

**SECTION 00 52 53.10 – CMGC AGREEMENT**

PART 1 - GENERAL

- 1.1 RELATED DOCUMENTS (Not Applicable)
- 1.2 SUMMARY (Not Applicable)
- 1.3 DEFINITIONS (Not Applicable)
- 1.4 CONTRACOR'S DESIGN/BID/BUILD (D/B/B) AGREEMENT
  - A. FORM: State of Colorado form "Construction Manager/General Contractor Agreement (CM/GC)" (SC-6.4).
  - B. A copy of the above noted document is attached to the end of this section.
- 1.5 PROCEDURE (Not Applicable)

PART 2 - PRODUCTS (Not Applicable)

PART 3 - EXECUTION (Not Applicable)

**END OF SECTION 00 52 53.10**

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**



**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CMGC) AGREEMENT  
(STATE FORM SC-6.4)**

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DEPARTMENT ID: \_\_\_\_\_

CONTRACT ID #: \_\_\_\_\_

PROJECT #: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

VENDOR NAME: \_\_\_\_\_

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STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM

CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)

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#### **EXHIBITS:**

**A. – O.** (As described in ARTICLE 2. DEFINITIONS, 2.1.6, Contract Documents)

STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM

CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT  
(STATE FORM SC-6.4)

Department ID: \_\_\_\_\_ Contract ID #: \_\_\_\_\_ Project #: \_\_\_\_\_

**1. PARTIES.** THIS AGREEMENT is entered into by and between the STATE OF COLORADO, acting by and through the (agency), hereinafter referred to as the Principal Representative, and (vendor name) having its offices at (vendor address) engaged to serve as Construction Manager/General Contractor, hereinafter referred to as the Construction Manager.

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.** This Agreement shall not be effective or enforceable until it is approved and signed by the State Controller or its designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay or reimburse Construction Manager for any performance hereunder or be bound by any provision hereof prior to the Effective Date.

**RECITALS:**

**WHEREAS**, the Principal Representative intends to procure (project name) hereinafter called the Project; and

**WHEREAS**, authority exists in the Law and Funds have been budgeted, appropriated, and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment In Fund Number \_\_\_\_\_, Account Number \_\_\_\_\_; and

**WHEREAS**, the State has **Appropriated** and the Principal Representative has been authorized to expend the total sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for this project including all professional services, construction management/general contractor services, construction/improvements, project contingencies, reimbursables, furnishings, movable equipment, and miscellaneous expenses; and

**WHEREAS**, *funds are available for only a portion of the services defined herein, as more fully described in the funding Condition Precedent clause in Article 9.6.*

**WHEREAS**, the Principal Representative has established the **Fixed Limit of Construction Cost** in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) ; and

**WHEREAS**, the Construction Manager shall establish a **Guaranteed Maximum Price (GMP)** (including Construction Manager's fee) that is within the Fixed Limit of Construction Cost as established by the Principal Representative at the completion of the Design Development Phase; and

**WHEREAS**, in accordance with Article 9 Compensation the Construction Manager's fee for the Project is \_\_\_\_\_ Dollars (\$\_\_\_\_\_) ; and

**WHEREAS**, the Architect/Engineer for the project is \_\_\_\_\_ ; and

**WHEREAS**, the Construction Manager acknowledges the statutory authority and responsibility of the Principal Representative within the State of Colorado; and

**WHEREAS**, the Construction Manager was selected after a determination that its proposal was the most advantageous to the Principal Representative pursuant to a request for proposal issued and awarded on .

**WHEREAS**, the Construction Manager and the Principal Representative have negotiated the terms of this Agreement pursuant to the Colorado Procurement Code or the applicable procurement code for institutions of higher education;

**NOW, THEREFORE**, the Principal Representative and the Construction Manager for the consideration hereinafter set forth, agree as follows:

## **ARTICLE 1. THE WORK**

### **1.1 THE WORK**

1.1.1 The Principal Representative intends to design and construct a \_\_\_\_\_, hereinafter referred to as the Project.

1.1.2 In the performance of the Work under this Agreement, the Construction Manager acknowledges that time is critical for Project delivery and that portions of the Work could have their design completed as separate Bid Packages and under construction before other portions of the Work are fully designed. It is further recognized that this accelerated approach to construction utilizing the services of an Architect/Engineer and Construction Manager/General Contractor is a unique concept and that its utilization requires maximum cooperation between all parties. It is also recognized that the services to be rendered by the Construction Manager and the inter-relationships and coordinative aspects thereof are in the developmental state and not fully defined. The Construction Manager has reviewed the Architect/Engineer's Agreement and accepts the terms thereof as expressing a workable concept. In furtherance thereof, in the event there appears to be a duplication, overlap or conflict of the responsibilities of or duties between the Architect/Engineer and Construction Manager or an absence of designation, the question shall be submitted to the Principal Representative for determination. The Construction Manager shall abide by the decision of the Principal Representative provided it does not require the performance of work beyond what was reasonably contemplated and accepted by the Construction Manager as its responsibility. If the Construction Manager claims any increase in the Work arises by virtue of such a decision, it shall give its Notice of Claim as provided in Article 19.

