. Portions of the phase may, at the discretion of the City, be designated as Substantially Complete.

- 1.68 "Superintendent" means the Contractor's authorized employee held responsible in charge of the Work.
- 1.69 "Supplier" means any manufacturer, fabricator, distributor, material man or vendor.
- 1.70 "Term" means the term of the Agreement, which shall commence as set forth in Section 6.1 and shall end on the final completion date of the Project pursuant to Article 15.
- 1.71 "Termination Claim" means a claim that results from termination of this Agreement pursuant to section 108.10 of the Standard Specifications or Article 16 of this Agreement.
- 1.72 "Termination Date" means the date this Agreement shall terminate, which is December 31, 2026, unless sooner terminated or further extended as specified elsewhere herein.
- 1.73 "City" means the City of Castle Pines, Colorado, a home rule municipal corporation.
- 1.74 "Value Engineering" means a study or activity that helps to design and provide deliverables that meet the customer needs at the lowest cost while assuming a standard of quality and reliability.
- 1.75 "Work" means the CM Services and all LLTPs required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.
- 1.76 "Worker and Public Safety Plan" means the report detailing how the Contractor will provide a safe work site and provide safety for the travelling public.
- 1.77 "Working Day" means any day, exclusive of Saturdays, Sundays, and City and federal recognized holidays, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed with the normal working force engaged in performing those items controlling the completion of the Work.

ARTICLE II

SCOPE OF SERVICES

- 2.1 The City intends to design and construct the Project. This Agreement is for CM Services only.

- 2.2 In the performance of the Work under this Agreement, the Contractor acknowledges that time is critical for Project delivery and that portions of the Work could have their design completed as separate Bid Packages and under construction before other portions of the Work are fully designed. It is further recognized that this accelerated approach to construction utilizing the services of a Design Consultant and Contractor is a unique concept and that its utilization requires maximum cooperation between all parties. It is also recognized that the Work to be performed by the Contractor and the inter-relationships and coordinative aspects thereof are in the developmental state and not fully defined. In furtherance thereof, if there appears to be a duplication, overlap or conflict of the responsibilities of or duties between the Design Consultant and Contractor or an absence of designation, the question shall be submitted to the City for determination. The Contractor shall abide by the decision of the City provided it does not require the performance of Work beyond what was reasonably contemplated and accepted by the Contractor as its responsibility.
- 2.3 In the performance of the Work, the Contractor agrees that its "key individuals" in its response to the "listed personnel in the Project Management Team /Capability" in "Contractor's Proposal" which is part of the Proposal (as defined in Section 1.12.2.2)(collectively, the "Key Personnel") constitutes an agreement by the Contractor to make such Key Personnel available to complete the Work on the Contract at whatever level the Project requires. Modifications to the Contractor's Key Personnel and other personnel listed in the Proposal, Contractor's Proposal are discouraged and will not be approved without justification. Examples of justification include death of a team member, changes in employment status, bankruptcy, inability to perform, organizational conflict of interest, or other such significant cause. In order to secure the City's approval after award of any change to the Contractor's Key Personnel, a written request shall be forwarded to the City for consideration as soon as possible after the event. The request shall include: a) the nature of the desired change, b) the reason for the desired change, and c) a statement of how the desired change will meet the required qualifications for the position/responsibility. No such modification will be made without prior approval by the City.
- 2.4 The Contractor agrees to cooperate fully with the City in the CM Services and LLTP aspects of the Work to keep within the Fixed Limit of Construction Cost.
- 2.5 The Contractor understands the relationship of trust and confidence established between it and the City and accepts those responsibilities as described in this Agreement. The Contractor covenants with the City to furnish its best skill and judgment and to cooperate with the Design Consultant in furthering the interests of the City. The Contractor agrees to furnish efficient business administration, Project management, and superintendence and to use its best efforts to complete the Work in an expeditious and economical manner consistent with the interests of the City.
- 2.6 The Contractor, the City, and the Design Consultant (collectively, the "Project Team") shall work during the Design Phase through to the acceptance of all LLTP CAPs and Construction CAPs. The Contractor shall provide leadership to the Project Team on all matters relating to construction.

- 2.7 The Contract Documents shall not be deemed to create any contractual relationship between the Design Consultant and the Contractor or any separate contractors, subcontractors of any tier or suppliers on the Project; nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against the City, the Design Consultant or Contractor which does not otherwise exist without regard to the Contract Documents.
- 2.8 The Work of the Contractor shall consist of its Work in connection with the Design Phase. The Design Phase of the Contractor's Work shall be parallel and coincidental with the Field Inspection Review ("FIR"), Final Office Review ("FOR"), and final Design Phase of the Design Consultant's services for each Bid Package. As the Bid Packages are prepared and prices are established for the Work to be performed within each respective Bid Package, the Parties contemplate that:
- 2.8.1 The procurement of any LLTP by Contractor shall be approved by the City through a contract amendment to this Agreement (with corresponding adjustments to the Contract Sum and/or Term) and subject to the issuance of a Notice to Proceed to Commence LLTP; and
- 2.8.2 The Work to be performed by the Contractor during the Construction Phase shall be approved and paid for by the City through construction contracts separate from this Agreement and modified for CM projects to incorporate the Bid Packages, Bonds, Certificates of Insurance, LLTP CAP and Construction CAP proposals, and all other contract documents required for the construction contracts.
- 2.9 The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents shall be required unless it is not consistent therewith and is not reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. Numerous exhibits to be developed over a period of time are to be also attached to and made a part of the Contract Documents, some of which may be in conflict with other exhibits or portions of this Agreement

ARTICLE III

CONTRACTOR SERVICES

The Contractor shall perform the following services under this Agreement described below:

3.1 COMPLETION WITHIN FISCAL AND TIME CONSTRAINTS

3.1.1 The Contractor expressly recognizes that this Project is being undertaken on an accelerated basis and must be completed within the time and fiscal constraints as set forth throughout this Agreement and its Exhibits. The Contractor further represents to the City that by executing this Agreement, it has been fully informed and has thoroughly reviewed: the goals of the Project; the work effort of the Design Consultant performed to date for the Project; all of this Agreement's Exhibits and Contract Documents; has been informed of the City's general time as well as fiscal constraints and contingencies applicable to the Fixed Limit of Construction Cost; and all of the CM Services and LLTPs to be provided by the Contractor pursuant to the Contract Documents. Based upon this review and analysis and recognizing that the contract for Design Services is between the City and the Design Consultant, the Contractor nonetheless represents to the City that it shall provide all the necessary services and perform all of the Work within the requirements of the Contract Documents.

3.1.2 To accomplish the objectives set forth in Section 3.1.1, the Contractor shall provide consultation throughout the Design Phase, but not limited to, the furnishing of all necessary CM Services and LLTPs. In cooperation with the Design Consultant and City, the Contractor shall:

1. Review all as-builts, current design, and site conditions.
2. Attend the Project Scoping Workshop.
3. Attend all Project, Milestone, Project action team, LLTP CAP or Construction CAP negotiation meetings with the Project team as agreed at the Project Scoping Workshop.
4. Formulate and evaluate alternative designs, systems, and materials.
5. Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives. The Contractor shall develop the OPCC on designs prepared by the Design Consultant at the completion of any agreed upon Milestone and shall include an analysis and commentary as to any discrepancies observed in any report referenced in Sections 3.1.2(7) and (8) below.
6. Evaluate the alternatives on the basis of costs, construction schedules, availability of labor, equipment, and materials, and construction feasibility in the form of Constructability Reports.

7. With the assistance of the Design Consultant, prepare written procurement reviews for materials that could be procured by the City or the Contractor ahead of any Construction Phase.
8. With the assistance of the Design Consultant, prepare written reports at the end of any FIR or any FOR summarizing the Value Engineering activities accomplished and any recommendations developed within each phase.
9. If OPCCs and/or bids received for the Work contained in any Bid Package cause the anticipated cost of the Work to exceed the then current OPCC, the Fixed Limit of Construction Cost, any LLTP CAP, any Construction CAP or Schedule of Bid Items, the Contractor shall, at no additional cost to the City unless caused by an increase in the Contractor's Work requested by the City, provide additional Value Engineering services in conjunction with any and all appropriate items in the OPCC, the Fixed Limit of Construction Cost, any LLTP CAP, any Construction CAP and/or the Schedule of Bid Items for the Work.
10. Lead Value Engineering meeting(s) at agreed upon Milestones to coordinate estimating tasks, bring multidiscipline cost/construction experts to evaluate alternative designs, systems, and materials. This Work includes the submittal and ongoing evaluation of Value Engineering Change Orders, if required.
11. Prepare preliminary construction schedules and phasing alternatives.
12. In collaboration with the Design Consultant and City, develop a Risk Management Plan, perform risk assessments, and prepare a Risk Register.
13. With the assistance of the Design Consultant and City, develop an Innovation Tracking and Performance Report
14. Develop a Quality Control Plan, a Material Sourcing Plan, and a Worker and Public Safety Plan.
15. Prepare and submit a Procurement Review Report for each LLTP CAP.

3.1.3 The City and the Design Consultant shall participate in the formulation and evaluation of alternatives in the Value Engineering activity.

