



**Contracts and Market Analysis Branch**  
2829 W. Howard Place, Suite 300  
Denver, Colorado 80204  
Telephone (303) 757-9354

NHPP 3851-018  
US 385 North of Cheyenne Wells  
Project Code: 23513

## **NOTICE TO PROCEED**

June 28, 2022

A & S CONSTRUCTION COMPANY  
839 MACKENZIE AVENUE  
CANON CITY, CO 81212-0566

You are hereby notified that on June 28, 2022, the Department of Transportation received a fully executed Contract and Bond, and acceptable evidence of insurance naming The Charter Oak Fire Insurance Company as the insurer for Colorado Project No. NHPP 3851-018 on US 385 NORTH OF CHEYENNE WELLS MP 157 - 172.7. We enclose herewith one duplicate original of the contract between this Department and your company.

This letter is to verify "Notice to Proceed" was given by email on June 28, 2022, to the Region Construction Office.

Work on this project may proceed. Time will be started as provided for in the contract, or when work is started, as authorized by the Engineer.

Regards,

*Tracie Benton*

Tracie Benton  
Contract Administrator III

cc: CCU (Tracie Benton)  
Sarah Winter/att. (Federal Aid)  
**Business Office** (Region 4)  
~~Federal Highway Administration~~

EEO (Staff Constr.)  
Traffic Engineer (Region 4)  
**Finals Engineer (Region 4)**  
Risk Management


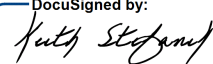
# STATE OF COLORADO CONTRACT

## COVER PAGE

<b>State Agency</b> Colorado Department of Transportation	<b>Agreement Number</b> 22-HA4-ZG-00124		
<b>Contractor</b> A & S CONSTRUCTION COMPANY	<b>Contract Performance Beginning Date</b> Shall be the Effective Date of the approval of the State Controller or designee.		
<b>Contract Maximum Amount</b>  <div style="text-align: right;">\$15,005,700.01</div>	<b>Initial Contract Expiration Date</b> Shall be five years from the Effective Date or the date of final acceptance of the project whichever occurs first.		
<b>Contract Purpose</b> Furnish all Materials and perform all services not specifically excepted in this Contract that are necessary or incidental to the complete construction of Colorado Project No. NHPP 3851-018 (23513) consisting of highway and bridge construction or maintenance consisting of RESURFACING, MINOR STRUCTURE REHABILITATION, SHOULDER WIDENING, located US 385 NORTH OF CHEYENNE WELLS MP 157 - 172.7 in Cheyenne County in the State of Colorado as described in the Plans and Specifications for the project incorporated herein by reference.			
<b>Exhibits and Order of Precedence</b> The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none"> <li>1. Exhibit A – Contractor Bid Proposal</li> <li>2. Exhibit B – Performance Bond</li> <li>3. Exhibit C – Payment Bond</li> <li>4. Exhibit D – Federal Requirements</li> <li>5. Exhibit E – Notification of Commitments Within 10% of Original Bid</li> <li>6. Exhibit F – Sample Funding Letter</li> <li>7. Exhibit G – Contract Modification Order</li> <li>8. Exhibit H – Required Contract Provisions Federal-Aid Construction Contracts</li> </ol> In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: <ol style="list-style-type: none"> <li>1. Exhibit D – Federal Requirements</li> <li>2. Colorado Special Provisions in §20 of the main body of this Contract.</li> <li>3. Special Provisions for the Project             <ol style="list-style-type: none"> <li>a. Project Special Provisions</li> <li>b. Standard Special Provisions</li> </ol> </li> <li>4. Project Plans</li> <li>5. Project Specifications</li> <li>6. The provisions of the other sections of the main body of this Contract.</li> <li>7. Exhibit A – Contractor’s Bid Proposal.</li> <li>8. Exhibits B through G in descending order</li> </ol>			
<b>Principal Representatives</b> <table style="width: 100%;"> <tr> <td style="width: 50%;">           For the State:            Rhianna Poss            Colorado Department of Transportation (R4)            401 A Avenue 366            Limon, CO 80828            719-775-8003            Rhianna.Poss@state.co.us         </td> <td style="width: 50%;">           For Contractor:            Nick Phillips            A &amp; S CONSTRUCTION COMPANY            839 MACKENZIE AVENUE            CANON CITY, CO 81212-0566            720-318-9216            Nick@arycorp.com         </td> </tr> </table>		For the State: Rhianna Poss Colorado Department of Transportation (R4) 401 A Avenue 366 Limon, CO 80828 719-775-8003 Rhianna.Poss@state.co.us	For Contractor: Nick Phillips A & S CONSTRUCTION COMPANY 839 MACKENZIE AVENUE CANON CITY, CO 81212-0566 720-318-9216 Nick@arycorp.com
For the State: Rhianna Poss Colorado Department of Transportation (R4) 401 A Avenue 366 Limon, CO 80828 719-775-8003 Rhianna.Poss@state.co.us	For Contractor: Nick Phillips A & S CONSTRUCTION COMPANY 839 MACKENZIE AVENUE CANON CITY, CO 81212-0566 720-318-9216 Nick@arycorp.com		


**SIGNATURE PAGE****THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature.

<p style="text-align: center;"><b>CONTRACTOR</b></p> <p style="text-align: center;">A &amp; S CONSTRUCTION COMPANY</p> <p>Nick Phillips</p> <hr/> <p style="text-align: center;">By: Name of Authorized Individual</p> <p style="text-align: center;">Construction Manager</p> <hr/> <p style="text-align: center;">Official Title of Authorized Individual</p> <p>DocuSigned by:    199061ED9B5C456...</p> <hr/> <p style="text-align: center;">Signature of Authorized Individual</p> <p style="text-align: right;">6/24/2022</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b></p> <p style="text-align: center;">Jared S. Polis, Governor  Colorado Department of Transportation  Shoshana M. Lew, Executive Director</p> <p>DocuSigned by:    63C1F827D40E4B3...</p> <hr/> <p style="text-align: center;">By: Stephen Harelson, P.E., Chief Engineer</p> <p style="text-align: right;">6/28/2022</p> <p>Date: _____</p>
<p style="text-align: center;"><b>LEGAL REVIEW</b></p> <p style="text-align: center;">Philip J. Weiser, Attorney General</p> <p style="text-align: center;">N/A</p> <p>By: _____</p> <p style="text-align: center;">Assistant Attorney General</p> <p style="text-align: right;">Date: _____</p>	

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

DocuSigned by:  
  
BDA801G5GFAC478...

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

Department of Transportation

Effective Date: 6/28/2022

## 1. PARTIES

This Contract is entered into by and between Contractor named on the Signature and Cover Page for this Contract (the "Contractor"), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Contract (the "State" or "Department"). Contractor and the State agree to the terms and conditions in this Contract.

## 2. TERM AND EFFECTIVE DATE

### A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

### B. Notice to Proceed

The Contractor shall not commence work prior to the issuance of a Notice to Proceed. The "Notice to Proceed" will stipulate the date on which contract time commences. When the Contractor proceeds with work prior to that date, contract time will commence on the date work actually begins. The Contractor shall commence work under the Contract on or prior to the 15th day following Contract execution or the 30th day following the date of award, whichever comes later, or in accordance with the selected start date allowed in the project special provisions.

### C. Initial Term

The Parties' respective performances under this Contract shall commence and terminate pursuant to the Project Special Provisions and the Department's Standard Specifications for Road and Bridge Construction ("Standard Specifications"), Section 108.08 (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Contract. The Parties agree that "time is of the essence" and that the Work shall begin under this Contract and must be completed as set forth in the Project Special Provisions incorporated by reference.

### D. Completion Date

When the Contract specifies a completion date, all work under the Contract shall be completed on or before that date. No extension of the completion date will be allowed for inclement weather, foreseeable causes, or conditions under the control of the Contractor. If all work under the Contract is not completed on or before the specified completion date, contract time will be assessed for each additional calendar day in accordance with the Standard Specifications Subsection 108.08 (a).

### E. Extension of Contract Time

For time extension requests, the Contractor shall provide a two-part submittal in accordance with the Standard Specifications Section 108.08 (d); part one shall consist of a written notice of the delay and part two shall consist of the Contractor's delay documentation and supporting analysis.

### F. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part in accordance with the Standard Specifications Section 108.11. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by Standard Specifications Sections 108.10 and 108.11.

## 3. AUTHORITY

Authority to enter into this Contract exists in 24-92-103, C.R.S., based on the State's issued Invitation for Bids for a transportation construction Project 23513, NHPP 3851-018. The Contractor's bid was selected in accordance with Federal and State law as a result of the project advertisement.

## 4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach. See also Contract Section 12, “Default”.
- B. **“Chief Procurement Officer”** means the individual to whom the Chief Engineer has delegated his or her authority pursuant to §43-1-110, C.R.S. to procure or supervise the procurement of all contracts for the construction or maintenance of federal or state highways and mass transportation projects needed by the state.
- C. **“Contract”** means this agreement between the State of Colorado through the Department of Transportation and the Contractor setting forth the obligations of the Parties for the performance of the work and the basis of payment. The Contract includes the invitation for bids, proposal, contract bonds, standard specifications, special provisions, general and detailed plans, notice to proceed, contract modification orders, and authorized extensions of time, all of which constitute one instrument.
- D. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- E. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- F. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- G. **“Exhibits”** means the following exhibits attached to this Contract as shown on the Cover Page for this Contract.
- H. **“Extension Term”** means the time period defined in §2.E.
- I. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- J. **“Initial Term”** means the time period defined in §2.C.
- K. **“Materials”** means all components required for use in the construction of the project.
- L. **“Party”** means the State or Contractor, and “Parties” means both the State and Contractor.
- M. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.
- N. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- O. **“Plans”** means the plans adopted for this project, including the **“Detailed Plans”** that are found at <https://cdot.dbesystem.com/>.

- P. **“Services”** means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Materials.
- Q. **“Special Provisions for this Project”** means the CDOT specifications generated for this project, including the **“Project Special Provisions”** that are found at <https://cdot.dbesystem.com/>.
- R. **“Standard Specifications”** means the Standard Specifications for Road and Bridge Construction that are found at <https://www.cdot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications/2019-specs-book>.
- S. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, Tax Information, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- T. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- S. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year
- V. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- W. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- X. **“Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- Y. **“Work”** means the furnishing of all labor, materials, equipment, and incidentals necessary to successfully complete the project according to all duties and obligations imposed by the Contract.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

## 5. STATEMENT OF WORK

Contractor shall complete the work as described in this contract in accordance with the provisions of the project plans and specifications, and CDOT’s Standard Specifications.

## 6. PAYMENTS TO CONTRACTOR

### A. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum that is shown on the Signature and Cover Page for this Contract.

### B. Payment Procedures

The State shall pay Contractor in the amounts and in accordance with the requirements of the Standard Specifications and the Supplemental Specifications, for the completed Work at the unit prices set forth in the Contractor’s Proposal attached as Exhibit A, and such further amounts as may be required for extra Services or Materials provided according to the provisions and subject to the conditions set forth in the Standard and Supplemental Specifications.

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State’s

obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Materials that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in the Standard Specification 108.11.