1.1.3 The Construction Manager acknowledges that the Principal Representative shall provide \_\_\_\_\_ ( \_\_\_\_ ) Bid Packages to accomplish the Work. In the event the Construction Manager for any reason within the Construction Manager's control, requests more than \_\_\_\_\_ ( \_\_\_\_ ) Bid Packages to be furnished by the Principal Representative, the Principal Representative shall make arrangement with the Architect/Engineer for the additional Bid Packages desired and shall directly compensate the Architect/Engineer for all fees and cost associated therewith. The Construction Manager shall reimburse the Principal Representative for all of the Architect/Engineer's fees and costs associated therewith and an appropriate Amendment or Change Order shall be issued deducting the same from the payments then or thereafter due to the Construction Manager. If those payments are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Principal Representative.

1.1.4 The Construction Manager agrees to cooperate fully with the Principal Representative in the design and construction aspects of the Work to keep within the Principal Representative's monetary limitations, as stipulated above.

1.1.5 The Construction Manager understands the relationship of trust and confidence established between it and the Principal Representative and accepts those responsibilities as described in this Agreement. The Construction Manager covenants with the Principal Representative to furnish its best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Principal Representative. The Construction Manager agrees to furnish efficient business administration and superintendence and to use its

best efforts to complete the work in an expeditious and economical manner consistent with the interest of the Principal Representative.

1.1.6 The Construction Manager, the Principal Representative, and the Architect/Engineer, called the Construction Team, shall work during design through to construction completion. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

1.1.7 The Architect/Engineer is a representative of the Principal Representative as provided in the Contract Documents and its Agreement is with the Principal Representative. In case of termination of employment or death of the Architect/Engineer, the Principal Representative shall appoint a capable and reputable Architect/Engineer against whom the Construction Manager makes no reasonable objection, whose status under the Agreement shall be the same as that of the former Architect/Engineer.

1.1.8 The Contract Documents shall not be deemed to create any contractual relationship between the Architect/Engineer and the Construction Manager or any separate contractors, subcontractors of any tier or suppliers on the Project; nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against the Principal Representative, the Architect/Engineer or Construction Manager which does not otherwise exist without regard to the Contract Documents.

1.1.9 The initial Work of the Construction Manager shall consist of its services in connection with the Preconstruction Phase. The Preconstruction Phase of the CM/GC Services shall be parallel and coincidental with the Schematic Design, Design Development, and Construction Document Phases of the Architect/Engineer's Services. As the Bid Packages are prepared and prices are established for the work to be performed within each respective Bid Package, the parties contemplate that the work to be performed by the Construction Manager shall be adjusted by Amendment or Change Order to this Agreement to place the work contained within the various Bid Packages within the work to be performed by the Construction Manager with corresponding adjustments made to the Contract Sum, Guaranteed Maximum Price and Contract Time.

1.1.10 Subject to the provisions of Article 10.4, execution of this Agreement by the Construction Manager is a representation that the Construction Manager has visited the site, become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents.

1.1.11 The intent of the Contract Documents are to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents shall be required unless it is not consistent therewith and is not reasonably inferable there from as being necessary to produce the intended results. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. If there are conflicting variances between the Drawings and Specifications, the requirements of the Specifications shall control unless the Architect/Engineer directs otherwise in writing. Numerous exhibits to be developed over a period of time are to be also attached to and made a part of the Contract Documents, some of which may be in conflict with other exhibits or portions of this Agreement. In the event of any conflict between any of them, the greater service, better quality or greater quantity shall be included in the Work, Contract Sum and Guaranteed Maximum Price without additional compensation, to be superseded by applicable Amendments and Change Orders.

1.1.12 The organization of the Specifications into division, section, and article, and the arrangement of Drawings shall not control the Construction Manager in dividing the Work among subcontractors or in establishing the extent of the work to be performed by any trade.

## **ARTICLE 2. DEFINITIONS**

### **2.1 DEFINITIONS**

2.1.1 The words "Agreement" or "Contract" shall be considered to be this written Agreement entered into by the Principal Representative and the Construction Manager for the performance of the Work and payment therefore.

2.1.2 "Architect/Engineer" shall mean the legally approved professional Architect/Engineer, or group or association or professional corporation of such approved professional Architect/Engineers, engineers and consultants, who have contracted with the Principal Representative to accomplish the architectural and engineering services necessary to the Project.