3.2 AVAILABLE FUNDS

- 3.2.1 The Parties expressly recognize and agree that this Agreement is subject to and contingent upon the continuing availability of funds for the purposes hereof. If the City does not receive such funds or any part thereof, the City's performance hereunder is contingent upon the continuing availability of such funds and the City may immediately terminate this Agreement without liability, including liability for termination costs. In the event of termination, the Contractor is entitled to payment, in accordance with this Agreement, for Work completed on the Project as of the date of the termination.
- 3.2.2 The Contractor acknowledges that the City is limited in the funds available to design and construct the Project. Should funding of a lesser amount be made available for the Project, it is the obligation of the City to revise the Project scope consistent with the ultimate appropriation.
- 3.2.3 Payments pursuant to this Agreement shall be made only from available funds encumbered for this Agreement and the City's liability for such payments shall be limited to the amount remaining of such encumbered funds.

3.3 BUDGETING AND FIXED LIMIT OF CONSTRUCTION COST

- 3.3.1 The Contractor shall assist the Design Consultant in evaluating the City's preliminary budget. Based on consultation with the Design Consultant and the Contractor, the City shall furnish a Fixed Limit of Construction Cost to the Contractor which shall set forth a dollar amount available for the total OPCC(s) of the Project and include contingencies for bidding and construction, shared risk contingency pools, force account items, and the CM Management Price Percentage.
- 3.3.2 The Fixed Limit of Construction Cost may be revised only by approved Amendments.

3.4 COST ESTIMATING AND PROJECT MANAGEMENT SOFTWARE

- 3.4.1 Cost estimating shall be conducted by three entities during the Design Phase of the Project. The City and Contractor shall maintain their own OPCCs through the Design Phase. The City may provide an Independent Cost Estimator or ICE that will develop an Independent Cost Estimate. At each agreed upon Milestone and after any LLTP CAP, or any Construction CAP proposals are submitted by the Contractor, the City's engineer estimate, and the Contractor's OPCC will be compared to the Independent Cost Estimate provided by the ICE. If the Independent Cost Estimate, Contractor's OPCC, and the City's engineer estimate

are not within 10% of the Contractor's OPCC or within 10% any LLTP CAP, or any Construction CAP proposal (as applicable), the City will conduct a review to determine where the cost estimates differ and what assumptions or details were used to determine each difference.

- 3.4.2 The Contractor shall maintain an open and accurate Cost Model that shall include all details of the OPCC and any LLTP CAP or any Construction CAP proposal when submitted. These details include, but are not limited to labor, materials, equipment, Subcontractor and Supplier quotes, assumptions, risk, direct, mobilization.
- 3.4.3 The Cost Model shall be used by all entities to develop Independent Cost Estimates and OPCCs at each agreed upon Milestone and when each LLTP CAP and Construction CAP proposal is submitted.
- 3.4.4 Each LLTP CAP and Construction CAP proposal will be submitted in a form acceptable to the City.
- 3.4.5 OPCC: When preparing any OPCC and in development of the Schedule of Bid Items, such documents shall include, without duplication:
 - 1. The cost of all labor, materials, equipment, bond premiums, and actual costs of procurement or construction that the Contractor will use for the duration of such LLTP Phase or Construction Phase to complete the Work.
 - 2. General Conditions and whether or not incorporated or to be incorporated in the Work.
 - 3. Each OPCC shall be produced in an open book process through the Design Phase of the Project so that the City, the Design Consultant, and the Independent Cost Estimator can make accurate assumptions, calculate prices, and determine the amount of risk in the Project.
 - 4. The Contractor's compensation for CM Services and any LLTP and the cost of Work provided by the Contractor pursuant to this Agreement.
 - 5. For each OPCC required for the Work, the Contractor shall acquire multiple quotes from potential Subcontractors and Suppliers. This information shall be shared in the open Cost Model and the Contractor shall allow their potential Suppliers and Subcontractors to share their information, quotes, and product data with the ICE, the City, and the Design Consultant.
- 3.4.6 No OPCC shall include the compensation of the Design Consultant, the Design Consultant's sub-consultants or any other sums due the Design Consultant, the costs of land, right of way, financing or any other costs which are the responsibility of the City.

- 3.4.7 The Contractor, in preparing its OPCC and providing each LLTP CAP and Construction CAP proposal, shall consult with the Design Consultant to determine what materials, equipment, labor, and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Work, and to include in the Contract Documents alternate items, as approved by the City in writing, for bid so as to permit the adjustment of the OPCC.

The Contractor shall prepare an OPCC as soon as major Project requirements have been identified and update it periodically. For each FIR, the Contractor shall prepare an OPCC and update periodically. During each FOR, the Contractor shall prepare a final OPCC in preparation for each LLTP CAP and Construction CAP proposal and update periodically. All OPCC shall make allowance for price escalation. During the final Design Phase, the Contractor shall continually monitor the cost estimates and develop an OPCC to help assure that the cost of the Work remains within the applicable portion of the Fixed Limit of Construction Cost and LLTP CAP or Construction CAP, as applicable.

- 3.4.8 Each OPCC shall be independently prepared but in coordination with the City and the ICE. Estimates shall be based on quantitative takeoffs whenever possible and shall be supported in sufficient depth and organization to be used in preparing budgets based on funding sources, sub-trades, combinations of sub-trades, building systems, Bid Packages or combinations thereof. The specific cost coding structure, estimating guidelines, assumptions, and contents of the cost estimates shall be mutually resolved between the Contractor and the City prior to development of the first cost estimate to assure that estimates developed by all parties can be compared and reconciled. Lump sum estimates are not acceptable. Differences between the OPCC and the Independent Cost Estimate will be compared and reconciled through the City.
- 3.4.9 During the preparation of each OPCC, the Contractor shall notify the City if it appears that the OPCC will exceed the applicable portion of the Fixed Limit of Construction Cost, satisfactorily demonstrate the accuracy of its estimate in such detail as shall be reasonably required by the City, and make reasonable recommendations for corrective action consistent with the Fixed Limit of Construction Cost. The Contractor shall submit OPCCs to the City for review and acceptance. Concurrently, the Contractor shall provide copies to the Design Consultant for review and verification.
- 3.4.10 The City shall reasonably cooperate with the Contractor to keep the Work within the applicable portions of the Fixed Limit of Construction Cost, including, but not limited to, the giving of appropriate and reasonable consideration to all reasonable recommendations of the Contractor, approving redesign, providing constructability reviews and reports, deductive alternatives or reductions in Work, requesting additional Value Engineering, making Modifications to the Contract Documents or exercising such other rights or remedies as may be available elsewhere under this Agreement including termination for convenience. However, the City shall be under

no duty to reduce the Work to accommodate for any construction contingency used to cover costs to correct errors, omissions, mistakes or rejected Work.

- 3.4.11 The Design Consultant, by the terms of its agreement with the City, is obligated to provide reasonable cooperation to the Contractor in the development of OPCCs and each LLTP CAP and Construction CAP proposal. Conversely, the Contractor, by the terms of this Agreement is obligated to provide reasonable cooperation to the Design Consultant in the development of OPCCs, each LLTP CAP and Construction CAP proposal. Additionally, both Design Consultant and Contractor are obligated to reconcile their respective cost estimates at the completion of each Bid Package including each LLTP CAP and Construction CAP proposal in a timely manner so as not to negatively impact the Project Schedule.

3.5 CM SERVICES

- 3.5.1 During Project development, the Contractor shall review conceptual design; advise on-site use and improvements, selection of materials, building systems, and equipment; and provide recommendations on construction feasibility, availability of materials and labor, local construction activity as it relates to schedules, and time requirements for installation and construction.
- 3.5.2 The Contractor shall perform those services included, but not limited to, those designated as "Required" in Exhibit A, Preconstruction Roles and Responsibilities Matrix. In addition and not in limitation, the Contractor shall also perform the other CM Services designated in this Article.
- 3.5.3 The Contractor shall review the Drawings, Plans, and Specifications as they are prepared, recommending alternative solutions whenever design details affect construction feasibility, schedules or cost; however, nothing contained in this paragraph shall be construed to require the Contractor to provide Design Services. Written reviews will be submitted with redlined drawings, plans, and specifications after each Milestone.
- 3.5.4 The Contractor shall make recommendations to the City and the Design Consultant regarding the division of Work in the Drawings, Plans, and Specifications to facilitate the bidding and awarding of subcontracts, allowing for phased construction and funding, if applicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, etc.
- 3.5.5 The Contractor shall review Drawings, Plans, and Specifications with the Design Consultant to (1) eliminate areas of conflict, overlapping trade jurisdictions, and overlapping in the Work to be performed by the various Subcontractors, (2)

endeavor to confirm that all Work has been included, and (3) allow for phased construction.

The appropriate representatives of the City shall review documents submitted by the Contractor and shall render decisions pertaining thereto without unreasonable delay.