C. Indefinite Quantity Contract, Funding Letter

This Contract is an indefinite quantity contract for the Services and Materials specified herein. The number of units of each required to complete the Work may change. The parties have estimated the quantity and cost of such Services and Materials, but such estimates may vary from actual required quantities and costs.

- i. Contract Funds are available and encumbered in the amount of the estimate. The Contractor shall not perform Work that creates a financial obligation of the State exceeding the amount of available Contract Funds specified herein. The Contractor shall notify the State Representative in writing, using a form substantially equivalent to the sample Notification of Commitments Within 10% of Original Bid, attached as Exhibit E, when State commitments, paid and unpaid, are within 10% of the amount of available Contract Funds. The State is not liable beyond the amount of Contract Funds specified as available on the Signature and Cover Page for this Contract.
- ii. The State may increase or decrease Contract Funds available on this Contract by issuing a Funding Letter substantially equivalent to Exhibit F and bearing the approval of the State Controller or his designee. The Funding Letter shall not be deemed valid unless and until the State Controller or his designee has approved.

**7. PAYMENT AND PERFORMANCE BONDS**

This contract shall not take effect or be in force until the contractor shall have furnished and delivered to the state a payment and performance bond, attached hereto as **Exhibits B and C**, acceptable to the state, in a penal sum equal to the nearest integral \$100.00 in excess of the project commitment amount duly executed by a corporate surety, qualified and licensed to do business in Colorado and maintaining a general agent therein. The project commitment amount is the total bid per "schedule" hereto attached plus the estimated amount of force account items designated for bonding in the project special provisions.

**8. REPORTING - NOTIFICATION**

A. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page of this Contract.

**9. CONTRACTOR RECORDS**

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date 3 years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period") or the period for which is identified for record retention in the Standard Specifications.

**B. Inspection**

Contractor shall permit the State and the FHWA to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

**C. Monitoring**

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

**D. Final Audit Report**

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

**10. CONFIDENTIAL INFORMATION - STATE RECORDS****A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or approved in Writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

**B. Other Entity Access and Nondisclosure Agreements**

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements at least as protective as those in this Contract, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure restrictions to the State upon request.

**C. Use, Security, and Retention**

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

**D. Incident Notice and Remediation**

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

**E. Data Protection and Handling**

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

**F. Safeguarding PII**

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

**11. CONFLICTS OF INTEREST****A. Actual Conflicts of Interest**

Contractor shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

**B. Apparent Conflicts of Interest**

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

**C. Disclosure to the State**

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

**12. INSURANCE****A. Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section and the Standard Specifications 107.15 at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies with an AM Best rating of A-VIII or better.**

The Contractor shall obtain, and maintain at all times during the term of this Contract, insurance in the following kinds and amounts:

1. Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of their employment.

2. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent Contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
    - (1) \$1,000,000 each occurrence;
    - (2) \$2,000,000 general aggregate;
    - (3) \$2,000,000 products and completed operations aggregate; and
    - (4) \$50,000 any one fire.
    - (5) Completed Operations coverage shall be provided for a minimum period of one year following final acceptance of work. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to CDOT a certificate or other document satisfactory to CDOT showing compliance with this provision.
  3. Automobile Liability Insurance covering any auto (including owned, hired, and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
  4. Professional liability insurance with minimum limits of liability of not less than \$1,000,000 Each Claim and \$1,000,000 Annual Aggregate for both the Contractor or any subcontractors when:
    - (1) Contract items 625, 629, or both are included in the Contract.
    - (2) Plans, specifications, and submittals are required to be signed and sealed by the Contractor's Professional Engineer, including but not limited to:
      - (i) Shop drawings and working drawings as described in subsection 105.02 of the Standard and Specifications.
      - (ii) Mix Designs.
      - (iii) Contractor performed design work as required by the plans and specifications.
      - (iv) Change Orders.
      - (v) Approved Value Engineering Change Proposals.
    - (3) The Contractor and any included subcontractor shall renew and maintain Professional Liability Insurance as outlined above for a minimum of one year following final acceptance of work.
  5. Umbrella or Excess Liability Insurance with minimum limits of \$1,000,000. This policy shall become primary (drop down) in the event the primary Liability Policy limits are impaired or exhausted. The Policy shall be written on an Occurrence form and shall be following form of the primary. The following form Excess Liability shall include CDOT as an additional insured.
- B. CDOT shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies. Completed operations additional insured coverage shall be on endorsements CG 2010 11/85, CG 2037, or equivalent. Coverage required of the Contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
  - C. Each insurance policy shall include provisions preventing cancellation or nonrenewal without at least 30 days prior notice to Contractor. The Contractor shall forward to the Engineer any such notice received within seven days of the Contractor's receipt of such notice.
  - D. The Contractor shall require all insurance policies in any way related to the Contract and secured and maintained by the Contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against CDOT, its agencies, institutions, organizations, officers, agents, employees and volunteers.
  - E. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to CDOT.
  - F. The Contractor shall provide certificates showing insurance coverage required by this contract to CDOT prior to execution of the contract. No later than 15 days prior to the expiration date of any such coverage, the Contractor shall deliver CDOT certificates of insurance evidencing renewals thereof. At any time during the term of this Contract, CDOT may request in writing, and the Contractor shall thereupon within ten days supply to CDOT, evidence satisfactory to CDOT of compliance with the provisions of this section.
  - G. Notwithstanding subsection 12(A), if the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended ("Act"), the Contractor shall at all times during the term of this Contract maintain only such liability insurance, by commercial policy or self-

insurance, as is necessary to meet its liabilities under the Act. Upon request by CDOT, the Contractor shall show proof of such insurance satisfactory to CDOT. Public entity Contractors are not required to name CDOT as an Additional Insured.

- H. When the Contractor requires a subcontractor to obtain insurance coverage, the types and minimum limits of this coverage may be different than those required, as stated above, for the Contractor, except for the Commercial General Liability Additional Insured endorsement and those that qualify as needing Professional Liability Insurance.

### 13. DEFAULT OF CONTRACT

- A. The Department may send a written notice of intent to find the Contractor in default to the Contractor and the Surety by certified mail for any of the reasons listed below. The notice will describe the conditions causing the impending default, advise them of the actions required for remedy, and state that if the conditions have not been corrected within ten days of receipt of the notice, CDOT will find the Contractor in default. The Department may send a written notice of intent under this part (a) if the Contractor:

- (1) Fails to begin the Contract work within the time specified to begin work, or
- (2) Fails to perform the Contract work with sufficient resources to assure its timely completion, or
- (3) Discontinues the Contract work, or
- (4) Fails to resume discontinued Contract work, or
- (5) Becomes insolvent, is declared bankrupt, commits an act of bankruptcy or insolvency, allows a final judgment to remain unsatisfied for a period of ten calendar days, makes an assignment for the benefit of creditors, or
- (6) Fails to comply with the Contract regarding minimum wage payments, DBE requirements, or EEO requirements, or
- (7) Is a party to fraud. If the Contractor fails to correct the conditions identified in the notice of intent to find the Contractor in default within ten calendar days of receipt, the Department may serve the Contractor with an immediate notice of default and take prosecution of the work from the Contractor. Copies of the default notice will also be sent, by certified mail, to the Contractor and the Surety.

Notwithstanding any provision of this Contract or the Standard Specifications to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended by the federal government or the State under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

- B. The Department may send a written notice of intent to find the Contractor in default to the Contractor and the Surety by certified mail for the reason listed below. The notice will include a stop work order which will require the Contractor to cease work on the Contract Items that are unacceptable. The notice will describe the conditions causing the impending default, advise the Contractor of the actions required for remedy and state that if the conditions have not been corrected within ten days of receipt of the notice, CDOT will find the Contractor in default. The Department may send a written notice of intent under this subsection B if the Contractor fails to perform the work to Contract requirements or neglects or refuses to correct or remove and replace rejected materials or unacceptable work. The Contractor shall not resume work on the unacceptable Contract Items until the following conditions have been met:

- (1) The Contractor shall submit a written proposal to the Engineer outlining the procedures which will be followed by the Contractor to correct the unacceptable conditions, and;
- (2) The Engineer and the Contractor shall meet to discuss the written proposal, and;
- (3) The Engineer will issue written permission for the Contractor to commence work. If the Contractor fails to meet these three conditions within ten calendar days of receipt of the notice of intent to find the Contractor in default, or if at any time after the Contractor resumes work, the work does not meet Contract requirements or the Contractor again neglects or refuses to correct or remove and replace rejected materials or unacceptable work, the Department may serve the Contractor with an immediate notice of default and take prosecution of the work from the Contractor. Copies of the default notice will also be sent, by certified mail, to the Contractor and the Surety.

- C. In the case of default under either Standard Specifications subsection 108.10(a) or 108.10(b):
- (1) The Department will revoke the Contractor's Prequalification. If the Department chooses to rebid the remaining Contract work on this project, the Contractor will not be allowed to submit a bid for this work.
  - (2) The Department may appropriate or use materials at the project site and contract with others to complete the remaining Contract work.
  - (3) The Department will determine the methods used for completion of the Contract.
  - (4) Resulting costs and charges incurred by the Department will be deducted from payments owed the Contractor. If such costs exceed the payment owed the Contractor, the Contractor and Surety shall reimburse the Department for these costs. These costs and charges may include but are not limited to: cost of Contract completion, including designing, advertising, bidding and awarding the remaining work and liquidated damages or disincentives.
- D. If the notice of default is determined to be in error, the rights and obligations of the parties shall be the same as if the Contract had been terminated in accordance with Standard Specifications subsection 108.10. Damages for improper notice of default may be awarded accordingly.

#### 14. TERMINATION OF CONTRACT

Parties will act in accordance with the Standard Specification subsection 108.11 which requires:

- A. Termination Notice. The Department may terminate work under the Contract in whole or in part if the Engineer determines that termination is in the Department's best interest. Contract termination will be initiated by the Engineer's written Contract Termination Notice to the Contractor. The notice will specify the effective date.
- B. Canceled Commitments. The Contractor, after receiving the Contract Termination Notice, shall cancel any outstanding commitments for procurement of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor shall use reasonable effort to cancel or divert any outstanding subcontract commitments to the extent they relate to any work terminated. With respect to such canceled commitments the Contractor shall:
- (1) Settle all outstanding liabilities and all claims arising out of these canceled commitments. Such settlements will be approved by the Engineer and shall be final; and
  - (2) Assign to the Department all of the rights, title and interest of the Contractor under the terminated orders and subcontracts, as directed. The Department will then have the right to settle or pay any or all claims arising out of the termination of these commitments.

- C. Termination Claim.

The Contractor shall submit the termination claim to the Engineer within 90 days after the termination notice effective date. During the 90 day period, the Contractor may make a written request for a time extension in preparing the claim. Any time extension must be approved by the Engineer. If the Contractor fails to submit the termination claim within the time allowed, the Engineer may determine the amount due the Contractor by reason of the termination.