2.1.3 The term "Colorado Labor," as provided in C.R.S. § 8-17-101(2)(a), as amended, means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.

2.1.4 The "Date of Completion of the Work" or designated portion thereof is the date certified by the Architect/Engineer when construction is complete, in accordance with the Contract Documents.

2.1.5 "Construction Manager" shall mean that the individual, partnership, or corporation which has, by virtue of its in-house capabilities of budgeting, cost estimating, management and labor relations personnel, the required technical and professional services expertise to work with the Principal Representative and the Architect/Engineer in order to help formulate the Project Budget, furnish the Architect/Engineer with the information on construction technology and market conditions to help assure that the building design stays within the Project Budget, Fixed Limit of Construction Cost and Guaranteed Maximum Price (except for changes made pursuant to Article 10), manage the procurement effort, and supervise the construction of the Work.

2.1.6 The "Contract Documents" consist of:

- .1 This Agreement;
- .2 The Conditions of the Contract (General, as included within this Agreement, and Supplementary, if applicable);
- .3 The Drawings released for Construction (**Exhibit I.1**);
- .4 The Specifications released for Construction (**Exhibit I.1**);
- .5 **Exhibit A**, CM/GC Designated Services and Method of Payment (Attached);
- .6 **Exhibit B**, Construction Manager's Certification (Attached);

- .7 **Exhibit C**, Construction Manager's Certificate of Liability Insurance (Attached);
- .8 **Exhibit D**, Certification and Affidavit Regarding Unauthorized Immigrants (Form UI-1) (Attached as Exhibit I.8)
- .9 **Exhibit E**, Not Used;
- .10 **Exhibit F**, List of Pre-Qualified Subcontractors (when approved by the Principal Representative **and prior to bidding**);
- .11 **Exhibit G**, Schematic Design Estimate Summary and Updated Summaries (when approved by the Principal Representative);

#### **First Amendment (incorporating GMP) Exhibits**

- .12 **Exhibit H.1**, Guaranteed Maximum Price Documents, Drawings and Specifications including Addenda and Modifications (when approved by the Principal Representative);
- .13 **Exhibit H.2**, Schedule of Bid Package Descriptions and Issuance Dates;
- .14 **Exhibit H.3**, Schedule of Values (prepared at the time of **the Guaranteed Maximum Price Amendment**);
- .15 **Exhibit H.4**, Allowance Schedule (prepared at the time of **the Guaranteed Maximum Price Amendment**);

#### **Second and Subsequent Amendments (incorporating Bid Packages) Exhibits**

- .16 **Exhibit I.1**, Contract Documents and Specifications (when approved by the Principal Representative);
- .17 **Exhibit I.2**, All Addenda issued prior to and all Modifications issued after execution of Amendment(s). A Modification to the Agreement includes (1) a written Amendment to this Agreement signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect/Engineer pursuant to Article 4.3, or (4) a written order for a minor change in the Work issued by the Architect/Engineer pursuant to paragraph 10.5.1;
- .18 **Exhibit I.3**, Schedule of Values (consistent with GMP Schedule of Values), include Labor Overhead (direct labor burdens) for each Subcontractor to be applied to all change orders and amendments;
- .19 **Exhibit I.4**, Allowance Schedule (consistent with GMP Allowance Schedule);
- .20 **Exhibit I.5**, Performance Bond;
- .21 **Exhibit I.6**, Labor and Material Payment Bond;
- .22 **Exhibit I.7**, Property Insurance Certificate;
- .23 **Exhibit I.8**, Certification and Affidavit Regarding Unauthorized Immigrants (Attached);
- .24 **Exhibit I.9**, Notice to Proceed to Commence Construction Phase (Form SC-7.26) (when issued);



- .25 **Exhibit I.10**, Preliminary and Detailed Construction Schedules (when approved by the Principal Representative);
- .26 **Exhibit I.11**, Notice of Substantial Completion (Form SBP-07) (when Issued);
- .27 **Exhibit I.12**, Notice of Approval of Occupancy/Use (Form SBP-01) (when issued);
- .28 **Exhibit J**, Notice of Acceptance (when issued);
- .29 **Exhibit K**, Notice of Contractor's Settlement (when issued);
- .30 **Exhibit L**, Request for Proposal (Dated \_\_\_\_\_) (Attached);
- .31 **Exhibit M**, Construction Manager's Fee Proposal (Dated \_\_\_\_\_) (Attached);
- .32 **Exhibit N**, Sales and Use Tax Forms Attached);
- .33 **Exhibit O**, Building Code Compliance Policy: Coordination of Approved Building Codes, Plan Reviews and Building Inspections (Attached).

2.1.7 Unless otherwise provided, the "Contract Time" shall commence as set forth in paragraph 6.1.1 and shall end on the final completion date of the Project as defined in paragraph 17.4.