- 3.5.6 The City through the Design Consultant and consistent with the City's contract with the Design Consultant, shall furnish the Contractor a sufficient quantity of documents required for the CM Services.
- 3.5.7 As part of each FIR review and OPCC, the Contractor shall develop a preliminary Project Schedule that is coordinated with the Design Consultant's design schedule, agreed upon Milestone dates from the Project Scoping Workshop, the Date of Completion specified in Section 6.1, the scope of work described within the Contract Documents, and the work described within each of the FIR documents. The Contractor shall utilize the most recent version of Microsoft Project to develop and manage the schedule. The schedule as agreed to shall be CPM with reasonable detail to allow for assessment of each LLTP schedule for equipment or materials to be furnished by the City or Contractor as agreed, the adequacy of the construction duration/period, critical paths among the activities for the building systems, peak manpower requirements, and crunch points within the Project's logic/critical path. As part of each FOR review and OPCC, this preliminary schedule shall be updated by the Contractor to reflect the work described in any FOR documents, and shall be utilized by the City to assess each LLTP CAP and Construction CAP proposal. The Project Schedule will be updated at other Milestone dates as agreed at the Project Scoping Workshop.
- 3.5.8 The Contractor shall attend all regular Project status meetings with the City and the Design Consultant and such additional meetings as the City may request. All regular meetings shall be scheduled by the Design Consultant with the agreement of the Contractor and approval of the City. All additional meetings shall be scheduled by the City.
- 3.5.9 The Contractor shall investigate and recommend materials and equipment that could be purchased by the City or the Contractor as agreed; consider LLTP opportunities, and mass purchasing power in making such recommendations; recommend a schedule for such purchases after coordination with the Design Consultant in the schedule for preparation of Contract Documents; and expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates.
- 3.5.10 The City and the Design Consultant will prepare all Drawings, Plans, Specifications, and engineering estimates for the Bid Packages for any LLTP CAP and Construction CAP proposal.

- 3.5.11 The Contractor shall provide the requirements and assignment of responsibilities for safety precautions and programs as required for the execution of the Work, temporary project facilities, and for equipment, materials and services for common use of Subcontractors and verify that all are included in the Contract Documents.
- 3.5.12 The Contractor shall participate in Project design review sessions at the close of each FIR, each FOR, and as construction documents are finalized for each Bid Package. The Project design review sessions shall be attended by the Design Consultant and representatives of the City. The purposes of the Project design review sessions are to (1) assure consistency with the design intent; (2) ensure complete, coordinated, constructible and cost-effective designs for all disciplines (e.g. architectural, structural, mechanical, geotechnical, electrical and roadway); (3) assure that the design documents are code compliant; (4) endeavor to confirm that all Work has been included and described in sufficient detail to assure complete pricing of Work; (5) allow for phased construction; and (6) identify errors and omissions. The Contractor shall provide the Design Consultant written reviews and redlined hard copies of Drawings, Plans, and Specifications. The Design Consultant shall collect all design review comments from the various participants, provide reports to the City, and ensure that with the issuance of each progress set of design documents all comments have either been incorporated or resolved to the satisfaction of the City.
- 3.5.13 The Contractor shall provide, not later than the first of each month, a monthly report documenting the current status of the Project's schedule, OPCC updates, updates to the Contracting and Diversity Plan, requests for information, submittals, manpower, safety, and other pertinent information. The report shall be separate from the monthly schedule update/report. The report shall include a narrative discussion of the progress achieved, activities anticipated for the next month, and issues that are affecting the rate of progress. Progress photographs for any LLTP Phase shall be attached/included. This monthly report shall be provided in Design Phase of the Project.
- 3.5.14 If the Contractor or any of its Subcontractors of any tier participating in the Design reviews observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, ordinances, rules or regulations, in any respect, the Contractor shall promptly notify the City in writing, noting the applicable Drawing, Plan or Specification, and recommending an appropriate alternative for correcting the Contract Document.
- 3.5.15 All reviews by the Contractor shall include written responses and redlined documents that detail recommendations, changes, and questions.

3.6 ADMINISTRATION

- 3.6.1 The City shall provide administration of this Agreement as described throughout this Agreement.
- 3.6.2 The Design Consultant and the Contractor shall advise and consult with the City. All instructions and communications by the Design Consultant to the Contractor and by the Contractor to the Design Consultant shall be copied to the City.
- 3.6.3 Except where expressly provided to the contrary in the Contract Documents, the Contractor's contact person shall forward all communications in writing and all documents to the City's contact person and the Design Consultant's contact person simultaneously as listed below:

For the City:

For the Design Consultant:

For the Contractor:

3.7 ACCESS TO WORK

- 3.7.1 The City, Douglas County, CDOT, and the Design Consultant shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide safe and reasonable facilities for such access so that the Design Consultant and City may exercise their rights and perform their functions under the Contract Documents.
- 3.7.2 During all phases of the Work and services to be provided hereunder the Contractor agrees to establish a working office at a place agreeable to the City and permit duly authorized agents and employees of the City to enter the Contractor's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

3.8 DESIGN CONSULTANT'S AUTHORITY

- 3.8.1 The duties, responsibilities and limitations of authority of the Design Consultant during construction shall be set forth by the City.

3.9 NO RESPONSIBILITY FOR DESIGN CONSULTANT

- 3.9.1 The Contractor shall not be responsible for the failure of the Design Consultant or its sub-consultants to properly discharge their duties and responsibilities as set forth in the agreement between the City and Design Consultant.

3.10 SCHEDULE, COORDINATION, AND COST CONTROL

- 3.10.1 In the performance of the Work under this Agreement, the Contractor acknowledges that time is of the essence of this Agreement. The Contractor shall begin the performance of CM Services upon receiving a Notice to Proceed to Commence CM Services. The Contractor shall begin the LLTP upon receiving the Notice to Proceed to Commence LLTP, in accordance with Section 6.1. The Contractor shall schedule and coordinate the work of all of its Suppliers on the Project including their use of the site. The Contractor shall keep the Suppliers informed of the Project Schedule to enable the Suppliers to plan and perform the work properly. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve completion of the Work prior to the Date of Completion specified in Section 6.3, as adjusted by Change Orders and Amendments.

3.11 Preliminary Project Schedule

1. Starting at the Project Scoping Workshop, the Contractor shall begin to develop the Project Schedule encompassing all LTTPs and Construction Phases. The Project Schedule shall be updated at each agreed upon Milestone during the Design Phase.
2. At each LTTP CAP or Construction CAP proposal meeting, the Contractor shall submit for the Design Consultant's and the City's review and acceptance of a preliminary Project Schedule. The preliminary Project Schedule shall include the Work encompassing all LTTP CAPs and Construction CAPs, in a manner that is consistent with previously issued schedules, and shall comply with the Date of Completion of the Work authorized by the current Contract Documents. This Project Schedule shall show all completed, in progress, and planned Bid Packages as intended at the appropriate Milestone, LTTP CAP or Construction CAP.
3. Within fourteen (14) calendar days of receiving Notice to Proceed to Commence any LTTP, the Contractor shall submit to the Design Consultant and City a detailed Project Schedule for such LTTP Bid Package integrated into the most current preliminary Project Schedule.
4. Detailed Project Schedules for Construction CAP Bid Packages will be incorporated into a CM Construction Contract.

5. Upon acceptance by the City, the most current Project Schedule shall be used as a basis for determining progress payments.

3.11.1 Technical Requirements:

1. The Project Schedule shall be developed utilizing commercially available scheduling software as approved by the City and the CPM. The level of detail of the Contractor's schedule shall be a function of the complexity of the Work involved. The Milestones and total number of activities shall be subject to approval by the City. The activities and resource loading will correspond with the Cost Model as required by Contract Documents.
2. Schedule activities shall be cost-loaded as agreed to and the assigned dollar value (cost loading) of each activity of the network shall cumulatively equal the total of all OPCCs. Costs for mobilization, bonds, permits, insurance costs may be shown separately. For any items that the Contractor intends to bill for stored materials, these items need to be shown as separate material procurement activities in the schedule and the material dollars only placed on these activities. Billing for stored materials on any other schedule activities not broken out in this manner shall not be allowed. General and administrative cost, overhead, and profit shall not be included within the cost loading and payment for these costs/fees shall be administered separately by the CM Management Price Percentage.
3. The Contractor shall assign manpower loading as agreed to for each activity of the network. In addition, the Contractor shall prepare and submit a separate manpower summary analysis in graphic format depicting manpower by Subcontractor and aggregate. The graph(s) shall show the number of man-days of effort, by month, over the duration of the Project Schedule for each LTTP or Construction Phase.
4. For all major equipment and materials fabricated or supplied for this Project, the network shall show a sequence of activities including, preparation of Shop Drawings and Samples submissions, review and approval of Shop Drawings and Samples, shop fabrication and delivery, erection or installation, and testing of equipment and materials.

3.11.2 Submittals:

For the preliminary or detailed Project Schedule submittals, as well as for each Project Schedule update, the Contractor shall submit the following:

1. Hard copies of schedule reports, to include the following minimum items:

- i. Cost report showing activity dollar value, dollar value of Work in place to-date and dollar value for current period.
- ii. Cost report showing activity dollar value, dollar value of Work in place to-date, and dollar value for current period summarizing to Schedule of Bid Items.
- iii. Resource report showing man-day allocations by specific trade on each activity.
- iv. Variance report comparing current dates to target dates.
- v. Cash flow report showing monthly projections of expenditures.

2. A narrative schedule report documenting:

- i. Description of the actual Work accomplished during the reporting period.
- ii. Description of any problem areas.
- iii. Description of current and anticipated delays with recommended corrective actions to mitigate such delays.
- iv. A list of proposed modifications, additions, deletions, and changes in logic to the approved construction schedule.

3. A Contractor's schedule to the City in an electronic format.

3.11.3 The Contractor shall utilize the most recent version of Microsoft Project to prepare and keep current, for the City's approval, a time schedule of submittals in a submittal log which is coordinated with the Contractor's detailed Project Schedule and allows the City a reasonable time to review submittals.

3.11.4 Schedule Management

- 1. Progress Meetings: Progress meetings will be held in a number per week or month mutually agreed to by the City and the Contractor, a meeting shall be held to assess the progress achieved by the Contractor during previous work week, discuss and resolve issues affecting progress, and review the critical activities anticipated for the following two (2) weeks. The Contractor is to provide short interval schedules documenting the activities to be accomplished during the past week and the activities forecast for the next two (2) weeks.