- D. Payment

Subject to subsection C above, the Contractor and Engineer may agree upon the whole or any part of the amount to be paid to the Contractor because of the termination. The amount may include reasonable cancellation charges incurred by the Contractor. The amount may also include any reasonable loss upon outstanding commitments for subcontracts which the Contractor is unable to cancel, provided the Contractor has made reasonable effort to divert the commitments to other activities. The amount agreed upon shall be embodied in a Contract Modification Order and the Contractor shall be paid that amount. Payments claimed and agreed to pursuant to termination shall be based on the Contract unit prices. Payment for partially completed lump sum items may be made in the proportion that the partially completed work is to the total lump sum item. Where work performed is of a nature that it is impossible to separate the costs of uncompleted work from completed units, the Contractor will be paid the actual cost incurred for the necessary preparatory work and other work accomplished. The Department may from time to time, under terms and conditions it may prescribe, make partial payments against costs incurred by the Contractor in connection with the contract

termination. The total of such payments shall not exceed the amount, as determined by the Engineer, the Contractor will be entitled to hereunder.

- E. Disposition of Work and Inventory. The Contractor shall transfer title and deliver to the Department, as directed, such items which, if the Contract had been completed, would have been furnished to the Department including:
- (1) Completed and partially completed work; and
  - (2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice. Other than the above, any termination inventory resulting from the contract termination may, with written approval of the Engineer, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the Engineer. The proceeds of any such disposition shall be applied to reduce any payments to the Contractor under the Contract, or shall otherwise be credited to the cost of work covered by the Contract, or paid in a manner as directed. Until final disposition, the Contractor shall protect and preserve all the material related to the Contract which is in the Contractor's possession and in which the Department has or may acquire an interest.
- F. Cost Records. The Contractor agrees to make cost records available to the extent necessary to determine the validity and amount of each item claimed.
- G. Contractual Responsibilities. Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed

## **15. DISPUTE RESOLUTION**

Subsections 105.22, 105.23, and 105.24 of the Department's Standard Specifications detail the process through which the Parties agree to resolve any issue that may result in a dispute. The intent of the process is to resolve issues early, efficiently, and as close to the project level as possible. Figure 105-1 in the standard special provisions outlines the process. Specified time frames may be extended by mutual agreement of the Department and the Contractor. In these subsections, when a time frame ends on a Saturday, Sunday or holiday, the time frame shall be extended to the next scheduled work day.

## **16. NOTICES and REPRESENTATIVES**

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Contract. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

## **17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for their use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the Department, any affected third party, or political sub-division from any and all claims for infringement resulting from the use of any patented design, device, material or process, or any trademark or copyright, and shall indemnify the Department for any costs, expenses, and damages which they may be obliged to pay by reason of any infringement, during the prosecution or after the completion of the Contract.

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Documents"). Contractor shall not use, willingly allow, cause or permit Work Product or State Documents to be used for any purpose other than

the performance of Contractor's obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Documents to the State in a form and manner as directed by the State.

## **18. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

## **19. GENERAL PROVISIONS**

### **A. Assignment**

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract.

### **B. Subcontracts**

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

### **C. Binding Effect**

Except as otherwise provided in **§19.A.**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

### **D. Authority**

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

### **E. Captions and References**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

### **F. Counterparts**

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

### **G. Entire Understanding**

This Contract, including all documents incorporated by reference, represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

### **H. Digital Signatures**

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller. Bilateral changes within the general scope of the contract may be executed using the contract modification order process described in this paragraph and in the Standard Specifications using a form substantially equivalent to the sample contract modification order attached as Exhibit G for any of the reasons listed in the Standard Specifications.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

L. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of this Contract.

M. Survival of Certain Agreement Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of this Contract shall survive the termination or expiration of this Contract and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §19.A., this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

**S. Licenses, Permits, and Other Authorizations.**

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

**T. Indemnification****i. General Indemnification**

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

**ii. Confidential Information Indemnification**

Disclosure or use of State Confidential Information by Contractor in violation of §10 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §10.

**iii. Intellectual Property Indemnification**

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

**20. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts except where noted in italics.

**A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

**B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S.

**D. INDEPENDENT CONTRACTOR.**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide**

**proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

**E. COMPLIANCE WITH LAW.**

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

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

**K. PUBLIC CONTRACTS FOR SERVICES. §8-17.5-101, *et seq.*, C.R.S.**

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the

Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §24-76.5-101, *et seq.*, C.R.S.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

Vendor 005A's Bid Information for Call 001, Letting 20220526, 05/26/2022

A&S Construction (005A)  
Call Order 001 (Proposal ID C23513)

County: KIT CARSONCHEYENNE  
Address: 839 Mackenzie Ave  
Canon City, CO81212  
Phone Number: 7192754555  
Signature Check: SignerCheck  
Time Bid Received: ReceiptTime  
Bid Checksum: 8242CBBB10  
Amendment Count: 0  
Bidding Errors: No  
Items Total: \$13,523,000.00  
Time Total: \$0.00  
Proposed Days:  
Bid Total: \$13,523,000.00  
DBE PCT: 10.00%%  
Bond ID: SCO05163132  
Bond was Verified:  
Bond Required Percent:  
Minimum Check Amount:  
Bid Security Maximum:  
Bond Agency Name: Travelers Casualty and Surety Company of America  
Agency Execution Date: 05/16/2022 09:05:24 PM  
Surety Name: Surety2000  
Surety State of Incorporation:  
Bond Company:  
Bond Type:  
Bond Appr Flag:  
Bond Affirm:  
Bond was Paid by Check: No

Error Details:

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Vendor 005A's Bid Information for Call 001, Letting 20220526, 05/26/2022

## **PROPOSAL GUARANTY BID BOND**

Bond Authorization Code: SCO05163132  
Bond Pct: 5%  
Pay By check ?: No  
Verified ?:  
Check Ammt:

Bid Error:

FORM 85  
=====  
Prequal. expiration date: 01/31/2023  
Number of revisions: 0  
Fuel Cost Adjustments: Yes  
Asphalt Cost Adjustments: No  
FORM 1414  
=====

FORM 604  
=====  
Non-Resident Bidder:

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Vendor 005A's Bid Information for Call 001, Letting 20220526, 05/26/2022

Contractor's code number: 005A  
Prequal. expiration date: 01/31/2023  
Proposal for Project No.(s) NHPP 3851-018

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CDOT Notice to bidders: The Colorado Department of Transportation in accordance with the Provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d to 2000d-4) and Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

I, the undersigned bidder for the project(s) listed above, hereby offer this proposal to the Chief Engineer, Department of Transportation, 2829 West Howard Place., Denver CO 80204.

I UNDERSTAND the bidding and award for this project(s) shall be in accordance with the rules that implement the "Construction Bidding for Public Projects Act", Sections 24-92-101 et seq., C.R.S.

I FURTHER UNDERSTAND that if this proposal is accepted, the Invitation for Bids, Proposal, Plans, Standard Specifications, Supplemental Specifications, Special Provisions, Contract Form, and Contract Bonds shall be part of the complete contract.

I FURTHER UNDERSTAND that failure to include this Form #85 in the proposal will cause this proposal to be rejected.

IN PREPARING THIS PROPOSAL, I HAVE:

- examined the Plans, Specifications, and the site of the proposed project and I am satisfied as to the conditions to be met and the work to be accomplished.
- considered any revisions to the Plans and Specifications which were made after advertisement. Number of revisions: 0

IF THIS PROPOSAL IS ACCEPTED AND I AM AWARDED THE CONTRACT, I AGREE TO:

- execute a Contract and Bonds on forms provided by the Department of Transportation within 15 calendar days after the date of award. I understand that failure to do so will be just cause for cancellation of the award and forfeiture of the proposal guarantee.
- commence work within 20 calendar days (or other time as specified in the Notice to Proceed) after the award date. I will complete the work in accordance with the time stated in the project Specifications.
- accomplish the work on the project in accordance with the Plans and Specifications, under the direction and according to the instructions of the Chief Engineer or, authorized representative, at the unit prices named in this proposal.
- perform any increased or decreased quantities of work at the unit prices named in the Proposal, except for alterations as provided for in the Specifications. I understand the Bid Schedule of quantities shown in this proposal is approximate and subject to change and that the Department may, in its sole discretion, unilaterally increase the funds available under the Contract if the quantities increase.
- furnish all labor, machinery, equipment, materials, and supplies necessary to accomplish the work on the project.
- provide adequate compensation insurance to protect my employees working on the project.

ACCEPTANCE OF FUEL AND ASPHALT COST ADJUSTMENTS:

Bidders have the option to accept Fuel and Asphalt Cost Adjustments in accordance with the Revisions of Section 109 for Fuel Cost Adjustments and Asphalt Cost Adjustments. To accept either of these standard special provisions, the bidder must fill in an "X" next to "YES" below. No Fuel or Asphalt Cost Adjustments will be made due to fuel or asphalt cost changes for bidders who answer "NO". If no line is marked for the Fuel or Asphalt Cost Adjustments, the default selection shall be considered a "NO", I choose not to accept the Cost Adjustments for this project'. When the Fuel or Asphalt Cost Adjustment specification does not apply to the project, no line should be marked. After bids are submitted, bidders will not be given any other opportunity to accept or reject these adjustments.

(SELECT YES or NO TO ACCEPT FUEL COST ADJUSTMENTS): Yes  
(SELECT YES or NO TO ACCEPT ASPHALT COST ADJUSTMENTS): No

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Company name: A&S Construction

Address: 839 Mackenzie Ave.

Canon City  
CO, 81212

County: Fremont

By (signature)

Print Name: John Paul Ary

Title: President

Date: 05/26/2022

\_\_\_\_\_  
2nd company name (if joint venture):

2nd Address:

County:

By (signature)

Print Name:

Title:

Date:

Attest:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[seal]

**NOTE:** This document must be signed in ink by an individual with the legal authority to bind the contractor. It must also be attested by the corporate secretary and bear the seal of the corporation.

CONTRACTORS PROPOSAL CHECKLIST (For information only)

The documents checked below are included in and made a part of this proposal. I have completed and signed all forms where indicated.

\_\_\_ Proposal Guarantee/Bid Bond (All Projects)

\_\_\_ Proposal (CDOT Form #85) (All Projects)

\_\_\_ Invitation for bids, plus any revision notices (All Projects)

\_\_\_ Anti-Collusion Affidavit (CDOT Form #606) (All Projects)

\_\_\_ Disadvantaged Business Enterprise Bid Conditions Assurance  
(CDOT Form #1414) (All Projects with DBE Goals)

\_\_\_ Statement of Residence for Bidder Preference (CDOT Form #604)  
(Non Federal Aid Projects Only)

\_\_\_ Bid Schedule (All Projects)

CDOT Form # 85 05/06

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Vendor 005A's Bid Information for Call 001, Letting 20220526, 05/26/2022

\_\_\_\_\_  
COLORADO DEPARTMENT OF TRANSPORTATION ANTI-COLLUSION AFFIDAVIT  
PROJECT NO. NHPP 3851-018  
LOCATION  
\_\_\_\_\_

I hereby attest that I am the person responsible within my firm for the final decision as to the price (s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other firm or person who is a bidder or potential prime bidder.

2A. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential prime bidder on this project, and will not be so disclosed prior to bid opening.

2B. Neither the prices nor the amount of the bid of any other firm or person who is a bidder or potential prime bidder on this project have been disclosed to me or my firm.