2.1.8 The term "Day" as used in the Contract Documents shall mean calendar day unless specifically designated otherwise.

2.1.9 The word "Drawings" shall mean all Drawings approved by the Principal Representative which have been prepared by the Architect/Engineer showing the work to be done.

2.1.10 The "Fixed Limit of Construction Cost" shall set forth a dollar amount available for the total Construction Cost for construction of all elements of the Work designed or specified by the Architect/Engineer including but not limited to the Construction Manager's fee, bond and insurance premiums, all reimbursables, together with any and all Construction Manager contingency amounts in accordance and as adjusted as set forth in paragraphs 3.4.1 through 3.4.3.

2.1.11 The term "Guaranteed Maximum Price" shall mean that maximum amount for which the work shall be accomplished (including Construction Manager's fee) and it shall be computed by the Construction Manager in accordance with the provisions of paragraph 9.3 hereinafter.

2.1.12 The word "Notice" shall mean any communication in writing from either contracting party to the other by such means of delivery that receipt cannot be properly denied.

2.1.13 The term "Principal Representative," shall mean: "The governing board of a state department, institution or agency or its designee; or if there is no governing board, then the executive head of a state department, institution, or agency, as designated by the governor or the General Assembly," and as shall be specifically identified in the Contract Documents.

2.1.14 The "Project" is the total construction of which the Work performed under the Contract Documents is a part, and may include construction by the Principal Representative or by separate contractors.

2.1.15 "State Buildings Program" shall mean an entity of the Department of Personnel & Administration of the Executive Branch of the State government or designee as shall be established to perform statutory responsibilities current at any time during the performance of this Agreement.

2.1.16 The term "Subcontractor" shall mean a person, firm, or corporation supplying labor and materials, or only labor, for the Work, under separate contract or agreement with the Construction Manager.

2.1.17 The terms "Substantial Completion" or "Substantially Complete" mean the stage in the progress of the work when the construction is sufficiently complete, in accordance with the Contract Documents as modified by any Change Orders, so that the Work, or at the discretion of the Principal Representative, any designated portion thereof, is available for its intended use by the Principal Representative and a Notice of Substantial Completion can be issued. Portions of the Project may, at the discretion of the Principal Representative, be designated as Substantially Complete.

2.1.18 The term "Supplier" shall mean any manufacturer, fabricator, distributor, material man or vendor.

2.1.19 The "Work" means the construction and services required by the Contract Documents, whether completed or partially completed and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations. The Work may constitute the whole or a part of the Project.

2.1.20 The "Preconstruction Phase" shall mean the Work done by the Construction Manager in the management and definition of the project prior to the awarding of construction contracts for any bidding package.

2.1.21 The "Construction Phase" shall mean the work done by the Construction Manager in the management and construction of the project from the awarding of construction contracts for any bidding package until the final acceptance of that package of Work.

2.1.22 The "Direct Cost of the Work" shall be those items defined in the Guaranteed Maximum Price; the General Conditions and Supplementary General Conditions directly related to construction and not otherwise defined under the Construction Phase of the Work; and reimbursable expenses including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work.

2.1.23 The "Schedule of Values" shall be defined as the itemized listing of description of the Work by Division and Section of the Specifications. The format shall be the Form SC-7.2. Included shall be the material costs, and the labor and other costs plus the sum of both.

2.1.24 The term "Construction Cost" shall be defined as provided in paragraph 3.4.6.

2.1.25 The term "Contract Sum" shall be defined as provided in paragraph 9.4.1.

2.1.26 The term "Occupancy" means occupancy taken by the State as Owner after the Date of Substantial Completion at a time when a building or other discrete physical portion of the Project is used for the purpose intended. The Date of Occupancy shall be the date of such first use, but shall not be prior to the date of execution of the Notice of Approval of Occupancy/Use (Form SBP-01). Prior to the date of execution of a Notice of Approval of Occupancy/Use, the State shall have no right to occupy and the project may not be considered safe for occupancy for the intended use.

2.1.27 The terms "Final Acceptance" or "Finally Complete" mean the stage in the progress of the work, after Substantial Completion, when all remaining items of work have been completed, all requirements of the Contract Documents are satisfied and the Notice of Acceptance can be issued. Discrete physical portions of the Project may be separately and partially deemed Finally Complete at the discretion of the Principal Representative when that portion of the Project reaches such stage of completion and a partial Notice of Acceptance can be issued.