2. **Monthly Project Review Meetings:** Once each month on or about the 25th of the month, a meeting shall be held to review a draft Pay Estimate and/or Project Schedule update, assess and agree to the progress achieved by the Contractor during the previous month, discuss and resolve issues affecting progress, and review the critical activities to be accomplished during the following ninety (90) days. The Contractor is to provide a draft Pay Estimate and Project Schedule update reflecting the Work accomplished during the previous month.
3. **Monthly Schedule Reporting:** After the monthly Project review meeting, but not later than the 28th of the month, the Contractor shall update the preliminary or detailed Project Schedule and submit the Pay Estimate and the current submittal log consistent with Section 3.10.5.
4. **Schedule Modifications:** If, as a result of the monthly schedule update, it appears the preliminary or detailed Project Schedule no longer represents the actual /logical progression of the Work or the Contractor's plan for prosecution and progress of the Work, the City shall require the Contractor to submit a revision to the preliminary or detailed Project Schedule. Such revisions to the preliminary or detailed Project Schedule shall not alter any of the Milestone dates unless approved by the City.
5. **Schedule Impacts, Schedule Delays, Time Extensions:** During the course of the Project, it may be appropriate to revise the preliminary or detailed Project Schedule to incorporate impacts or delay issues into the Project Schedule. If the Contractor feels it has encountered schedule impacts that it feels may warrant a time extension, it shall present an impacted Project Schedule in accordance with Article 6, to the City supporting its claim.
6. **Recovery Schedule:** If progress falls behind schedule dates, the Contractor shall prepare a recovery schedule indicating its revised plan to assure the timely completion of the Work. The recovery plan shall be subject to the City's approval.

3.12 SALES AND USE TAXES

3.12.1 Contractor shall provide the City with copies of the following:

Colorado Department of Revenue - Contractor Application for Exemption certification: (Form DR 0172).

Agency Tax exemption Number: _____

Additional Tax exemptions the agency may have with local Cities or Counties (as applicable).

ARTICLE IV

DRAWINGS, PLANS AND SPECIFICATIONS

4.1 PROCUREMENT OF AND RIGHTS IN DATA, DOCUMENTS, AND COMPUTER

4.1.1 Any software, research, reports, studies, estimates, data, photographs, negatives or other documents, Plans, Drawings, Specifications, memoranda, computation sheets or materials prepared by Contractor in the performance of its obligations under this Agreement shall be the exclusive property of the City without restriction and all such materials shall be delivered to the City by the Contractor upon completion, termination, or cancellation of this Agreement. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this Agreement without the prior written consent of the City; provided, however, that Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the Work. Copies of said documents may be retained by the Contractor, but shall not be made available to other individuals or organizations without prior written approval of the City. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use written works.

4.1.2 The Drawings, Plans, and Specifications and other documents are to be used only with respect to this Project and are not to be used on any other project. With exception of one contract set for each Party to this Agreement, such documents are to be returned or suitably accounted for to the City on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is to be approved by the City.

4.2 REVIEW OF THE CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall immediately report to the City any error, inconsistency, or omission that may be discovered. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Drawings, Plans, Specifications, instructions, Shop Drawings, Product Data, or Samples for such portion of the Work.

4.2.2 If the Contractor or any of its Subcontractors of any tier observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, ordinances, rules, or regulations, in any respect, the Contractor shall immediately

notify the City in writing, and any necessary changes shall be accomplished by appropriate Amendment or Change Order.

- 4.2.3 If the Contractor or any of its Subcontractors of any tier perform any Work with knowledge or reason to know that it is contrary to any laws, statutes, building codes, ordinances, rules, or regulations, and does not notify the City, as required in Sections 4.2.1 and 4.2.2, the Contractor shall assume full responsibility therefor and shall bear all costs attributable therefor.

4.3 INTERPRETATIONS

- 4.3.1 City shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder.
- 4.3.2 City shall render interpretations consistent with the intent of, and reasonably inferable from the Contract Documents, consisting of additional instructions by means of Drawings, Plan, Specifications or otherwise, necessary for the proper execution or progress of the Work, in accordance with agreed upon time limits and otherwise so as to cause no unreasonable delay. The Contractor may make written request to the City for such interpretations and decisions.

4.4 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

- 4.4.1 The Contractor shall furnish for approval, all Samples as directed by the Design Consultant. The Design Consultant shall check and approve such Samples with reasonable promptness.
- 4.4.2 The Contractor shall prepare, review, approve, and submit to the Design Consultant, with reasonable promptness and in such sequence as to cause no unreasonable delay in the Work or in the work of the City or any separate Contractor, all Samples and sufficient copies of all Shop Drawings and Product Data required by the Contract Documents. Specific quantities, format, size, etc. of Samples, Shop Drawings, and Product Data shall be described in the Contract Documents prepared by the Design Consultant. All Shop Drawings shall contain identifying nomenclature and each submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures.
- 4.4.3 By preparing, approving, and submitting Shop Drawings, Product Data, and Samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto, or shall do so with reasonable promptness, and has checked and coordinated the information contained within such submittal with the requirements of the Work, the Project, the Contract Documents, and prior approvals.

- 4.4.4 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Consultant's approval of Shop Drawings, Product Data, or Samples unless the Contractor has specifically informed the City and Design Consultant in writing of such deviation at the time of submission and the Design Consultant and City have both given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, or Samples by the Design Consultant's approval of them.
- 4.4.5 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, or Samples, to revisions other than those requested by the City on previous submittals.
- 4.4.6 No portion of the Work requiring submission of a Shop Drawing, Product Data, or Sample shall be commenced until the submittal has been approved by the City.
- 4.4.7 All such portions of the Work shall be in accordance with approved submittals. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, shall not be acceptable unless previously accepted in writing by the City.
- 4.4.8 City will review and approve or take other appropriate action upon the Contractor's submission of any document such as Shop Drawings, Product Data, and Samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no unreasonable delay. City's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Any and all approved substitutions shall be coordinated with the Contract Documents and all prior approvals.
- 4.4.9 Transmittal of copies of Shop Drawings, Product Data and Samples to the City is solely for convenience of the City and shall neither create nor imply a responsibility or duty of review by the City.

4.5 CONFIDENTIALITY

- 4.5.1 The Contractor understands that all services hereunder are confidential in character, and that as such, details and investigative results are not to be divulged in whole or in part at any time in the form of press releases, public statements, publication in technical papers by the Contractor, its agents, employees or representatives.

- 4.5.2 Similarly, no detailed information about the Project shall be tendered to property owners, speculative and promotional interests or to the general public without written authority from the City.
- 4.5.3 In the event the Contractor shall obtain access to any records or files of the City in connection with this Agreement, or in connection with the performance of its obligations under this Agreement, the Contractor shall keep such records and information confidential and shall comply with § 8 72 107, C.R.S., and all other laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the City. The Contractor shall notify its employees that they are subject to the confidentiality requirements as set forth above, and shall provide each employee with a written explanation of the confidentiality requirements before the employee is permitted access to confidential data.

ARTICLE V

CITY RESPONSIBILITIES

5.1 CITY RESPONSIBILITIES

- 5.1.1 The City shall furnish the Contractor with detailed program requirements and the Fixed Limit of Construction Cost established for the Work.
- 5.1.2 The City shall designate a representative (other than the Design Consultant) authorized to act on its behalf with respect to the Project (as indicated in Section 3.6).
- 5.1.3 The City shall retain a Design Consultant for preparation of the Design Services documents required for the Project. The Design Consultant's services, duties, and responsibilities are described in the agreement between the City and the Design Consultant, a copy of which will be furnished to the Contractor.
- 5.1.4 The Contractor shall be furnished, without charge () sets of copies of the Drawings, Plans and Specifications for each LLTP. Additional sets, as mutually agreed upon to meet construction needs, shall be a direct cost of Work.
- 5.1.5 The City shall furnish the site of the Project, all necessary surveys describing the physical characteristics, legal limitations, utility locations, and a legal description.
- 5.1.6 The City shall identify and make available to Contractor copies of reports of geotechnical explorations and tests of subsurface conditions at the site which have been utilized by Design Consultant in preparing the Drawings, Plans, and

Specifications. The City does not represent that these reports show completely and accurately the existing conditions and the City does not guarantee any interpretation of the reports. The Contractor expressly assumes all responsibility for deductions and conclusions which may be made as to the nature of the materials to be excavated, and the difficulties of making and maintaining the required excavations, and of doing other work affected by the geology of the site of the Work. The geotechnical information discussed above is for reference only and is not part of the Contract Documents.

- 5.1.7 The City shall secure and pay for necessary approvals, temporary easements, permanent easements, assessments, acquisitions, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 5.1.8 The City shall furnish such legal, accounting, and insurance counseling services as may be necessary for the Project, and such auditing services as the City may require to ascertain how or for what purposes the Contractor has used the monies paid to it under this Agreement.
- 5.1.9 The services, information, surveys, and reports required by Sections 5.1.3 through 5.1.8 shall be furnished on a timely basis and at the City's expense, and except as may be provided to the contrary elsewhere in this Agreement, the Contractor shall be entitled to rely upon the accuracy and completeness thereof.
- 5.1.10 The Contractor recognizes that the City is a governmental body with certain procedural requirements to be satisfied. The Contractor has and shall make reasonable allowance in its performance of the Work for such additional time as may be required for approvals and decisions by the City, in addition to the times specifically provided in Section 5.1.11.
- 5.1.11 In the review process of any FIR or FOR documents and construction documents for each Bid Package, the Contractor expressly agrees to the following review times by the City:
 - 1. A period of fourteen (14) days for the review of any FIR or FOR documents; and
 - 2. A period of fourteen (14) days prior to completion of the construction documents together with an additional seven (7) days after receipt of all Drawings, Plans and Specifications for such Bid Package, commencing with the date of receipt by the City of all documents and any other items which are required to be furnished to the City by the terms of the City's agreement with the Design Consultant.