3A. No attempt has been made to solicit, cause or induce any firm or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.

3B. No agreement has been promised or solicited for any other firm or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.

4. The bid of my firm is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any firm or person to submit any intentionally high, noncompetitive or other form of complementary bid.

5. My firm has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing or promising to do so on this project.

6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person. and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firms submitting any intentionally high, noncompetitive or other form of complementary bid, or agreeing or promising to do so, on this project.

7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.

8. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from the Colorado Department of Transportation, of the true facts relating to submission of bids for this contract.

UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor's firm or company name: A&S Construction

Title President By John Paul Ary Date 05/26/2022

2nd Contractor's firm or company name:  
(if joint venture)

Title By Date

Sworn to me this \_\_\_\_\_ day of, \_\_\_\_\_ 20 \_\_\_\_\_

Notary Public \_\_\_\_\_

Commission Expiration Date \_\_\_\_\_

NOTE: This document must be signed in Ink.

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Vendor 005A's Bid Information for Call 001, Letting 20220526, 05/26/2022

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COLORADO DEPARTMENT OF TRANSPORTATION ANTICIPATED DBE PARTICIPATION PLAN  
Individual's Name: A&S Construction  
PROJECT NO. NHPP 3851-018  
LOCATION

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COLORADO DEPARTMENT OF TRANSPORTATION  
ANTICIPATED DBE PARTICIPATION PLAN

Project: NHPP 3851-018  
Subaccount #: C23513  
Contractor: A&S Construction  
Contact Phone: 719-275-3264  
Contact Email: nick@arycorp.com  
Contact: Nick Phillips

Preferred Contact Method: Email

**DBE Commitments**

DBE FirmName: MWBD Traffic Control  
Work to Be Performed: Traffic Control  
Commitment Amount: \$310,735.00  
DBE Credit Amount: \$310,735.00

DBE FirmName: Kolbe Striping  
Work to Be Performed: Striping  
Commitment Amount: \$627,255.00  
DBE Credit Amount: \$627,255.00

DBE FirmName: All Cowboy Erosion Control LLC  
Work to Be Performed: Erosion Control, Seeding  
Commitment Amount: \$59,552.29  
DBE Credit Amount: \$59,552.29

DBE FirmName: Gonzales Construction Co.  
Work to Be Performed: Guardrail  
Commitment Amount: \$92,325.00  
DBE Credit Amount: \$92,325.00

DBE FirmName: ATZ Construction Services  
Work to Be Performed: Office & Lab Trailers  
Commitment Amount: \$22,221.50  
DBE Credit Amount: \$22,221.50

DBE FirmName: Estate Media  
Work to Be Performed: Public Information  
Commitment Amount: \$5,459.00  
DBE Credit Amount: \$5,459.00

DBE FirmName: Chacons Construction & Transport  
Work to Be Performed: Aggregate Dry Haul - Trucking  
Commitment Amount: \$300,000.00  
DBE Credit Amount: \$234,752.21

DBE FirmName:  
Work to Be Performed:  
Commitment Amount:  
DBE Credit Amount:

DBE FirmName:  
Work to Be Performed:  
Commitment Amount:  
DBE Credit Amount:

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DBE Credit Amount:

Anticipated DBE Participation: \$1,352,300.00  
Bid Amount: \$13,523,000.00  
Total DBE Percentage: 10.00%

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#### **Bidder Signature**

This section must be signed by an individual with the authority to bind the Bidder. By signing this form, as an authorized representative of the Bidder, you declare under penalty of perjury in the second degree and any other applicable state or federal laws that the statements made in this document are true and complete to the best of your knowledge. Further, you attest that you have read the Standard Special Provision Disadvantaged Business Enterprise Requirements and understand the following:

CDOT shall not award a contract until it has been determined that the contract goal has been met or that you have otherwise demonstrated good faith efforts. Once your proposal has been submitted, commitments may not be modified or terminated without the approval of CDOT. If selected as the lowest apparent bidder, you shall submit a Form 1415 for each commitment listed above. If you have not met the contract goal, you will also be required to submit documentation of all good faith efforts to meet the contract

goal.

It is your responsibility to ensure that the selected DBEs are certified for the work to be performed and that their credit has been properly counted. For additional information and instructions on calculating DBE credit, see the Standard Special Provision Disadvantaged Business Enterprise Requirements.

By entering your name below, you are signing this document:

Representative Name: John Paul Ary

Title: President

Date: 05/26/2022

Form 1414 (01/14)

## Colorado Department Of Transportation

06/16/2022

## Contract Schedule

Page 1 of 5

Contract ID: C23513

Project(s): NHPP 3851-018

SECTION 0001 BID ITEMS

Proposal Line Number	Item ID Description	Approximate Quantity and Units	Unit Price		Bid Amount	
			Dollars	Cents	Dollars	Cents
0005	201-00000	1.000				
	Clearing and Grubbing	L S	24,000.00		24,000.00	
0010	202-00090	384.000				
	Removal of Delineator	EACH	12.00		4,608.00	
0015	202-00240	201,873.000				
	Removal of Asphalt Mat (Planing)	SY	3.00		605,619.00	
0020	202-00250	104,292.000				
	Removal of Pavement Marking	SF	1.20		125,150.40	
0025	202-00810	21.000				
	Removal of Ground Sign	EACH	150.00		3,150.00	
0030	202-00821	116.000				
	Removal of Sign Panel	EACH	160.00		18,560.00	
0035	202-01130	590.000				
	Removal of Guardrail Type 3	LF	12.00		7,080.00	
0040	202-01300	4.000				
	Removal of End Anchorage	EACH	700.00		2,800.00	
0045	202-05030	13,000.000				
	Sawing Asphalt Material (10 Inch)	LF	3.00		39,000.00	
0050	203-00050	2,500.000				
	Unsuitable Material	CY	16.00		40,000.00	
0055	203-00060	25,833.000				
	Embankment Material (Complete In Place)	CY	7.00		180,831.00	
0060	203-00066	528.000				
	Embankment Material (Complete In Place) (R40)	CY	60.00		31,680.00	
0065	203-01500	20.000				
	Blading	HOUR	120.00		2,400.00	
0070	207-00700	2,460.000				
	Topsoil (Onsite)	CY	4.00		9,840.00	
0075	207-00704	14,762.000				
	Subgrade Soil Preparation	SY	2.00		29,524.00	
0080	208-00016	900.000				
	Erosion Log Type 1 (Special) (12 Inch)	LF	8.00		7,200.00	
0085	208-00035	300.000				
	Aggregate Bag	LF	18.00		5,400.00	

## Colorado Department Of Transportation

06/16/2022

## Contract Schedule

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Contract ID: C23513

Project(s): NHPP 3851-018

SECTION 0001 BID ITEMS

Proposal Line Number	Item ID Description	Approximate Quantity and Units	Unit Price		Bid Amount	
			Dollars	Cents	Dollars	Cents
0090	208-00075 Pre-fabricated Vehicle Tracking Pad	4.000 EACH	800.00		3,200.00	
0095	208-00103 Removal and Disposal of Sediment (Labor)	60.000 HOUR	60.00		3,600.00	
0100	208-00105 Removal and Disposal of Sediment (Equipment)	20.000 HOUR	120.00		2,400.00	
0105	208-00106 Sweeping (Sediment Removal)	80.000 HOUR	160.00		12,800.00	
0110	208-00107 Removal of Trash	30.000 HOUR	80.00		2,400.00	
0115	208-00146 Pre-fabricated Concrete Washout Structure (Type 2)	1.000 EACH	800.00		800.00	
0120	208-00207 Erosion Control Management	16.000 DAY	500.00		8,000.00	
0125	210-00815 Reset Sign Panel	1.000 EACH	640.00		640.00	
0130	212-00700 Organic Fertilizer	610.000 LB	3.00		1,830.00	
0135	212-00701 Compost (Mechanically Applied)	198.000 CY	90.00		17,820.00	
0140	212-00703 Humate	458.000 LB	5.00		2,290.00	
0145	212-00704 Mycorrhizae	25.000 LB	50.00		1,250.00	
0150	212-00706 Seeding (Native) Drill	3.050 ACRE	1,600.00		4,880.00	
0155	213-00016 Mulching Pelletized Material (Waterless Application)	4.450 ACRE	8,000.00		35,600.00	
0160	304-06000 Aggregate Base Course (Class 6)	200.000 TON	66.00		13,200.00	
0165	304-06009 Aggregate Base Course (Class 6) (Special)	1,317.000 TON	56.00		73,752.00	

## Colorado Department Of Transportation

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## Contract Schedule

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Contract ID: C23513

Project(s): NHPP 3851-018

SECTION 0001 BID ITEMS

Proposal Line Number	Item ID Description	Approximate Quantity and Units	Unit Price		Bid Amount	
			Dollars	Cents	Dollars	Cents
0170	310-00608 Full Depth Reclamation of Hot Mix Asphalt Pavement (0-8")	58,857.000 SY	7.00		411,999.00	
0175	310-00610 Full Depth Reclamation of Hot Mix Asphalt Pavement (8-12")	4,928.000 SY	10.00		49,280.00	
0180	403-00720 Hot Mix Asphalt (Patching) (Asphalt)	800.000 TON	165.00		132,000.00	
0185	403-33741 Hot Mix Asphalt (Grading S) (75) (PG 64- 22)	35,372.000 TON	131.00		4,633,732.00	
0190	403-34751 Hot Mix Asphalt (Grading SX) (75) (PG 64-28)	35,336.000 TON	139.00		4,911,704.00	
0195	411-10255 Emulsified Asphalt (Slow-Setting)	26,660.000 GAL	3.00		79,980.00	
0200	420-00132 Geotextile (Separator) (Class 1)	2,500.000 SY	3.00		7,500.00	
0205	603-10240 24 Inch Corrugated Steel Pipe	18.000 LF	300.00		5,400.00	
0210	603-30024 24 Inch Steel End Section	2.000 EACH	1,165.00		2,330.00	
0215	606-00301 Guardrail Type 3 (6-3 Post Spacing)	462.500 LF	60.00		27,750.00	
0220	606-01370 Transition Type 3G	4.000 EACH	7,000.00		28,000.00	
0225	606-02005 End Anchorage (Flared)	4.000 EACH	7,600.00		30,400.00	
0230	612-00111 Delineator (Drivable)(Type I)	356.000 EACH	120.00		42,720.00	
0235	612-00113 Delineator (Drivable)(Type III)	2.000 EACH	130.00		260.00	
0240	614-00011 Sign Panel (Class I)	549.000 SF	27.00		14,823.00	
0245	614-00012 Sign Panel (Class II)	498.000 SF	33.00		16,434.00	