2.1.28 The term "Amendment" shall be defined as provided in paragraph 10.1.2.

2.1.29 The term "Change Order" shall be defined as provided in paragraph 10.1.3.

### **ARTICLE 3. CONSTRUCTION MANAGER'S SERVICES**

The Construction Manager shall perform the following services under this Agreement in each of the phases described below:

#### **3.1 COMPLETION WITHIN FISCAL AND TIME CONSTRAINTS AND VALUE ENGINEERING**

3.1.1 The Construction Manager expressly recognizes that this Project is being undertaken on an accelerated basis and must be completed within the time and fiscal constraints as set forth throughout this Agreement. The Construction Manager further represents to the Principal Representative that by executing this Agreement, it has been fully informed and has thoroughly reviewed: the goals of the Project; the work effort of the Architect/Engineer performed to date for the Project; all of the Exhibits and documents attached to this Agreement and when executed, specifically including **Exhibit A**, CM/GC Designated Services and Method of Payment, **Exhibit H.1**, Guaranteed Maximum Price Documents, Drawings and Specifications when approved by the Principal Representative, **Exhibit H.2**, Schedule Of Bid Package Descriptions and Issuance Dates, **Exhibit H.3**, Schedule of Values, **Exhibit H.4**, Allowance Schedule, and **Exhibit F**, List of Pre-Qualified Subcontractors, all of which exhibits are incorporated herein and by reference made a part hereof; has been informed of the Principal Representative's general time as well as fiscal constraints and contingencies applicable to the Fixed Limit of Construction Cost; and all of the services to be provided by the Construction Manager pursuant to the Contract Documents. Based upon this review and analysis and recognizing that the contract for design services is between the Principal Representative and the Architect/Engineer, the Construction Manager nonetheless represents to the Principal Representative that it shall provide all the necessary services and perform all of the Work within the requirements of the Contract Documents.

3.1.2 To accomplish the objectives set forth in paragraph 3.1.1, the Construction Manager shall provide consultation throughout the Preconstruction and Construction Phases including but not limited to the furnishing of all necessary Value Engineering services. The object of the Value Engineering is to achieve optimum value for each construction dollar spent and keep the time of completion and cost of the Work within the time and fiscal constraints set forth throughout the Contract Documents. In cooperation with the Architect/Engineer and Principal Representative, the Construction Manager shall:

- .1 Formulate and evaluate alternative designs, systems, materials;
- .2 Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives. The Construction Manager shall review the Statement of Probable Construction Cost prepared by the Architect/Engineer at the completion of the Schematic Design phase and include an analysis and commentary as to any discrepancies observed in the report referenced in 3.1.2.4 below;
- .3 Evaluate the alternatives on the basis of costs, time schedules, availability of labor and materials, construction feasibility, etc.;

- .4 With the assistance of the Architect/Engineer, prepare written reports at the end of the Schematic Design Phase and the Design Development Phase summarizing the Value Engineering activities accomplished and any recommendations developed within each phase.
- .5 If Estimates of Construction Cost and/or bids received for the Work contained in any Bid Package cause the anticipated cost of the Work to exceed the then current Estimate of Construction Cost, the Fixed Limit of Construction Cost, the Guaranteed Maximum Price or Schedule of Values, the Construction Manager shall, at no additional cost to the Principal Representative unless caused by an increase in the Construction Manager's Work requested by the Principal Representative, provide additional Value Engineering services in conjunction with any and all appropriate items in the Estimate of Construction Cost, the Fixed Limit of Construction Cost, the Guaranteed Maximum Price, and/or the Schedule of Values for the Work.
- .6 Participate in a formal Value Engineering workshop at the end of the Schematic Design review and estimating tasks, bringing multidiscipline cost/construction experts to evaluate alternative designs, systems and materials.
- .7 Lead a formal Value Engineering workshop at the end of the Design Development Design review and estimating tasks, bringing multidiscipline cost/construction experts to evaluate alternative designs, systems and materials.

3.1.3 The Principal Representative shall participate in the formulation and evaluation of alternatives in the Value Engineering activity.

## **PRECONSTRUCTION SERVICES**

### **3.2 AVAILABLE FUNDS**

3.2.1 The Construction Manager acknowledges that the Principal Representative is limited in the funds available to design and construct the Project. Should funding of a lesser amount be made available for the Project, it is the obligation of the Principal Representative to revise the Project scope consistent with the ultimate appropriation.

3.2.2 Consultation During Project Development: The Construction Manager shall review conceptual design; advise on-site use and improvements, selection of materials, building systems and equipment; and provide recommendations on construction feasibility, availability of materials and labor, local construction activity as it relates to schedules, and time requirements for installation and construction.

### **3.3 BUDGETING AND FIXED LIMIT OF CONSTRUCTION COST**

3.3.1 The Construction Manager shall assist the Architect/Engineer in evaluating the Principal Representative's preliminary budget. Based on consultation with the Architect/Engineer and the Construction Manager, the Principal Representative shall furnish a Project Budget to the Construction Manager which shall set forth a dollar amount available for the total Construction Cost of the Project and include contingencies for bidding and construction.