It is expressly understood and expected that the Contractor shall develop each LLTP CAP and Construction CAP proposal as agreed upon Milestones are reached and that the final establishment of each LLTP CAP and Construction CAP proposal shall occur within fourteen (14) days of receipt of the final full scope of such Bid Package, including all associated addenda, for such LLTP CAP or Construction CAP (as applicable).

5.1.12 If the City receives federal funds to be used toward any portion of construction, DBE goals will be identified within the construction documents that the Contractor will be responsible for adhering to.

5.1.13 The foregoing are in addition to other duties and responsibilities of the City enumerated elsewhere in the Contract Documents.

ARTICLE VI

TIME OF COMMENCEMENT AND COMPLETION

6.1 COMMENCEMENT

6.1.1 The Parties' performances under this Agreement shall commence on the Effective Date but no work shall be performed prior to the Contractor's receipt of a Notice to Proceed for CM Services.

6.1.2 The procurement of any LLTP is expressly conditioned upon and shall not commence until:

1. The applicable LLTP CAP and associated Bid Package have been approved and accepted by the City and added to this Agreement by Amendment;
2. The date for completion of the LLTP has been approved and accepted by the City;
3. All required Performance Bonds and Payment Bonds and Insurance Certificates have been approved and accepted by the City; and
4. Notice to Proceed to Commence LLTP has been issued by the City and made a part of the Contract Documents.

If any of the preceding material conditions to be performed by the Contractor have not been fully satisfied by reason of any act or omission on the part of the Contractor through no fault of the City, the City shall give the Contractor written notice of any and all such deficiencies and allow ten (10) days from the date of such notice to correct and cure such deficiency or deficiencies, and if the deficiency or deficiencies are not fully corrected and cured within the ten (10) day period, the City may declare the Contractor to be in default of this Agreement.

6.1.3 The commencement of any Construction Phase is expressly conditioned upon and shall not commence until:

1. The applicable Construction CAP and associated Schedule of Bid Items have been approved and accepted by the City;
2. A CM Construction Contract for such Construction Phase has been issued, signed, and executed;
3. The date for completion of the Construction Phase Work has been approved and accepted by the City;
4. Should federal funds be received for any portion of construction, and in accordance with the standard special provisions (as included in any Specifications) which outlines the requirements of the DBE Program on construction contracts, the Contractor has submitted and the City has approved a plan detailing the Contractor's commitments and efforts to meet the DBE participation goal for such Construction Phase. The Contractor shall agree to the requirements of the DBE Program and the applicable standard special provisions as part of the CM Construction Contract;
5. All required Performance Bonds and Payment Bonds and Insurance Certificates have been approved and accepted by the City; and
6. A Notice to Proceed to Commence Construction Phase has been issued by the City as part of the CM Construction Contract.

If any of the preceding material conditions to be performed by the Contractor have not been fully satisfied by reason of any act or omission on the part of the Contractor through no fault of the City, the City shall give the Contractor written notice of any and all such deficiencies and allow ten (10) days from the date of such notice to correct and cure such deficiency or deficiencies, and if the deficiency or deficiencies are not fully corrected and cured within the ten (10) day period, the City may declare the Contractor to be in default of this Agreement.

6.2 TIME OF ESSENCE

- 6.2.1 Time is of the essence of this Agreement. The Contractor shall begin the Work on the Effective Date. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve completion of the Work by the Termination Date.

6.3 COMPLETION DATE

- 6.3.1 The Date of Completion for performance hereunder shall be established:

1. The initial Date of Completion for any LLTP is stated in the Amendment incorporating the applicable Bid Package. Amendments to such Date of Completion are made by approved Amendments to the applicable Bid Package.
2. The initial Date of Completion for CM Services is the Termination Date. Amendments to such Date of Completion are made by Amendments to the Termination Date.

6.4 DELAYS AND EXTENSIONS OF TERM AND FOR COMPLETION OF WORK

- 6.4.1 Extensions of the Term of this Agreement shall be granted only to the extent that the critical path was delayed or the time allowed for any activity or activities affected exceed the identified available float or slack that occurs, or should occur, along the channels involved.
- 6.4.2 Subject to the limitations as provided in Section 6.4.1, if the Contractor is delayed at any time in the progress of the Work by any act or omission of the City, the Design Consultant, or of any employee of either, or by any separate contractor that is not a Subcontractor of the Contractor, or by changes ordered in the Work, or by strikes, lockouts, fire, unusual delay in transportation, directed suspensions of the Work pursuant to Section 6.5.1, unavoidable casualties, or any other causes beyond the Contractor's control, the Term of this Agreement shall be extended by the City for such period of time as the City may determine based upon the Contractor's showing of the delay to the critical path in accordance with Section 6.4.1 and that it could not have avoided the delay by the exercise of due diligence.
- 6.4.3 If adverse weather conditions are the basis for a claim for an extension of the Term of this Agreement, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and that the weather conditions complained of had an

adverse effect on the critical path. Substantiation shall be based on a comparison of current conditions with recorded conditions for the same time period over the duration of the past 10 years. For all Disputes and Claims, the Parties shall use Dispute Resolution pursuant to Sections 105.22, 105.23, and 105.24 of the Standard Specifications.

6.4.4 If the Contractor intends to assert a claim for an extension of the Term of this Agreement, the Parties shall use Dispute Resolution pursuant to Sections 105.22, 105.23, and 105.24 of the Standard Specifications.

6.4.5 If no schedule is prepared fixing the dates on which various detail Drawings, Plans, Specifications and instruction (not including final construction documents to be released for construction) will be needed, no extension to the term of this Agreement shall be allowed for failure to furnish such Drawings, Plans, Specifications or instructions as needed, except in respect of that part of any delay in furnishing Drawings, Plans, Specifications or instructions extending beyond a period of two (2) weeks after written demand for such Drawings, Plans, Specifications or instructions is received by the Design Consultant. In any event, any claim for an extension of the term of this Agreement for such cause shall be recognized only to the extent of the delay directly caused by failure to furnish Drawings, Plans, Specifications or instructions pursuant to schedule, or such two (2) weeks demand, without fault on the part of the Contractor or those for whom the Contractor is responsible.

6.5 TEMPORARY SUSPENSION OF THE WORK

6.5.1 The City shall have the authority to suspend the Work (each a "Suspension of Work"), either wholly or in part, for such period or periods as it may deem necessary due to:

1. Unsuitable weather;
2. Faulty workmanship;
3. Contractor's material and substantial failure to carry out orders or to perform any provision of the Contract Documents;
4. Conditions which are considered unfavorable for the prosecution of the Work; or
5. Any other reason, with or without cause, including but not limited to the availability of funding for the Project as well as any other construction projects and the need to allocate funds between them.

6.5.2 If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such manner that they shall not become an obstruction or become damaged in any way; and it shall take every precaution to prevent damage to or deterioration of the Work, provide suitable drainage, and erect temporary structures where necessary.

- 6.5.3 Such notice of Suspension of Work shall be in writing and the Contractor shall again proceed with the Work when so notified in writing. The Contractor may assert any claims for an adjustment of the Contract Sum, any LLTP CAP or Term of this Agreement as provided in Article 6 through Dispute Resolution pursuant to Sections 105.22, 105.23, and 105.24 of the Standard Specifications.

6.6 DELAY DAMAGES

- 6.6.1 The City's liability for delay damages shall be limited to delays of completion of the Work caused by those sources identified in the Standard Specifications, section 109.10, Compensation for Compensable Delays.

6.7 LIQUIDATED DAMAGES

- 6.7.1 If the Contractor shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Agreement and the City, acting by and through the City, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in Section 17.8, Modification of Article 6. Time of Commencement and Completion.
- 6.7.2 The Contractor and the Contractor's surety shall be jointly liable for and shall pay the City, or the City may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay in the entire Project resulting from delays in any LLTP, which is determined by when such LLTP is 1) Substantially Complete, and the Notice (or all Notices) of Substantial Completion are issued, 2) Finally Complete and accepted and the City Acceptance Letter is issued, or 3) both. Delay in Substantial Completion shall be measured from the date of the Notice to Proceed to Commence LLTP and delay in final completion and acceptance shall be measured from the date of the Notice of Substantial Completion for such LLTP.
- 6.7.3 In the first instance, specified in Section 17.8, Modification of Article 6. Time of Commencement and Completion, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed to Commence LLTP, until the date of the Notice of Substantial Completion for such LLTP. In the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.
- 6.7.4 In the second instance, specified in Section 17.8, Modification of Article 6. Time of Commencement and Completion, liquidated damages, if any, shall be the amount specified in Section 17.8 for each calendar day in excess of the number of calendar days specified in the Contractor's LLTP CAP for such LLTP and stipulated in the

Agreement to Finally Complete the LLTP (as defined by the issuance of the City Acceptance Letter) after the final Notice of Substantial Completion has been issued.