## Colorado Department Of Transportation

06/16/2022

## Contract Schedule

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Contract ID: C23513

Project(s): NHPP 3851-018

## SECTION 0001 BID ITEMS

Proposal Line Number	Item ID Description	Approximate Quantity and Units	Unit Price		Bid Amount	
			Dollars	Cents	Dollars	Cents
0250	614-01575 Steel Sign Support (2-1/2 Inch Round NP-40)(Post)	182.000 LF	40.00		7,280.00	
0255	614-01578 Steel Sign Support (2-1/2 Inch Round NP-40)(Slipbase)	13.000 EACH	320.00		4,160.00	
0260	620-00002 Field Office (Class 2)	1.000 EACH	34,000.00		34,000.00	
0265	620-00012 Field Laboratory (Class 2)	1.000 EACH	37,000.00		37,000.00	
0270	620-00020 Sanitary Facility	2.000 EACH	5,400.00		10,800.00	
0275	625-00000 Construction Surveying	1.000 L S	30,000.00		30,000.00	
0280	626-00000 Mobilization	1.000 L S	897,798.60		897,798.60	
0285	626-01114 Public Information Management (Tier IV)	103.000 DAY	60.00		6,180.00	
0290	627-00008 Modified Epoxy Pavement Marking	1,205.000 GAL	149.00		179,545.00	
0295	627-00013 Pavement Marking Paint (High Build)	3,058.000 GAL	90.00		275,220.00	
0300	627-30110 Pavement Marking Paint (Xwalk-Stop Line)	240.000 SF	24.00		5,760.00	
0305	629-01031 Survey Monument (Type 3A)	9.000 EACH	2,000.00		18,000.00	
0310	630-00000 Flagging	3,750.000 HOUR	42.00		157,500.00	
0315	630-00007 Traffic Control Inspection	38.000 DAY	350.00		13,300.00	
0320	630-00012 Traffic Control Management	75.000 DAY	1,100.00		82,500.00	
0325	630-80002 Flashing Beacon (Solar)	2.000 EACH	1,400.00		2,800.00	
0330	630-80341 Construction Traffic Sign (Panel Size A)	12.000 EACH	50.00		600.00	

## Colorado Department Of Transportation

06/16/2022

## Contract Schedule

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Contract ID: C23513

Project(s): NHPP 3851-018

## SECTION 0001 BID ITEMS

Proposal Line Number	Item ID Description	Approximate Quantity and Units	Unit Price		Bid Amount	
			Dollars	Cents	Dollars	Cents
0335	630-80342	56.000				
	Construction Traffic Sign (Panel Size B)	EACH	55.00		3,080.00	
0340	630-80344	140.000				
	Construction Traffic Sign (Special)	SF	24.00		3,360.00	
0345	630-80350	25.000				
	Vertical Panel	EACH	50.00		1,250.00	
0350	630-80355	2.000				
	Portable Message Sign Panel	EACH	9,000.00		18,000.00	
0355	630-80360	25.000				
	Drum Channelizing Device	EACH	50.00		1,250.00	
0360	630-80380	500.000				
	Traffic Cone	EACH	6.00		3,000.00	
0365	630-85041	5.000				
	Mobile Attenuator	DAY	3,000.00		15,000.00	
			Total Bid:		\$13,523,000.00	

Bond No.: 107631893

**EXHIBIT B, PERFORMANCE BOND**

**KNOW ALL PERSONS BY THESE PRESENTS**, That we A & S CONSTRUCTION COMPANY of the County of Fremont, in the State of Colorado as Principal, and Travelers Casualty and Surety Company of America of One Tower Square, Hartford, CT, in the State of CT as surety, are held and firmly bound unto the **STATE OF COLORADO**, in the penal sum of FOURTEEN MILLION THREE HUNDRED TWENTY-THREE THOUSAND ONE HUNDRED DOLLARS AND ZERO CENTS (\$14,323,100.00), with interest thereon at the rate of eight percent (8%) per annum, until paid in good and lawful money of the United States of America, for the payment whereof, well and truly to be made, we bind ourselves, our and each of our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the obligation is that the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, dated 6/28/2022, for the construction of a project described as Colorado Project No. NHPP 3851-018 - 23513, located US 385 NORTH OF CHEYENNE WELLS MP 157 - 172.7 in Cheyenne County in the State of Colorado. The work consists of RESURFACING, MINOR STRUCTURE REHABILITATION, SHOULDER WIDENING; said work of construction to be done according to the requirements of said contract;

**NOW THEREFORE**, if the said Principal shall at all times duly and faithfully discharge its, his or their duties under said contract, and shall duly and faithfully perform all the obligations thereof, and shall and will indemnify and save harmless the State of Colorado, and all persons as provided by the Statutes of the State of Colorado, from any and all damages or loss which the said State of Colorado or any persons as provided by the Statutes of the State of Colorado may or shall suffer by reason of the default of the Principal or anyone acting for him as sub-contractor or otherwise in the performance of this contract, or by reason of any failure on the part of said Principal, his agents, servants or employees, his sub-contractor or sub-contractors, or any of them, in the performance of said contract or any portion thereof, these presents shall become void, otherwise to be and remain in full force and effect.

**THE STATE OF COLORADO** shall be under no obligation, except as expressly provided by statute, to withhold any sums due the said Principal under the terms of this contract, or to protect in any other way the surety or sureties, claimants or others.

No representation or statement of the Principal made to the surety or sureties in application for this bond, or otherwise, shall be read into or be a part of this bond or binding in any way on the obligee herein.

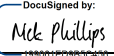
No assignment by Principal to surety of the proceeds of such contract shall be binding, except as to any net surplus after paying all claims chargeable by law or by said contract, against the proceeds thereof.

No extension of time of performance of said contract or delay in the completion of the work there under shall invalidate this bond or release the liability of the surety there under.

This agreement shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado, or such assistant as he may designate.

**IN WITNESS WHEREOF**, We have hereunto set our hands and seals at Denver,  
Colorado the day and date above written.

Contractor: A & S CONSTRUCTION COMPANY

Sign Name:  Nick Phillips

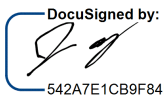
Type Name: Nick Phillips

Surety Co.: Travelers Casualty and Surety Company of America

Address: One Tower Square

Hartford, CT 06183

**ATTEST:**

  
542A7E1CB9F84E9...

Josh Ary

VP

(Title)

Bonding Agent: IMA, Inc.

Sign Name:  Amy Coonts

Type Name: Amy Coonts

Title: Attorney-in-Fact

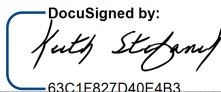
Address: 1705 17th Street, Suite 100

Denver, CO 80202

N/A

Approved by the STATE OF COLORADO, Department of Transportation, This \_\_\_\_\_ day of  
6/28/2022, A.D.

By:

  
63C1E827D40E4B3

Stephen Harelson, P.E., Chief Engineer, Department of Transportation

Bond No.: 107631893

**EXHIBIT C, PAYMENT BOND**

**KNOW ALL PERSONS BY THESE PRESENTS**, That we A & S CONSTRUCTION COMPANY of the County of Fremont, in the State of Colorado as Principal, and Travelers Casualty and Surety Company of America of One Tower Square, Hartford, CT, in the State of CT as surety, are held and firmly bound unto the **STATE OF COLORADO**, in the penal sum of FOURTEEN MILLION THREE HUNDRED TWENTY-THREE THOUSAND ONE HUNDRED DOLLARS AND ZERO CENTS (\$14,323,100.00), with interest thereon at the rate of eight percent (8%) per annum, until paid in good and lawful money of the United States of America, for the payment whereof, well and truly to be made, we bind ourselves, our and each of our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the obligation is that the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, dated 6/28/2022, for the construction of a project described as Colorado Project No. NHPP 3851-018 - 23513, located US 385 NORTH OF CHEYENNE WELLS MP 157 - 172.7 in Cheyenne County in the State of Colorado. The work consists of RESURFACING, MINOR STRUCTURE REHABILITATION, SHOULDER WIDENING; said work of construction to be done according to the requirements of said contract;

**NOW THEREFORE**, if the said Principal, his sub-contractor or subcontractors, and each and all of them, shall duly pay for all labor, materials, and other supplies used or consumed in the performance of the work contracted to be done or any part thereof, and if the said Principal shall also fully indemnify and save harmless the State of Colorado, and all persons as provided by the Statutes of the State of Colorado, from any and all damages or loss which the said State of Colorado or any persons as provided by the Statutes of the State of Colorado may or shall suffer by reason of the default of the Principal or anyone acting for them as sub-contractor or otherwise in connection with such payments, these presents shall become void, otherwise to be and remain in full force and effect.

**THE STATE OF COLORADO** shall be under no obligation, except as expressly provided by statute, to withhold any sums due the said Principal under the terms of this contract, or to protect in any other way the surety or sureties, claimants or others.

No representation or statement of the Principal made to the surety or sureties in application for this bond, or otherwise, shall be read into or be a part of this bond or binding in any way on the obligee herein.

No assignment by Principal to surety of the proceeds of such contract shall be binding, except as to any net surplus after paying all claims chargeable by law or by said contract, against the proceeds thereof.

No extension of time of performance of said contract or delay in the completion of the work there under shall invalidate this bond or release the liability of the surety there under.

This agreement shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado, or such assistant as he may designate.

**IN WITNESS WHEREOF**, We have hereunto set our hands and seals at Denver,  
Colorado \_\_\_\_\_ the day and date above written.

Contractor: A & S CONSTRUCTION COMPANY

Sign Name: \_\_\_\_\_

DocuSigned by:  
Nick Phillips  
100081E08B5C4506

Type Name: \_\_\_\_\_


Nick Phillips

Surety Co.: Travelers Casualty and Surety Company of America

Address: One Tower Square

Hartford, CT 06183

**ATTEST:**

DocuSigned by:  
  
542A7E1CB9F84E9...

Josh Ary

VP

(Title)

Bonding Agent: IMA, Inc.

Sign Name: \_\_\_\_\_

DocuSigned by:  
Amy Coonts  
0CE84D097A54476...

Type Name: \_\_\_\_\_

Amy Coonts

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

Attorney-in-Fact

Address: \_\_\_\_\_

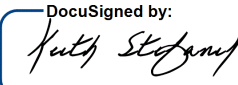
1705 17th Street, Suite 100

Denver, CO 80202

N/A

Approved by the STATE OF COLORADO, Department of Transportation, This \_\_\_\_\_ day of  
6/28/2022, A.D.

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

DocuSigned by:  
  
63C1F827D40E4B3...