3.3.2 The Fixed Limit of Construction Cost has been established by the Principal Representative, converting the applicable portion of the Project Budget into the Fixed Limit of Construction Cost, as set forth in the recital above.

3.3.3 The Fixed Limit of Construction Cost may be revised only by approved Amendments and Change Orders issued after execution of the Contract Documents.

### 3.4 COST ESTIMATING

3.4.1 It is the desire of the Principal Representative to incorporate as many alternate bid items into the Project as reasonable and otherwise increase the Work to be performed by the Construction Manager, and all parties recognize that although the availability of funds will depend in part upon favorable market conditions, with thorough and careful planning, cost estimating and cooperation, funds may become available for the alternates through procurement at less than the Construction Manager's estimated cost therefore, together with savings through the unexpended portion of the bidding contingency.

3.4.2 To accomplish the inclusion of alternates and/or increases, the project contingency shall be as follows:

- .1 The bidding contingency for all Bid Packages together with the construction of the Work shall be equal to two point five percent (2.5%) of the Guaranteed Maximum Price.
- .2 The construction contingency for the Work shall be equal to three and one-half percent (3.5%) of the initial Guaranteed Maximum Price.

The bidding contingency shall be allocated between the presently anticipated \_\_\_\_\_ (\_\_) Bid Packages, at the discretion of the Construction Manager. The Construction Manager shall notify, in writing, the Principal Representative of the allocation of the bidding contingency for each Bid Package.

3.4.3 At the conclusion and award of the Bid Packages, all differences between the Construction Manager's estimated cost of the work contained within the Bid Packages, exclusive of contingency, versus the actual cost thereof as determined by bidding and award (buyouts) shall be promptly calculated and totaled. If the total of all of the buyouts exceed the Construction Manager's estimated cost therefore, the bidding contingency identified in paragraph 3.4.2.1 shall be applied by the Construction Manager, after prior written notice to the Principal Representative, to cover any overrun per Bid Package.

3.4.4 After all of the Bid Packages have been bought out, any and all savings achieved through the buyouts of the Bid Packages together with all unexpended sums remaining in the bidding contingencies shall forthwith accrue to the Principal Representative to be applied by the Principal Representative, in its sole and absolute discretion, to the inclusion of desired alternates into the Work or to otherwise increase the Work to be performed by the Construction Manager, and/or to reduce the Guaranteed Maximum Price.

3.4.5 The construction contingency shall only be used to cover costs for labor, materials, equipment and similar costs for items or work to be furnished during the construction phase of the Project. It is not the intent of this Agreement to use the construction contingency for costs incurred during the Preconstruction phase or bidding phase or for costs to correct any errors, omissions, mistakes or rejected work caused by subcontractors. The construction contingency may be used to cover the Construction Manager's costs (i) arising from estimating cost overruns in the costs of Exhibit H.4 Allowance Schedule; (ii) unexpected additional trade coordination costs incurred for work directly performed by the Construction Manager that could not have been reasonably contemplated; (iii) items required and reasonably inferable from the Contract Documents which the Construction Manager can show were not specifically called out within estimate or bid documents of the Construction Manager or any Subcontractor; (iv) losses or damages to property related to the Work not covered by insurance provided by the Construction Manager, but not including any insurance deductible(s); (v) arising from expediting or acceleration of the Project schedule

where such cost is not a basis for an increase in the GMP under Article 6; (vi) Bid Package buyout overrun costs for additional Bid Packages that were not part of anticipated Bid Packages defined in 1.1.3, but only if bidding procedures contemplated hereunder were followed and the bidding contingency has been exhausted; or (vii) other costs incurred not reasonably to have been expected that are approved by the Principal Representative in the Principal Representative's sole discretion, so long as those costs are not recovered under any insurance policy provided pursuant to this Agreement and so long as the total costs under this Agreement do not exceed the Guaranteed Maximum Price. No expenditure from the construction contingency for any matters or work activities shall be made without the prior written approval of the Principal Representative, which approval, with the exception of item (vii) above, shall not be unreasonably withheld. Expenditures from the construction contingency shall be made only by Change Order.

**3.4.6 Construction Cost:** When preparing any Estimates of Construction Cost and in development of the Schedule of Values, such documents shall include, without duplication:

- .1 All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work;
- .2 At current market rates, including a reasonable allowance for overhead and profit, the cost of labor and materials furnished by the Principal Representative;
- .3 Any Principal Representative furnished equipment which has been designed, specified, selected or specifically provided for by the Architect/Engineer;
- .4 The Construction Manager's compensation for services and the cost of work provided by the Construction Manager;
- .5 All bond premiums; and
- .6 Contingencies for bidding, price escalation, and construction as set forth above.

**3.4.7** The Estimates of Construction Cost shall not include the compensation of the Architect/Engineer, the Architect/Engineer's consultants or any other sums due the Architect/Engineer, the costs of land, right of way, financing or other costs which are the responsibility of the Principal Representative.