- 6.7.5 In the third instance, when so specified in Section 17.8, both types of liquidated damages shall be separately assessed where those delays have occurred.
- 6.7.6 The Parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Agreement was formed; the liquidated damages in the first instance representing an estimate of damages due to the inability to use the LLTP and resulting Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all guarantees and warranties, the submittals of sales and use tax payment forms, the calling for the final inspection and issuance of the Notice of Substantial Completion.
- 6.7.7 The Parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed Substantial Completion or Final Acceptance. Such liquidated damages shall not be avoided by virtue of the fact of concurrent delay caused by the City, or anyone acting on behalf of the City, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with Section 6.4, Delays And Extensions of Term and for Completion of Work

ARTICLE VII

SUBCONTRACTS

7.1 SUBCONTRACTING

- 7.1.1 Any Subcontractor retained by the Contractor and any and all subcontracts entered into by the Contractor for any Work performed under this Agreement and any Modifications hereto are subject to prior approval by the City. The Contractor shall not engage the services of any persons then in the employ of the City for Work covered by the terms of this Agreement without the written consent of the City. All subcontracts, exceeding \$10,000.00 in cost, shall contain the provisions included in Section 18.
- 7.1.2 Subcontractors as defined in Section 101.02 of the Standard Specifications shall be able to sublet during the Design Phase of this Project as permitted in Section

108.01 Subletting of Contract in the Standard Specifications. This shall be only allowed during LLTPs unless a specialty Subcontractor is required for the Design Phase and as approved by the City

7.2 SUBCONTRACT FORMS

- 7.2.1 All subcontracts shall be between the Contractor and the Subcontractors. The form of subcontracts shall be furnished to the City for review and consent as to form, which consent shall not be unreasonably withheld.

7.3 CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS

- 7.3.1 The Contractor shall be responsible to the City for the acts and omissions of its agents and employees, Suppliers, Subcontractors performing Work under a contract with the Contractor, and such Subcontractors' lower tier subcontractors, agents, Suppliers, or employees.

7.4 SUBSTITUTION OF SUBCONTRACTORS

- 7.4.1 The Contractor shall make no substitution for any Subcontractor, Supplier, person, or entity previously selected without the prior written approval of the City, which approval shall not be unreasonably withheld.

7.5 SUBCONTRACTUAL RELATIONS

- 7.5.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor and Supplier, to the extent of the Work to be performed by the Subcontractor or Supplier, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the City and the Design Consultant. Said agreement shall preserve and protect the rights of the City and the Design Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor or Supplier so that the subcontracting thereof shall not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor or Supplier to enter into similar agreements with their subcontractors and suppliers. The Contractor shall make available to each proposed Subcontractor or Supplier, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor or Supplier shall similarly make copies of such Contract Documents available to their sub-subcontractors. Each Subcontractor and Supplier shall be bound by this Section 7.5.1.

7.6 CITY/SUBCONTRACTOR RELATIONSHIP

- 7.6.1 The Parties recognize that the bidding and subcontracting procedures prescribed herein are intended to promote pricing of the Work that shall be fair and reasonable and based on full and open competition. The Contractor agrees to comply in a timely manner with reasonable requests for information concerning pre-qualification of a prospective Subcontractor, the evaluation and award of bids, or other obligations under this Agreement concerning pre-qualification, bidding, and subcontracting. Upon notice by the City, the Contractor agrees to meet and confer with the City and other invited, interested persons at the City or at the site, the choice of such location to be made by the City, or at some other location mutually agreeable to the City and Contractor, concerning its pre-qualification, bidding and subcontracting procedures. The Contractor agrees to meet within three (3) business days of an election by the City and to comply with reasonable requests for information to be provided at such meeting. The City agrees that this administrative procedure shall be exhausted prior to the City's exercising any contractual or other remedy relating to the pre-qualification, bidding, or subcontracting procedures specified herein.
- 7.6.2 Nothing contained in the Contract Documents, including this Agreement, shall be deemed to create any contractual relationship between any Subcontractor or Supplier of any tier and the City. Further, consistent with Section 17.23, nothing in the Contract Documents, including this Agreement and the pre-qualification, bidding and subcontracting procedures specified herein, is intended to create or shall be deemed to create third party beneficiary or other rights inuring to the benefit of any prospective Subcontractor, Supplier, or any other third person.

ARTICLE VIII

WORK BY CITY OR BY SEPARATE CONTRACTORS

8.1 CITY'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

- 8.1.1 The City reserves the right to perform Work related to the Project with the City's own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of this Agreement.
- 8.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term separate contractor in the Contract Documents in each case shall mean the contractor who executes each separate agreement between the City and such contractor.

- 8.1.3 If the City does not accept any LLTP or any Construction CAP and advertises Bid Packages for such LLTP or Construction Phases for low bid solicitation, the Contractor shall not be allowed to bid on such associated LLTP or Construction Phase Bid Packages as the prime contractor.

8.2 COORDINATION

- 8.2.1 To the extent separate contractors are not assigned to the Contractor for coordination pursuant to Article 10, the City shall provide and be responsible for the coordination of the Work of the City's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Sections 8.3.1 through 8.3.5.

8.3 MUTUAL RESPONSIBILITY

- 8.3.1 The Contractor shall afford to City and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate the Work with theirs as required by the Contract Documents.
- 8.3.2 To ensure the proper execution of its subsequent Work, if any part of the Contractor's Work depends for proper execution or results upon the work of the City or any separate contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the City any apparent discrepancies or defects in such other work that renders it unsuitable for such proper execution and results. The Contractor shall also measure work already in place and shall promptly report to the City and the Design Consultant any discrepancy between the executed work and the Drawings, Plans or Specifications. Failure of the Contractor to so report shall constitute an acceptance of the City's or separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the separate contractor's work after execution of the Work.
- 8.3.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.
- 8.3.4 Should the Contractor cause damage to the Work or property of the City, or to other work or property on the site, the Contractor shall promptly remedy such damage.
- 8.3.5 Should the Contractor wrongfully delay or cause damage to the work or property of any separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other separate contractor by agreement or otherwise to resolve

the dispute. If such separate contractor sues the City on account of any delay or damage alleged to have been caused by the Contractor, the City shall notify the Contractor, the City shall defend any proceedings, and if any judgment or award against the City arises therefrom and to the extent that Contractor is responsible, the Contractor shall pay or satisfy it and reimburse the City for all attorney's fees and court costs which the City has incurred.

ARTICLE IX COMPENSATION

9.1 CONTRACTOR'S CM PRECONSTRUCTION FEE AND LLTP CAP

9.1.1 All invoices shall be submitted by the Contractor to the City for payment pursuant to the terms of this Agreement. The Contractor shall submit its billings such that the cost for each activity or task contained in the Agreement shall be separately shown. Upon approval thereof, the City will pay the appropriate amount of each invoice to the Contractor within forty-five (45) days of receipt of invoice, if all charges are adequately documented and undisputed. Interest shall be paid on all undisputed and unpaid invoices that exceed the forty-five (45) day payment requirements under § 24-30-202(24)(a) C.R.S. Progress payments may be claimed on a monthly basis pursuant to the payment format approved in this Agreement.

9.1.2 Subject to the provisions of this Agreement, and in consideration of the performance of this Agreement, the City shall pay the Contractor in current funds as compensation for its services, a "CM Preconstruction Fee" amount (listed below) and separate LLTP CAP for applicable LLTPs as listed below:

Two-Hundred Fifty Thousand Dollars and No Cents (\$250,000.00)

**Only the CM Preconstruction Fee is initially approved for payment. Payment of any LLTP CAP will be authorized by Amendment.

9.2 ADJUSTMENTS IN CONTRACTOR'S CM PRECONSTRUCTION FEE

9.2.1 If, after the total Contractor's CM Preconstruction Fee is accepted in writing by the City, and the "Estimated Quantities" on Scoring Form C-2 in Exhibit C change due to increased Work approved by the City, which results in an increase to the total Contractor's CM Preconstruction Fee, Contractor shall be paid for such increases by Amendment.

9.3 CONTRACTOR'S CM MANAGEMENT PRICE PERCENTAGE

- 9.3.1 The CM Management Price Percentage shall be eight percent (8%) as defined in Scoring Form C-1 in Exhibit C. This percentage will be applied to all Construction CAP proposals and will apply to all CM Construction Contracts.

9.4 ADJUSTMENTS IN CONTRACTOR'S CM MANAGEMENT PRICE PERCENTAGE

- 9.4.1 After establishing the CM Management Price Percentage on Scoring Form C-1 in Exhibit C, no change will be made to the percentage at any point during the Project.

9.5 CONSTRUCTION AGREED PRICE ("CAP")

- 9.5.1 At an agreed upon Milestone, the Contractor shall deliver to the City, a LLTP CAP proposal in which the Contractor shall agree to procure the LLTP and guarantee the maximum price to the City for the entire cost of such LLTP, as adjusted by deductive alternates required to maintain the aggregate of all LLTP CAPs and Construction CAPs below the Fixed Limit of Construction Cost, which have been previously approved by the City pursuant to Section 3.4. The City reserves the right to audit the Contractor's final direct cost of each CAP.

- 9.5.2 At an agreed upon Milestone, the Contractor shall deliver to the City, a Construction CAP proposal in which the Contractor shall agree to perform all of the Work required for such Construction Phase, even though all of the construction documents have not all been finalized and released for construction, and guarantee the maximum price to the City for the entire cost of the Work required for the applicable Construction Phase, as adjusted by deductive alternates required to maintain the aggregate of all LLTP CAPs and Construction CAPs below the Fixed Limit of Construction Cost, which have been previously approved by the City pursuant to Section 3.4.