Stephen Harelson, P.E., Chief Engineer, Department of Transportation



**EXHIBIT D, FEDERAL REQUIREMENTS**

Federal laws and regulations that may be applicable to the Work include:

- A. 23 CFR Part 635 concerning "Construction and Maintenance Provisions", and 23 CFR Part 633, concerning "Required contract Provisions for Federal-Aid Construction Contracts."
- B. Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction Contracts awarded in excess of \$10,000).
- C. The Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All Contracts for construction or repair).
- D. The Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction Contracts in excess of \$2,000. This act requires that all laborers and mechanics employed by Contractors or sub-Contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).
- E. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction Contracts in excess of \$2,000).
- F. Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act (33 USC 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts and Subcontracts in excess of \$100,000).
- G. 42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 CFR Part 80 et seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.
- H. The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.
- I. The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the Contractor is acquiring real property and displacing households or businesses in the performance of this Contract.)
- J. The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).
- K. The Age Discrimination Act of 1975, 42 USC Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91.
- L. Section 504 of the Rehabilitation Act of 1973, 29 USC 794, as amended, and implementing regulation 45 CFR Part 84.
- M. The specific Contract provisions described in Title 49, Code of Federal Regulations, section 18.36(i), which are also deemed incorporated herein. The Contractor shall incorporate such provisions into any Subcontract (s) as terms and conditions of those Subcontracts.
- N. Cargo Preference Act, 46 CFR Part 381.7(b). Any items transported by ocean vessel must be transported by privately owned United States-flag commercial vessels. Such vessels shall ship at least 50 percent of the gross tonnage whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. Gross tonnage is computed separately for dry bulk carriers, dry cargo liners, and tankers. For all items transported by ocean vessel, the Contractor shall furnish a legible, English language copy of a rated 'on-board' commercial ocean bill-of-lading for each shipment of cargo described in the previous paragraph. Such bill-of-lading shall be furnished within 20 days following the date of loading for shipments originating in the United States and within 30 working days following the date of loading from shipments originating outside the United States. The bill-of-lading shall be furnished to the Resident Engineer and to the following:

Division of National Cargo

PO #: 461001894  
Routing #: 22-HA4-ZG-00124

Office of Market Development  
Maritime Administration  
Washington, DC 20590

The Contractor shall also include the language in this Section in all subcontracts issued pursuant to this Contract.

**EXHIBIT E, NOTIFICATION OF COMMITMENTS WITHIN 10% OF  
ORIGINAL BID**

This is to notify the State that the commitments on this project for completed work, paid and unpaid, is within 10% less of the amount of funds available per the Contract identified below, as detailed below.

Project number: \_\_\_\_\_

Project code: \_\_\_\_\_

Contractor: \_\_\_\_\_

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

**Available Funds**

Original contract: \$ \_\_\_\_\_

Planned force account: \$ \_\_\_\_\_

Total: \$ \_\_\_\_\_

90% of total: \$ \_\_\_\_\_

**Commitments**

Amount paid to date \$ \_\_\_\_\_

Estimated value of completed work not yet paid \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

Contractor Signature: \_\_\_\_\_ Title: \_\_\_\_\_

**EXHIBIT F, SAMPLE FUNDING LETTER**

<b>COLORADO DEPARTMENT OF TRANSPORTATION CONTRACT FUNDING INCREASE/DECREASE AND APPROVAL LETTER</b>						<b>AUTHORITY:</b> State Controller Policy letter on June 12, 1996 CDOT Controller letter on May 23, 1996			
Region: Complete section 1 and submit to CDOT Controller's office.									
(1) This form to be used for the following contracts/situations only (check the appropriate situation): <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> indefinite quantity, order more/add more  <input type="checkbox"/> CDOT construction, sum of CMO's  <input type="checkbox"/> CDOT construction, underestimated total cost         </div> <div> <input type="checkbox"/> utility/railroad, underestimated total cost  <input type="checkbox"/> LA construction, underestimated cost  <input type="checkbox"/> CDOT consultant, underestimated cost         </div> </div>									
<b>SECTION 1 (Region use)</b>									
Date: (2)						Project code (3)			
To: CDOT Controller (FAX #(303) 757-9573 or e-mail CONTROLLER)						Project # (4)			
From: Region # (5)			Office: (5)			Phone # (5)		FAX # (5)	
CDOT has executed a contract with: (6) Address: (6)									
FEIN # (6)			Contract routing # (7)				PO encumbrance # (indicate PO, SC or PG #) (8)		
Fund (9)	Orgn. (9)	Appro. (9)	Prgrm. (9)	Func. (9)	Object/Sub- obj N/P (9)	GBL (9)	Reporting Catg. (9)	Proj/Sub /Phase (9)	
Original contract amount \$ (10)				Has a Budget Request been processed to cover the contract amount increase? - <input type="checkbox"/> yes <input type="checkbox"/> no (14)					
Previous Funding Letter(s) Total \$ (11) (Funding letter #1 thru #___)				Preparer's name (15) <div style="text-align: right;">PHONE NO:</div>					
This Funding Letter Total \$ (12) - (#___)				Contract Administrator's/Business Manager's Approval (16) <div style="text-align: right;">PHONE NO:</div>					
Adjusted contract amount \$ (13)				CDOT Designee Approval (17)					
				Local Agency approval (18)					
<b>SECTION 2 (Controller's Office use) (19)</b>									
Total allotment amount \$ (19)				Commission budget \$ (19)					
If construction: __CE pool elig. (19)		CE charges \$ (19)		Indirect chgs \$ (19)		Adjusted contract amount plus total CE & indirect charges calculation \$ (19)			
I have reviewed the financial status of the project, organization, grant and have determined that sufficient funds are available to cover this increase, effective as of _____ (19)									
State Controller or Delegee (20)								Date (20)	

**EXHIBIT G, CONTRACT MODIFICATION ORDER**

<b>COLORADO DEPARTMENT OF TRANSPORTATION CONTRACT MODIFICATION ORDER</b>	<b>Project No.</b>		<b>Project code</b>
	<b>Location</b>		
	<b>Date</b>		<b>Project order No.</b>
<b>Contractor</b>		<b>Estimated cost to project</b> <input type="checkbox"/> <b>Increase</b> <input type="checkbox"/> <b>Decrease</b> \$	
<b>Complete Address</b>		<b>Total additional days allowed to complete work</b>	<b>Federal oversight</b> <input type="checkbox"/> <b>yes</b> <input type="checkbox"/> <b>no</b>
<b>Modification title</b>			

--

<b>I accept this order, for work to be performed and prices on which payment is to be based.</b>			
<b>REQUIRED IN ACCORDANCE WITH THE INSTRUCTIONS IN CDOT'S CONSTRUCTION MANUAL</b>		<b>REQUIRED FOR ALL CHANGE ORDERS</b>	
<b>Approved by FHWA Operations Engineer:</b> <b>Date</b> <div style="border-bottom: 1px solid black; width: 100px; margin-left: 300px;"></div>		<b>Authorized by Project Engineer:</b> <b>Date</b> <div style="border-bottom: 1px solid black; width: 100px; margin-left: 300px;"></div>	
<b>OPTIONAL</b> <b>Approved by Region Transportation Director:</b> <b>Date</b> <div style="border-bottom: 1px solid black; width: 100px; margin-left: 300px;"></div>		<b>Contractor Representative:</b> <b>Date</b> <div style="border-bottom: 1px solid black; width: 100px; margin-left: 300px;"></div>	
		<b>Approved by Resident Engineer</b> <b>Date</b> <div style="border-bottom: 1px solid black; width: 100px; margin-left: 300px;"></div>	
		<input type="checkbox"/> <b>Participating</b> <input type="checkbox"/> <b>Non-participating</b> <input type="checkbox"/> <b>Participation as noted</b>	
		<b>Approved funding by Region Program Engineer:</b> <b>Date</b> <div style="border-bottom: 1px solid black; width: 100px; margin-left: 300px;"></div>	

PREVIOUS EDITIONS ARE OBSOLETE, AND MAY NOT BE USED

CDOT FORM #90 6/02

**EXHIBIT H, REQUIRED CONTRACT PROVISIONS FEDERAL-AID  
CONSTRUCTION CONTRACTS**

FHWA-1273 -- Revised May 1, 2012

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only).

**I. GENERAL**

- 1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design- build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

- 2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
- 3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
- 4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23

CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
  - a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
  - b. The contractor will accept as its operating policy the following statement:  
 "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the- job training."
2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
  - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
  - a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
  - c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
  - a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
  - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
  - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
  - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such

corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
- b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

- a. The records kept by the contractor shall document the following:
  - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
  - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
  - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work

classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NON-SEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b.
  - (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
    - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
    - (ii) The classification is utilized in the area by the construction industry; and
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The

Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- b.
  - (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.
  - (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
    - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
    - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347

shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

- (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such

programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
  - a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the

contractor's own organization (23 CFR 635.116).

- a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
    - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
    - (2) the prime contractor remains responsible for the quality of the work of the leased employees;
    - (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
    - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
  3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
  4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
  5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

#### **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

#### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal- aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented; Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## 2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
  - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
  - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## 2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
  - a. To the extent that qualified persons regularly residing in the area are not available.
  - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
  - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of

PO #: 461001894  
Routing #: 22-HA4-ZG-00124

subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.
6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.





7501 E. Lowry Blvd.  
Denver, CO 80230-7006  
303.361.4000 / 800.873.7242  
[Pinnacol.com](http://Pinnacol.com)

NCCI #: WC000313  
Policy #: 4098405

A & S Construction Co Inc  
c/o Partners PEO  
6099 S. Quebec Street, Suite 200  
Greenwood Village, CO 80111

Orcutt Insurance Group, LLC  
8361 Sangre de Cristo Rd., Ste 200  
Littleton, CO 80127  
(303) 233-2828

**ENDORSEMENT: Waiver Of Subrogation**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**SCHEDULE**

State of Colorado  
Department of Transportation  
2829 W Howard Place #300  
Denver, CO 80204-2305

Effective Date: June 24, 2022  
Pinnacol Assurance has issued this endorsement June 24, 2022



# CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)  
06/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Pinnacol Assurance 7501 E. Lowry Blvd. Denver, CO 80230-7006	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A : <b>Pinnacol Assurance</b></td> <td><b>41190</b></td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : <b>Pinnacol Assurance</b>	<b>41190</b>	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER D :															
INSURER E :															
INSURER F :															
<b>INSURED</b> A & S Construction Co Inc c/o Partners PEO 6099 S. Quebec Street, Suite 200 Greenwood Village, CO 80111															

**COVERAGES**
**CERTIFICATE NUMBER:**
**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$																
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$																
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<b>A</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	4098405	04/01/2022	04/01/2023	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">X</td> <td style="width: 15%;">PER STATUTE</td> <td style="width: 10%;">OTH-ER</td> <td style="width: 80%;"></td> </tr> <tr> <td></td> <td>E.L. EACH ACCIDENT</td> <td></td> <td>\$ 1,000,000</td> </tr> <tr> <td></td> <td>E.L. DISEASE - EA EMPLOYEE</td> <td></td> <td>\$ 1,000,000</td> </tr> <tr> <td></td> <td>E.L. DISEASE - POLICY LIMIT</td> <td></td> <td>\$ 1,000,000</td> </tr> </table>	X	PER STATUTE	OTH-ER			E.L. EACH ACCIDENT		\$ 1,000,000		E.L. DISEASE - EA EMPLOYEE		\$ 1,000,000		E.L. DISEASE - POLICY LIMIT		\$ 1,000,000
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	E.L. DISEASE - POLICY LIMIT		\$ 1,000,000																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Unless otherwise stated in the policy provisions, coverage in Colorado only. Project # NHPP 3851-018 US 385 North of Cheyenne Wells Project Code: 23513

**CERTIFICATE HOLDER**

 2265534  
 State of Colorado  
 Department of Transportation  
 2829 W Howard Place #300  
 Denver, CO 80204-2305

**CANCELLATION**

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

AUTHORIZED REPRESENTATIVE

Orcutt Insurance Group, LLC

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ACORD 25 (2016/03)

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**CERTIFICATE HOLDER COPY**

State of Colorado  
Department of Transportation  
2829 W Howard Place #300  
Denver, CO 80204-2305

**IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT (CONT)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> IMA, Inc. - Colorado Division 1705 17th Street, Suite 100 Denver CO 80202	<b>CONTACT</b> NAME: IMA Denver Team PHONE (A/C, No, Ext): 303-534-4567 FAX (A/C, No): E-MAIL ADDRESS: DenAccountTechs@imacorp.com														
<b>INSURED</b> Ary Corp. Companies PO Box 566 Canon City, CO 81215	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: The Charter Oak Fire Insurance Company</td> <td style="text-align: center;">25615</td> </tr> <tr> <td>INSURER B: Travelers Property Casualty Company of America</td> <td style="text-align: center;">25674</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: The Charter Oak Fire Insurance Company	25615	INSURER B: Travelers Property Casualty Company of America	25674	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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**COVERAGES****CERTIFICATE NUMBER:** 338446179**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded:\$25,000 <input checked="" type="checkbox"/> XCU Not Excluded GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			DTC06C976043TIL22	1/1/2022	1/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			8102L9680402226G	1/1/2022	1/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP9M4672492226	1/1/2022	1/1/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Automobile Physical Damage			8102L9680402226G	1/1/2022	1/1/2023	Deductibles: Comprehensive \$1,000 Collision \$1,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Pollution Liability Coverage: Policy #CPYG2764594A004  
 Effective Dates: 01/01/2021 - 01/01/2023 Insurer: Illinois Union Insurance Company  
 \$5,000,000 Limit; \$5,000,000 Aggregate; \$10,000 SIR; \$25,000 Exposure-Specific Catastrophe Mgmt.