**3.4.8** The Construction Manager, in preparing its Estimates of Construction Cost and providing the Guaranteed Maximum Price, shall consult with the Architect/Engineer to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Work, and to include in the Contract Documents alternate items, as approved by the Principal Representative in writing, for bid so as to permit the adjustment of the Estimate of Construction Cost.

**3.4.9** The Construction Manager shall prepare an Estimate of Construction Cost as soon as major Project requirements have been identified and update it periodically. For the Schematic Design Phase, the Construction Manager shall prepare a quantity take-off cost estimate based on building systems, assemblies, components, etc., and update periodically. During the Design Development Phase, the Construction Manager shall prepare a final cost estimate in preparation for a Guaranteed Maximum Price and update periodically. All Estimates of Construction Cost shall make allowance for bidding and price escalation. During the Construction Documents Phase, the Construction Manager shall continually monitor the cost estimates and develop a cost estimate to help assure that the cost of the Work remains within the applicable portion of the Project Budget, Fixed Limit of Construction Cost and Guaranteed Maximum Price.

3.4.10 Estimates shall be independently prepared but in coordination with the Architect/Engineer and shall be based on quantitative takeoffs whenever possible and shall be supported in sufficient depth and organization to be used in preparing budgets based on Construction Specifications Institute (CSI) Division, funding sources, sub-trades, combinations of sub-trades, building systems, Bid Packages or combinations thereof. The specific cost coding structure, estimating guidelines, assumptions, and contents of the cost estimates shall be mutually resolved between the Construction Manager and the Architect/Engineer prior to development of the first cost estimate to assure that estimates developed by all parties can be compared and reconciled. Lump sum estimates are not acceptable.

3.4.11 During the preparations of cost estimates, the Construction Manager shall notify the Principal Representative if it appears that the Estimate of Construction Cost will exceed the applicable portion of the Project Budget or Fixed Limit of Construction Cost as may be applicable, satisfactorily demonstrate the accuracy of its estimate in such detail as shall be reasonably required by the Principal Representative, and make reasonable recommendations for corrective action consistent with the Project Budget or Fixed Limit of Construction Cost, as may be applicable. The Construction Manager shall submit cost estimates to the Principal Representative for review and acceptance. Concurrently, the Construction Manager shall provide copies to the Architect/Engineer for review and verification.

3.4.12 The Principal Representative shall reasonably cooperate with the Construction Manager to keep the Work within the applicable portions of the Project Budget or Fixed Limit of Construction Cost, as may be applicable, including but not limited to the giving of appropriate and reasonable consideration to all reasonable recommendations of the Construction Manager, approving redesign, deductive alternatives or reductions in Work, requesting additional Value Engineering, making modifications to the Contract Documents or exercising such other rights or remedies as may be available elsewhere under this Agreement including termination for convenience. However, the Principal Representative shall be under no duty to reduce the Work to accommodate for any construction contingency used to cover costs to correct errors, omissions, mistakes or rejected work pursuant to paragraph 3.4.5.

3.4.13 Architect/Engineer/Construction Manager Cooperation: The Architect/Engineer, by the terms of its agreement with the Principal Representative, is obligated to provide reasonable cooperation to the Construction Manager in the development of Estimates of Construction Cost and the Guaranteed Maximum Price. Conversely, the Construction Manager, by the terms of this Agreement is obligated to provide reasonable cooperation to the Architect/Engineer in the development of Statements of Probable Construction Cost and the Guaranteed Maximum Price. Additionally, both Architect/Engineer and Construction Manager are obligated to reconcile their respective cost estimates at the completion of each design phase of the Work including the Guaranteed Maximum Price in a timely manner so as not to negatively impact the Project Schedule.

3.4.14 A contract-control/project-management software (hereafter "Project Management Software") approved by the Principal Representative, shall be used as a primary tool for project control, communication and documentation control by all the project participants, to include the Principal Representative, Construction Manager, and Architect. The Construction Manager shall utilize the Project Management Software to implement a cost forecasting, monitoring, control and reporting system for the Project. The Project Management Software shall be maintained throughout the project, both during the Preconstruction and construction phases. Cost analyses shall be based upon data analyses as developed/described within Section 3.4 and shall include analyses of all trades and Project components making a significant contribution for total Project costs. The Project Management Software shall provide for development of a Project cost model, monitoring the design process and periodic reviews of the cost

estimates/forecasts to identify variances from the cost model. Additionally, the Project Management Software shall identify variances between actual and budgeted or estimated costs or the Fixed Limit of Construction Cost and, consistent with paragraph 3.4.9, advise the Principal Representative and Architect whenever projected costs are expected to exceed Project Budgets, estimates of construction Cost, the Fixed Limit of Construction Cost, or the Guaranteed Maximum Price as may be applicable.