- 9.5.3 Each LLTP CAP and Construction CAP proposal shall include all of the Contractor's obligations to be performed pursuant to the terms of the Contract Documents for such LLTP or Construction Phase and shall include, but not be limited to, the following:

1. The total of all unit prices for the applicable Bid Package for such LLTP CAP or Construction CAP, as applicable;
2. For each Construction CAP, the installation cost of items to be procured by the City or Contractor in any LLTP and for the applicable Construction CAP;
3. The estimated maximum direct cost of Work for such LLTP or Construction Phase to be performed by the Contractor;

4. Costs for all Performance Bonds, Payment Bonds and insurance premiums required by Contractor pursuant to this Agreement for such LLTP CAP or Construction CAP, as applicable;
5. For each Construction CAP, the CM Management Price Percentage shall be included;
6. An aggregate amount for items 1 through 5 above (as applicable);
7. The Schedule of Bid Items, which shall be consistent with previously approved Schedules of Bid Items, as adjusted as required pursuant to the agreed upon OPCC;
8. Contain no conditions, exceptions or allowances;
9. Be substantiated with complete supporting documentation acceptable to the City to clearly define the anticipated Work to be performed by the Contractor and facilitate a determination when final Drawings, Plans and Specifications are released for construction, as to whether there has been an increase in the Work required of the Contractor in the documents released for construction from the agreed upon Milestone documents on which the LLTP CAP or Construction CAP (as applicable) was based.

9.5.4 If, through no fault on the part of the Contractor, and after receiving reasonable cooperation by the City and Design Consultant, the Contractor submits a LLTP CAP or Construction CAP proposal contrary to the provisions of Sections 9.5.1, 9.5.2, and/or 9.5.3, the proposal may be rejected by the City. The City shall be under no obligation to accept such LLTP CAP or Construction CAP proposals or any subsequent proposals. The City may declare the Contractor to be in default; and payment may be withheld from the Contractor, excepting the Contractor's CM Preconstruction Fee for the CM Services and all previously approved LLTPs, until a satisfactory LLTP CAP or Construction CAP is furnished in compliance with Sections 9.5.1, 9.5.2, and 9.5.3.

9.5.5 If, in developing a LLTP CAP or Construction CAP, the Contractor believes any documentation or information, consistent with the agreed upon Milestone Drawings, Plans and Specifications, is not sufficiently complete to clearly define the anticipated Work, the Contractor shall be responsible for making all necessary inquiries and requests to establish the same.

9.5.6 When any LLTP CAP is agreed upon and accepted by the City, it shall be made a part of this Agreement by Amendment; and shall be subject to modification in accordance with Article 10. If the Contractor, in good faith, furnishes the City with a LLTP CAP proposal which meets the criteria of Sections 9.5.1 and 9.5.3 and the Parties fail to mutually agree to that number as set forth above, the Parties expressly agree that default termination of the Contractor shall not be a remedy therefor under this Agreement, and the City shall be entitled to proceed with the Work as set forth elsewhere in this Agreement.

9.5.7 When any Construction CAP is agreed upon and accepted by the City, it shall be made a part of a separate CM Construction Contract and subject to the terms thereof. If the Contractor, in good faith, furnishes the City with a Construction CAP proposal which meets the criteria of Sections 9.5.2 and 9.5.3, and the Parties fail to mutually agree to that number as set forth above, the Parties expressly agree that default termination of the Contractor shall not be a remedy therefor under this Agreement, and the City shall be entitled to proceed with the Work as set forth elsewhere in this Agreement.

9.5.8 When the Contractor provides a LLTP CAP or Construction CAP, the subcontracts for the Work shall either be with the Contractor or shall contain the necessary provisions to allow the Contractor to control the performance of the Work. The City shall also authorize the Contractor to take all steps necessary in the name of the City to assure that any separate contractors, having separate contracts with the City for the Project, perform their contracts in accordance with their terms.

9.6 CONTRACT SUM

9.6.1 Subject to the provisions of Articles 3, 9, and 16, the Contract Sum shall be Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00), which is equal to the defined Contractor's CM Preconstruction Fee on Scoring Form C-1 and Scoring Form C-2 of Exhibit C and any accepted LLTP.

9.6.2 After execution of the Amendment to the Agreement establishing and accepting any LLTP CAP, the Contractor shall be paid a sum equal to the amount accepted in the applicable LLTP CAP for the procurement of such LLTP as defined in the payment schedule; and

9.6.3 The Contract Sum shall be the maximum amount payable under this Agreement and the Contract Documents to Contractor by the City, as determined by the City from available funds. The Contract Sum can only be modified by Amendment.

9.7 PAYMENTS

9.7.1 Contractor's CM Preconstruction Fee

1. For the performance of CM Services in the Design Phase, the compensation set forth in Section 9.1 shall be paid based upon detailed monthly invoices over a twelve (12) month period totaling the aggregate of all Work previously performed as submitted by the Contractor, with the total payment not to exceed the fee for such services as set forth in Section 9.1.

9.7.2 LLTP CAPs

1. At the time of the agreement and acceptance of each LLTP CAP, the Contractor shall submit to the City, a complete, detailed, and itemized Schedule of Bid Items for such LLTP CAP.
2. The City shall pay the Contractor, according to the requirements of the Drawings, Plans, Specifications and Standard Specifications, the amounts required for the completed LLTP at the unit prices set forth in such LLTP CAP proposal, and such further amounts as may be required for extra work or materials, all according to the provisions and subject to the conditions as set forth in the Drawings, Plans, Specifications and Standard Specifications as required in this Agreement.

9.7.3 All payments to Contractor shall be in the form of Pay Estimates.

9.8 CONDITIONS OF COMPENSATION/CONDITION PRECEDENT

9.8.1 Financial obligations of the City payable after the current fiscal year are contingent upon funds for the purpose being appropriated, budgeted, and otherwise made available.

9.8.2 The Contractor shall submit monthly progress reports to the City. Failure to submit a progress report may result in non-payment to the Contractor for the month. The progress report will be reviewed by the City and, after deemed satisfactory by the City, will be used as justification for billing. The progress report shall contain, but not limited to, the following:

1. Report on progress of each Work activity or Milestone identified in the Agreement, to show the amount of Work accomplished during the current month and the amount of Work accomplished overall;
2. A report on the time scheduled for each Work activity or Milestone identified in the Agreement to show planned time completion and actual times used to do the Work;
3. A description of the cause for delays beyond the planned completion time of Work activities or Milestones contained in the Agreement;
4. A report on the cost incurred to date on each Work activity or Milestone contained in the Agreement and a comparison to the cost estimates for such Work activity or Milestone;
5. A description of possible remedies to get Work activities or Milestones that are behind schedule, back on schedule, and to get Work activities or Milestones that are exceeding cost estimates, back within planned costs;

6. Documentation of meetings that were held during the subject time period;
7. A report on the participation of Subcontractors and Suppliers; and
8. A description of problems and concerns that could affect delivery of the Work or Project.

9.8.3 The total cost of the Work including but not limited to the Contactor's CM Preconstruction Fee, all LLTP CAPs, and any and all sums claimed by the Contractor to be due as set forth throughout this Agreement, are expressly subject to the limitations set forth in Sections 9.8.1 and nothing herein contained shall be construed or understood to commit the City to a total expense greater than that which is provided in the appropriation or allocation. Further, no funds appropriated or allocated for any other purpose shall be expended for this Agreement. The City agrees not to issue any Modifications which would cause the sums due the Contractor pursuant to this Agreement to exceed the appropriation or allocation for the Work.

9.8.4 Contractor shall not receive payment for any Work without its receipt of the required, appropriate Notice to Proceed.

ARTICLE X

CHANGES IN THE WORK

10.1 AMENDMENTS AND CHANGE ORDERS

10.1.1 The City, without invalidating this Agreement and without notice to any surety, may order extra work or make changes by altering, adding to, or deducting from the Work, the Fixed Limit of Construction Cost, the Contract Sum, any LLTP CAP, the Contractor's CM Preconstruction Fee and Term being adjusted accordingly.

10.1.2 Each adjustment in the Work, the Fixed Limit of Construction Cost, the Contract Sum, any LLTP CAP, the Contractor's CM Preconstruction Fee and Term resulting from an Amendment shall clearly separate the amount attributable to the cost of the Work and the Contractor's Fee, if any. The Fixed Limit of Construction Cost, Contract Sum, any LLTP CAP, the Contractor's CM Preconstruction Fee, and Term may be changed only by Amendment.

10.1.3 Any changes in the Work that result in an increase in the Work, the Fixed Limit of Construction Cost, the Contract Sum, any LLTP CAP, the Contractor's CM Preconstruction Fee, and Term shall be added to this Agreement by an Amendment pursuant to Section 10.1.2.

10.1.4 No extra work or change in the Contract Documents shall be made unless by a written Amendment or Change Order. No claim for any change to the Work, the Fixed Limit of Construction Cost, the Contract Sum, any LLTP CAP, the Contractor's CM Preconstruction Fee and Term shall be valid unless so ordered. An Amendment or Change Order signed by the Contractor conclusively establishes the Contractor's agreement therewith, including the adjustment in the Contract Sum, any LLTP CAP, the Contractor's CM Preconstruction Fee and the Term.

10.1.5 This Agreement 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 Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both Parties in an Amendment.

10.1.6 All Change Orders, changes in estimated quantities, hazardous materials, and differing site conditions will follow the Standard Specifications.