Unscheduled Equipment and Leased & Rented Equipment Coverages: Policy #QT6300J229048TIL22  
 Effective Dates: 01/01/2022 - 01/01/2023 Insurer: Travelers Prop. Casualty Co. of America  
 \$17,152,992 UnScheduled Contractors Equipment Limit; \$2,500 Deductible  
 \$1,000,000 Leased & Rented Equipment, including loss of use Limit; \$2,500 Deductible  
 See Attached...

**CERTIFICATE HOLDER****CANCELLATION**

A & S CONSTRUCTION COMPANY  
 839 MACKENZIE AVENUE  
 CANON CITY CO 81212-0566

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

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: ASCONST1

LOC #: \_\_\_\_\_



ADDITIONAL REMARKS SCHEDULE

AGENCY IMA, Inc. - Colorado Division		NAMED INSURED Ary Corp. Companies PO Box 566 Canon City, CO 81215
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Certificate Holder is included as Additional Insured on the General Liability, Automobile Liability, and Umbrella Liability policies if required by written contract or agreement and with respect to work performed by Insured, subject to the policy terms and conditions. This Insurance is Primary & Non-Contributory on the General Liability policy subject to the policy terms and conditions. A Waiver of Subrogation is provided in favor of Additional Insureds on the General Liability, Automobile Liability, Umbrella Liability and Workers Compensation policies if required by written contract or agreement and with respect to work performed by Insured, subject to the policy terms and conditions.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **XTEND ENDORSEMENT FOR CONTRACTORS**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |  |   |
|--|---|
| <p><b>A. Who Is An Insured – Unnamed Subsidiaries</b></p> <p><b>B. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations</b></p> | <p><b>C. Incidental Medical Malpractice</b></p> <p><b>D. Blanket Waiver Of Subrogation</b></p> <p><b>E. Contractual Liability – Railroads</b></p> <p><b>F. Damage To Premises Rented To You</b></p> |
|--|---|

### **PROVISIONS**

#### **A. WHO IS AN INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a.** You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and
- b.** Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a.** Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b.** After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a.** An organization other than a partnership, joint venture or limited liability company; or

- b.** A trust;

as indicated in its name or the documents that govern its structure.

#### **B. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a.** Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b.** Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

## COMMERCIAL GENERAL LIABILITY

**C. INCIDENTAL MEDICAL MALPRACTICE**

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

**b.** An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a), (b), (c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

**(a)** "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician or paramedic; or

**(b)** First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph **2., Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of

pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

**a.** Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or

**b.** The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph **4.b., Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph **2.a.(1)** of Section **II – Who Is An Insured**.

**D. BLANKET WAIVER OF SUBROGATION**

The following is added to Paragraph **8., Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

**a.** "Bodily injury" or "property damage" that occurs; or

**b.** "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

**E. CONTRACTUAL LIABILITY – RAILROADS**

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:

**c.** Any easement or license agreement;

## COMMERCIAL GENERAL LIABILITY

2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

### **F. DAMAGE TO PREMISES RENTED TO YOU**

The following replaces the definition of "premises damage" in the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED** **(Includes Products-Completed Operations If Required By Contract)**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **PROVISIONS**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

- (1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and

- (b) Supervisory, inspection, architectural or engineering activities.

- (2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

- c. The additional insured must comply with the following duties:

- (1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- (a) How, when and where the "occurrence" or offense took place;

- (b) The names and addresses of any injured persons and witnesses; and

- (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- (2) If a claim is made or "suit" is brought against the additional insured:

## COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
  - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

## COMMERCIAL GENERAL LIABILITY

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

POLICY NUMBER:  
DTCO6C976043TIL22

ISSUE DATE: 12/22/21

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED ENTITY – NOTICE OF CANCELLATION PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

### **SCHEDULE**

**CANCELLATION:**

**Number of Days Notice of Cancellation:** 30

**PERSON OR  
ORGANIZATION:**

ANY PERSON OR ORGANIZATION  
(CONTINUED ON IL T8 03)

**ADDRESS:**

CANON CITY  
CO  
81215

### **PROVISIONS:**

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, and a number of days is shown for cancellation in the schedule above, we will mail notice of cancellation to the person or organization shown in the schedule

above. We will mail such notice to the address shown in the schedule above at least the number of days shown for cancellation in the schedule above before the effective date of cancellation.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BUSINESS AUTO EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li><b>A. BROAD FORM NAMED INSURED</b></li> <li><b>B. BLANKET ADDITIONAL INSURED</b></li> <li><b>C. EMPLOYEE HIRED AUTO</b></li> <li><b>D. EMPLOYEES AS INSURED</b></li> <li><b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b></li> <li><b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b></li> <li><b>G. WAIVER OF DEDUCTIBLE – GLASS</b></li> </ul> | <ul style="list-style-type: none"> <li><b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b></li> <li><b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b></li> <li><b>J. PERSONAL PROPERTY</b></li> <li><b>K. AIRBAGS</b></li> <li><b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b></li> <li><b>M. BLANKET WAIVER OF SUBROGATION</b></li> <li><b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b></li> </ul> |
|---|---|

### **PROVISIONS**

#### **A. BROAD FORM NAMED INSURED**

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

#### **B. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph **c.** in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

#### **C. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.5., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

- b.** For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

## COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**D. EMPLOYEES AS INSURED**

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

**E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS**

1. The following replaces Paragraph **A.2.a.(2)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS**

The following replaces Subparagraph (5) in Paragraph **B.7., Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph **C., Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph **C., Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

#### **G. WAIVER OF DEDUCTIBLE – GLASS**

The following is added to Paragraph **D.**, **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

#### **H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT**

The following replaces the last sentence of Paragraph **A.4.b.**, **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

#### **I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT**

The following replaces the first sentence in Paragraph **A.4.a.**, **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

#### **J. PERSONAL PROPERTY**

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

##### **Personal Property**

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

#### **K. AIRBAGS**

The following is added to Paragraph **B.3.**, **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
  - b. The airbags are not covered under any warranty; and
  - c. The airbags were not intentionally inflated.
- We will pay up to a maximum of \$1,000 for any one "loss".

#### **L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS**

The following is added to Paragraph **A.2.a.**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

#### **M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph **A.5.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

##### **5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

## COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

### **N. UNINTENTIONAL ERRORS OR OMISSIONS**

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

POLICY NUMBER: 8102L9680402226G

ISSUE DATE: 12/22/21

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED ENTITY – NOTICE OF CANCELLATION PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

### **SCHEDULE**

**CANCELLATION:** Number of Days Notice of Cancellation: 30

### **PERSON OR**

**ORGANIZATION:** ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THE SCHEDULE

**ADDRESS:** THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US

### **PROVISIONS:**

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, and a number of days is shown for cancellation in the schedule above, we will mail notice of cancellation to the person or organization shown in the schedule

above. We will mail such notice to the address shown in the schedule above at least the number of days shown for cancellation in the schedule above before the effective date of cancellation.

1. This insurance will apply before any "other insurance" that is available to such additional insured which covers that person or organization as a named insured, and we will not share with that "other insurance", provided that the injury or damage for which coverage is sought is caused by an "event" that takes place or is committed subsequent to the signing of that contract or agreement by you.
2. This insurance is still excess over any valid and collectible "other insurance", whether primary, excess, contingent or otherwise, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

**N. PREMIUM**

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
2. If the premium is a flat charge, it is not subject to adjustment except as provided in Paragraph 4. below.
3. If the premium is other than a flat charge, it is an advance premium only. The earned premium will be computed at the end of the policy period, or at the end of each year of the policy period if the policy period is two years or longer, at the rate shown in the Declarations, subject to the Minimum Premium.
4. Additional premium may become payable when coverage is provided for additional insureds under the provisions of **SECTION II – WHO IS AN INSURED**.

**O. PREMIUM AUDIT**

The premium for this policy is the amount stated in Item 5. of the Declarations. The premium is a flat charge unless it is specified in the Declarations as adjustable.

**P. PROHIBITED COVERAGE – UNLICENSED INSURANCE**

1. With respect to loss sustained by any insured in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
  - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to

provide insurance in such country or jurisdiction; or

- b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

**Q. PROHIBITED COVERAGE – TRADE OR ECONOMIC SANCTIONS**

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.

**R. REPRESENTATIONS**

By accepting this insurance, you agree:

1. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this insurance in reliance upon your representations.

**S. SEPARATION OF INSURED**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom claim is made or "suit" is brought.

**T. WAIVER OR TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us and the insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us, and with respect to Coverage A, the "underlying insurer", enforce them.

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against that person or organization, but only for payments we make because of an "event" that takes place or is committed subsequent to the

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execution of that contract or agreement by such insured.

2. Reimbursement of any amount recovered will be made in the following order:
  - a. First, to any person or organization (including us or the insured) who has paid any amount in excess of the applicable limit of insurance;
  - b. Next, to us; and
  - c. Then, to any person or organization (including the insured and with respect to Coverage A, the "underlying insurer") that is entitled to claim the remainder, if any.
3. Expenses incurred in the process of recovery will be divided among all persons or organizations receiving amounts recovered according to the ratio of their respective recoveries.

### U. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS INSURANCE

1. Your rights and duties under this insurance may not be transferred without our written consent except in the case of death of an individual Named Insured.
2. If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

### V. UNINTENTIONAL OMISSION OR ERROR

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

### W. WHEN LOSS IS PAYABLE

If we are liable under this insurance, we will pay for injury, damage or loss after:

1. The insured's liability is established by:
  - a. A court decision; or
  - b. A written agreement between the claimant, the insured, any "underlying insurer" and us; and
2. The amount of the "applicable underlying limit" or "self-insured retention" is paid by or on behalf of the insured.