10.2 ADJUSTMENTS IN CONTRACT SUM WITHIN A LLTP CAP

10.2.1 The value of any change shall be determined in one or more of the following ways:

1. By estimate and acceptance in a lump sum;
2. By unit prices named in the Contract Documents or subsequently agreed upon;
3. By actual cost plus a fixed fee being agreed upon prior to starting the changed Work; or
4. In the absence of agreement by the Parties, by a unilateral determination by the City of the costs attributable to the events or situation under such clauses with an adjustment to the fee, all as computed by the City pursuant to the applicable sections of any rules issued under Sections 24-107-101, et seq. C.R.S., as amended, and subject to the provisions of Title 24, Article 109.

The Contractor shall be required to submit cost or pricing data if any adjustment in Contract Sum or any LLTP CAP is subject to the provisions of Section 24-103-403 et seq. C.R.S., as amended.

Changed Work shall be adjusted and considered separately for the Work either added or omitted. The amount of adjustment for Work omitted shall be estimated at the time it is authorized, and the agreed adjustment shall be deducted from the subsequent monthly estimates.

ARTICLE XI

INSURANCE

11.1 Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

11.1.1 Contractor shall procure and maintain, and shall cause each subcontractor of the Consultant to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the City. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

11.1.1.1 Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) disease-each employee.

11.1.1.2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

11.1.1.3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate with respect to each of Consultant's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

11.1.2. The policies required above, except Workers' Compensation insurance, Employers' Liability insurance and Professional Liability insurance, shall be endorsed to include the City, its officers and employees, as additional insureds. Every policy required above, except Workers' Compensation and Professional Liability insurance, if applicable, shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.

11.1.3 Certificates of insurance shall be completed by Contractor's insurance agent and submitted at the time of the execution of the agreement or contract between parties as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

11.1.4 Failure on the part of Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the City may procure or renew any such policy or any extended connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.

11.1.5 The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, et seq., 10 C.R.S., as from time to time amended, or otherwise available to City, its officers, or its employees.

ARTICLE XII

PERFORMANCE AND PAYMENT BONDS

12.1 The Contractor shall furnish a Performance Bond and a Payment Bond on approved City forms, executed by a corporate surety licensed to transact such business in the State of Colorado, each in the full amount of the applicable LLTP CAP with the Amendment for the

addition of the applicable Bid Package to this Agreement. If subsequent Amendments are made to this Agreement which substantially increase the applicable LLTP CAP, increased bond limits shall be furnished by the Contractor upon the acceptance of the increase in the applicable LLTP CAP. The then current bonds shall apply to all Work included within the scope of the applicable LLTP, including but not limited to all prior Work which may have been performed when previous bonds were in effect.

The Amendment for such applicable LLTP shall not take effect or be in force until the Contractor shall have furnished and delivered to the City a Payment Bond and Performance Bond, attached hereto as Exhibits D.2 and D.3, acceptable to the State, in a penal sum equal to the nearest integral \$100.00 in excess of the applicable LLTP CAP duly executed by a corporate surety, qualified and licensed to do business in Colorado and maintaining a general agent therein.

- 12.2 The Performance Bond shall remain in effect until at least one (1) year after the date when such LLTP receives Finally Acceptance, except as otherwise provided by law or regulation or by the Contract Documents. The Payment Bond shall remain in effect for not less than the required statutory period. All bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. All bonds must be acceptable to the City.
- 12.3 The initial Bonds shall be filed with the City at the time of execution of the initial, applicable Bid Package.
- 12.4 If the surety on any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business in the State of Colorado is terminated or it ceases to meet the requirements of Sections 13.1 and 13.2, the Contractor shall within ten (10) days thereafter, substitute another bond and surety, both of which must be acceptable to the City.
- 12.5 Upon the issuance and acceptance of the Performance Bonds and Payment Bonds, the premium therefor shall be included in the first Pay Estimate for the applicable LLTP CAP. The premiums for all bonds and increases thereto to be provided by the Contractor as well as those Subcontractors required to be bonded by the Contractor shall be included in the applicable LLTP CAP, and the price of each applicable Amendment and Change Order, and the Contractor shall not be entitled to additional compensation therefor.

ARTICLE XIII

ACCESS TO WORK AND OBSERVATION

- 13.1 DESIGN CONSULTANT'S WORK

13.1.1 The City shall be in the first instance, the judge of the performance of the Contractor as it relates to compliance with the Contract Documents and quality of workmanship and material.

13.1.2 The City and its professional consultants, staff or practicing, shall make visits to the site appropriate to the stage of construction to become familiar with the progress and quality of the Work, and to determine that the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.

13.1.3 The City shall also observe the following for compliance with the Contract Documents:

1. Shop Drawings; and
2. Any special testing required in the Contract Documents.

ARTICLE XIV OTHER PROVISIONS

14.1 INDEMNIFICATION

14.1.1 Contractor expressly agrees to indemnify and hold harmless City or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against City, City will give notice within ten (10) days thereof to Contractor.

14.2 ADDITIONAL DOCUMENTS

14.2.1 The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

14.3 ENTIRE AGREEMENT

14.3.1 This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

14.4 DEFAULT AND REMEDIES.

14.4.1 In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured for more than ten (10) days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

14.5 WAIVER

14.5.1 A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

14.6 GOVERNING LAW

14.6.1 This Agreement shall be governed by the laws of the State of Colorado.

14.7 INDEPENDENT CONTRACTOR

14.7.1 Contractor and City hereby represent that Contractor is an independent contractor for all purposes hereunder. As such, Contractor is not covered by any worker's compensation insurance or any other insurance maintained by City except as would apply to members of the general public. Contractor shall not create any indebtedness on behalf of the City. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

14.8 NO THIRD-PARTY BENEFICIARIES

14.8.1 It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14.9 WEB ACCESSIBILITY REQUIREMENTS

14.9.1 Contractor agrees to perform the Work in a manner that ensures the City's full compliance with applicable web accessibility requirements set forth in C.R.S. § 24-34-802 and associated regulations, as may be amended from time to time.

[Signature pages to follow]

THIS AGREEMENT is executed and made effective as provided herein.

CITY OF CASTLE PINES, COLORADO:

By: _____

Printed Name: Michael Penny

Title: City Manager

Date of execution: _____

ATTEST:

Tobi Duffey, MMC, City Clerk

APPROVED AS TO FORM (*excluding exhibits*):

Linda Michow, City Attorney

Kraemer North America, LLC:

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Construction Manager Services Agreement was subscribed, sworn to and acknowledged before me this _____ day of _____, 20_____, by _____ (printed name) as _____ (title) of Kraemer North America, LLC, a Delaware limited liability company.

My commission expires: _____

(S E A L)

Notary Public
(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))










Resolution 25-40, Approving Kraemer North America CM Agreement

Final Audit Report

2025-11-12


| | |
|-----------------|--|
| Created: | 2025-09-25 |
| By: | Katie Goins (Katie.Goins@castlepinesco.gov) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAOmZAVQymUMoHkopLCWB--4QKk81Ebhq0 |


"Resolution 25-40, Approving Kraemer North America CM Agreement" History

-  Document created by Katie Goins (Katie.Goins@castlepinesco.gov)
2025-09-25 - 8:46:28 PM GMT
-  Document emailed to lmichow@mgmfirm.com for signature
2025-09-25 - 8:47:13 PM GMT
-  Email viewed by lmichow@mgmfirm.com
2025-10-09 - 4:27:06 PM GMT
-  Signer lmichow@mgmfirm.com entered name at signing as Linda Michow
2025-10-09 - 4:27:25 PM GMT
-  Document e-signed by Linda Michow (lmichow@mgmfirm.com)
Signature Date: 2025-10-09 - 4:27:27 PM GMT - Time Source: server
-  Document emailed to tracy.engerman@castlepinesco.gov for signature
2025-10-09 - 4:27:28 PM GMT
-  Email viewed by tracy.engerman@castlepinesco.gov
2025-11-12 - 9:52:58 PM GMT
-  Signer tracy.engerman@castlepinesco.gov entered name at signing as Tracy Engerman
2025-11-12 - 9:53:23 PM GMT
-  Document e-signed by Tracy Engerman (tracy.engerman@castlepinesco.gov)
Signature Date: 2025-11-12 - 9:53:25 PM GMT - Time Source: server
-  Document emailed to Tobi Duffey (tobi@castlepinesco.gov) for signature
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Adobe Acrobat Sign


 Email sent to Tobi Duffey (tobi@castlepinesco.gov) bounced and could not be delivered
2025-11-12 - 9:53:35 PM GMT


 Katie Goins (Katie.Goins@castlepinesco.gov) added alternate signer tobi.duffey@castlepinesco.gov. The original signer Tobi Duffey (tobi@castlepinesco.gov) can still sign.
2025-11-12 - 9:54:33 PM GMT


 Document emailed to tobi.duffey@castlepinesco.gov for signature
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2025-11-12 - 9:54:45 PM GMT

 Email viewed by tobi.duffey@castlepinesco.gov
2025-11-12 - 10:10:20 PM GMT

 Document signing delegated to Tobi Duffey (tobi@castlepinesco.gov) by tobi.duffey@castlepinesco.gov
2025-11-12 - 10:10:23 PM GMT

 Document e-signed by Tobi Duffey (tobi@castlepinesco.gov)
Signature Date: 2025-11-12 - 10:10:42 PM GMT - Time Source: server

 Agreement completed.
2025-11-12 - 10:10:42 PM GMT