## SECTION VI – DEFINITIONS

### A. With respect to all coverages of this insurance:

1. "Applicable underlying limit" means the sum of:
  - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance subject to the provisions in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY OF SECTION I – COVERAGES**; and
  - b. The applicable limit of insurance of any "other insurance" that applies.

The limits of insurance in any policy of "underlying insurance" will apply even if:

- a. The "underlying insurer" claims the insured failed to comply with any term or condition of the policy; or
  - b. The "underlying insurer" becomes bankrupt or insolvent.
2. "Auto hazard" means all "bodily injury" and "property damage" to which liability insurance afforded under an auto policy of "underlying insurance" would apply but for the exhaustion of its applicable limits of insurance.
  3. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
  4. "Event" means an "occurrence", offense, accident, act, error, omission, wrongful act or loss.
  5. "Extended reporting period" means any period of time, starting with the end of the policy period of your claims-made insurance, during which claims or "suits" may be first made, brought or reported for that insurance.
  6. "Medical expenses" means expenses to which any Medical Payments section of any policy of Commercial General Liability "underlying insurance" applies.
  7. "Other insurance" means insurance, or the funding of losses, that is provided by, through or on behalf of:
    - a. Another insurance company;
    - b. Us or any of our affiliated insurance companies;
    - c. Any risk retention group;

POLICY NUMBER:  
CUP9M4672492226

ISSUE DATE:  
12/22/21

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED ENTITY – NOTICE OF CANCELLATION PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

### **SCHEDULE**

**CANCELLATION:** Number of Days Notice of Cancellation: 30

#### **PERSON OR ORGANIZATION:**

ANY PERSON OR ORGANIZATION TO WHOM YOU  
HAVE AGREED IN A WRITTEN CONTRACT THAT  
NOTICE OF CANCELLATION OF THIS POLICY  
WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO  
PROVIDE SUCH NOTICE, INCLUDING THE NAME  
AND ADDRESS OF SUCH PERSON OR  
ORGANIZATION, AFTER THE FIRST NAMED  
INSURED RECEIVES NOTICE FROM US OF THE  
CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST  
AT LEAST 14 DAYS BEFORE THE BEGINNING  
OF THE APPLICABLE NUMBER OF DAYS  
SHOWN IN THE SCHEDULE

#### **ADDRESS:**

THE ADDRESS FOR THAT PERSON OR  
ORGANIZATION INCLUDED IN SUCH  
WRITTEN REQUEST FROM YOU TO US

#### **PROVISIONS:**

If we cancel this policy for any statutorily permitted  
reason other than nonpayment of premium, and a  
number of days is shown for cancellation in the  
schedule above, we will mail notice of cancellation to  
the person or organization shown in the schedule

above. We will mail such notice to the address shown  
in the schedule above at least the number of days  
shown for cancellation in the schedule above before  
the effective date of cancellation.

- B.** The Insurer shall have the right to select legal counsel to: **1)** represent the “insured” for the investigation, adjustment, and defense of any “claims” covered pursuant to this Policy; and **2)** assist the “insured” with clarifying the extent of, and to help minimize, any “emergency response costs”. Selection of legal counsel by the Insurer shall not be done without the consent of the “insured”; such consent shall not be unreasonably withheld.

In the event the “insured” is entitled by law to select independent counsel to defend itself at the Insurer's expense, the attorney fees and all other litigation expenses the Insurer shall pay to that counsel are limited to the rates the Insurer actually pays to counsel that the Insurer normally retains in the ordinary course of business when defending “claims” or lawsuits of similar complexity in the jurisdiction where the “claim” arose or is being defended. In addition, the “insured” and the Insurer agree that the Insurer may exercise the right to require that such counsel: **1)** have certain minimum qualifications with respect to their competency, including experience in defending “claims” similar to those being asserted against the “insured”; **2)** maintain suitable errors and omissions insurance coverage; **3)** be located within a reasonable proximity to the jurisdiction of the “claim”; and **4)** agree in writing to respond in a timely manner to the Insurer's requests for information regarding the “claim”. The “insured” may at any time, by its signed consent, freely and fully waive its right to select independent counsel.

- C.** The “insured” shall have the right and the duty to retain a qualified environmental consultant or “catastrophe management firm” to: **1)** perform any investigation and/or remediation of any “pollution condition” or “site environmental condition” covered pursuant to this Policy; or **2)** perform “catastrophe management services” covered pursuant to this Policy, respectively. The “insured” must receive the consent of the Insurer prior to the selection and retention of any such environmental consultant or “catastrophe management firm”, except in the event of an “emergency claim” that results in “emergency response costs”.
- D.** “Legal defense expenses” reduce the Limits of Liability identified in the Declarations to this Policy, and, unless specifically stated otherwise herein, any applicable Limits or Sublimits of Liability identified in any endorsement hereto. “Legal defense expenses” shall also be applied to the “self-insured retention”.
- E.** The Insurer shall present all settlement offers to the “insured”. If the Insurer recommends a settlement which is acceptable to a claimant, exceeds any applicable “self-insured retention”, is within the Limits of Liability, and does not impose any additional unreasonable burdens on the “insured”, and the “insured” refuses to consent to such settlement offer, then the Insurer's duty to defend shall end. Thereafter, the “insured” shall defend such “claim” independently and at the “insured's” own expense. The Insurer's liability shall not exceed the amount for which the “claim” could have been settled if the Insurer's recommendation had been accepted, exclusive of the “self-insured retention”.

#### IV. COVERAGE TERRITORY

The coverage afforded pursuant to this Policy shall only apply to “covered operations” and “transportation” performed, and “claims” made, within the United States of America.

#### V. DEFINITIONS

- A. “Additional insured” means:**

- 1.** Any person or entity specifically endorsed onto this Policy as an “additional insured”, if any. Such “additional insured” shall maintain only those rights that are specified by endorsement to this Policy; and
- 2.** All clients, or other persons or entities, which a “named insured” is required by written contract or agreement with its client to secure such coverage, but solely with respect to “covered operations”, “completed operations” or “transportation” performed for that client (hereinafter Client Additional Insureds). Such Client Additional Insureds are covered solely with respect to their vicarious liability for a monetary judgment, award or settlement of compensatory damages to which this insurance applies.

- B. “Adverse media coverage”** means national or regional news exposure in television, radio, print or internet media that is reasonably likely to have a negative impact on the “insured” with respect to its income, reputation, community relations, public confidence or good will.
- C. “Bodily injury”** means physical injury, illness, disease, mental anguish, emotional distress, or shock, sustained by any person, including death resulting therefrom, and any prospective medical monitoring costs that are intended to confirm any such physical injury, illness or disease.
- D. “Catastrophe management costs”** means reasonable and necessary expenses approved by the Insurer, in writing, except for those expenses incurred during the same seven (7) day period associated with “emergency response costs”, which have been incurred by the “insured” for the following:

2. To sue the Insurer in connection with this insurance unless all of the Policy terms have been fully complied with.

A person or organization may sue the Insurer to recover after an agreed settlement or on a final judgment against an "insured". However, the Insurer shall not be liable for amounts that are not payable pursuant to the terms of this Policy or that are in excess of the applicable Limit of Liability. An agreed settlement means a settlement and release of liability signed by the Insurer, the "insured", and the claimant or the claimant's legal representative.

#### **D. Bankruptcy**

The insolvency or bankruptcy of any "insured", or any "insured's" estate, shall not relieve the Insurer of its obligations pursuant to this Policy. However, any such insolvency or bankruptcy of the "insured", or the "insured's" estate, shall not relieve the "insured" of its "self-insured retention" obligations pursuant to this Policy. This insurance shall not replace any other insurance to which this Policy is excess, nor shall this Policy drop down to be primary, in the event of the insolvency or bankruptcy of any underlying insurer.

#### **E. Subrogation**

In the event of any payment pursuant to this Policy by the Insurer, the Insurer shall be subrogated to all of the rights of recovery against any person or organization, and the "insured" shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. All "insureds" shall do nothing to prejudice such rights. Any recovery as a result of subrogation proceedings arising pursuant to this Policy shall accrue first to the "insureds" to the extent of any payments in excess of the limit of coverage; then to the Insurer to the extent of its payment pursuant to the Policy; and then to the "insured" to the extent of the "self-insured retention". Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

Notwithstanding the foregoing, the Insurer hereby waives its rights to subrogate against all clients of a "named insured" where such waiver is required by written contract or agreement executed between a "named insured" and such client prior to the relevant "claim" or discovery of a "pollution condition" or "site environmental condition" to which this insurance applies.

#### **F. Representations**

By accepting this Policy, the "first named insured" agrees that:

1. The statements in the Declarations, schedules and endorsements to, and Application for, this Policy are accurate and complete;
2. Those statements and representations constitute warranties that the "first named insured" made to the Insurer; and
3. This Policy has been issued in reliance upon the "first named insured's" warranties.

#### **G. Separation of Insureds**

Except with respect to the Limits of Liability, Cancellation condition **2.a.**, and any applicable exclusions, this Policy applies:

1. As if each "named insured" were the only "insured"; and
2. Separately to each "named insured" against whom a "claim" is made,

and any fraud, misrepresentation, breach of a condition or violation of any duty (hereinafter Breach) by an "insured" shall not prejudice coverage for any "named insured" pursuant to this Policy, provided that: **1)** such "named insured" did not participate in, know of or assist in such Breach; and **2)** such "named insured" is not a parent, subsidiary, partner, member, director, officer of, employer of or otherwise affiliated with, the "insured" that committed such Breach.

#### **H. Other Insurance**

1. If other valid and collectible insurance is available to any "insured" covering "loss" also covered by this Policy, this insurance shall apply as primary insurance. The Insurer's obligations are not affected unless any other applicable, unaffiliated insurance is also determined to be primary. In that event, the Insurer shall share with the insurer underwriting such other insurance by the method described in Paragraph **2.**, below.

#### **2. Method of Sharing**



**Travelers Casualty and Surety Company of America**  
**Travelers Casualty and Surety Company**  
**St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Amy Coonts** of **DENVER**, **Colorado**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, **2021**.



State of Connecticut

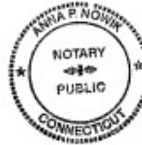
City of Hartford ss.

By:   
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, **2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2026**



  
 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,



  
 Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.**

**Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**



**SURETY BOND SEAL ADDENDUM**  
**TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA**

Due to logistical issues associated with the use of traditional seals during the COVID-19 pandemic, Travelers Casualty and Surety Company of America ("Travelers") has authorized its Attorneys-in-Fact to affix Travelers' corporate seal to any bond executed on behalf of Travelers by any such Attorney-in-Fact by attaching this Addendum to said bond.

To the extent this Addendum is attached to a bond that is executed on behalf of Travelers by its Attorney-in-Fact, Travelers hereby agrees that the seal below shall be deemed affixed to said bond to the same extent as if its raised corporate seal was physically affixed to the face of the bond.

Dated this 16<sup>th</sup> day of March, 2020.

**Travelers Casualty and Surety Company of America**



By:   
Robert L. Raney, Senior Vice President