The Construction Manager shall use the Project Management Software for the major contract administration processes to include, but not limited to:

- .1 Submittals:
  - a. Construction Manager shall create a Submittal log and Submittal schedule.
  - b. Submittals shall be directly submitted to the Architect and directly returned from the Architect.
- .2 Requests for Information:
  - a. Construction Manager shall submit requests for information using the Project Management Software.
  - b. Architect shall answer requests for information via the Project Management Software. Requests for Information responses that have cost impact will have corresponding Change Order Bulletin (Form SC 6.311) issued by the Architect/Engineer.
- .3 Change Management: Entire change management process including Notices and Change Orders shall be managed using the Project Management Software, and utilizing Contract Amendment (Form SC 6.0), Change order(Form SC 6.31), Change Order Bulletin (Form SC 6.311), Change Order Proposal (Form SC 6.312) and Change Order Log.
- .4 Pay-applications: Construction Manager shall be responsible for creating and distributing pay-application in the Project Management Software using an earned-value calculation through the CPM Schedule & utilizing Application and Certificate for Contractor's Payment (SBP7.2).
- .5 Meeting Minutes: Construction Manager shall be responsible for creating and distributing construction-meeting minutes in the Project Management Software.
- .6 Daily Report: Construction Manager shall be responsible to prepare and distribute daily reports in the Project Management Software.
- .7 Insurance certificate: Construction Manager shall responsible for storing all the insurance related information of subcontractors in the Project Management Software.
- .8 Punchlists: Construction Manager shall be responsible to update the Substantial Completion Punchlist status using the Project Management Software.
- .9 All correspondence with Architect or Principal Representative shall be in the Project Management Software.

### 3.5 OTHER PRECONSTRUCTION SERVICES

3.5.1 The Construction Manager shall perform those items designated as Required Services as set forth in the CM/GC Designated Services and Method of Payment schedule designated as **Exhibit A**. In addition and not in limitation, the Construction Manager shall also perform the other Preconstruction Services designated in this Article 3 together with such other services as are normally and customarily provided by a Construction Manager.

3.5.2 The Construction Manager shall review the Drawings and Specifications as they are being prepared, recommending alternative solutions whenever design details affect construction feasibility, schedules or cost; however, nothing contained in this paragraph shall be construed to require the Construction Manager to provide Architect/Engineer services.

3.5.3 The Construction Manager shall make recommendations to the Principal Representative and the Architect/Engineer regarding the division of Work in the Drawings and



Specifications to facilitate the bidding and awarding of subcontracts, allowing for phased construction and funding, if applicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, etc.

3.5.4 The Construction Manager shall review Drawings and Specifications with the Architect/Engineer to (1) eliminate areas of conflict, overlapping trade jurisdictions, and overlapping in the Work to be performed by the various subcontractors, (2) endeavor to confirm that all Work has been included, and (3) allow for phased construction.

3.5.5 The appropriate representatives of the Principal Representative shall review documents submitted by the Construction Manager and shall render decisions pertaining thereto without unreasonable delay.

3.5.6 Copies for Review: The Principal Representative through the Architect/Engineer and consistent with the Principal Representative's contract with the Architect/Engineer, shall furnish the Construction Manager a sufficient quantity of documents required for the Preconstruction Services.

3.5.7 As part of the Schematic Design review and estimating tasks, the Construction Manager shall develop a preliminary Project Schedule that is coordinated with the Architect/Engineer's design schedule, the milestone dates specified in **Exhibit H.2**, the Date of Completion specified in paragraph 6.3.1, the scope of work described within the Contract Documents, and the work described within the Schematic Design Documents. The Construction Manager shall utilize the Project Management Software to develop and manage the schedule. The schedule as agreed to shall be Critical Path Method (CPM) with reasonable detail to allow for assessment of procurement schedules for equipment to be furnished by the Principal Representative, the adequacy of the construction duration/period, critical paths among the activities for the building systems, peak manpower requirements, and crunch points within the Project's logic/critical path. As part of the Design Development Document review and estimate, this preliminary schedule shall be updated by the Construction Manager to reflect the work described in the Design Development Documents, and shall be utilized by the Principal Representative to assess the Guaranteed Maximum Price.

3.5.8 The Construction Manager shall attend all regular meetings with the Principal Representative and the Architect/Engineer and such additional meetings as the Principal Representative may request. All regular meetings shall be scheduled by the Architect/Engineer with the agreement of the Construction Manager and approval of the Principal Representative. All additional meetings shall be scheduled by the Principal Representative.

3.5.9 The Construction Manager shall implement a cost forecasting, monitoring and control program and reporting system for the Project. The system shall be maintained throughout the project, both during the Preconstruction and Construction Phases. Cost analyses shall be based upon data analyses as developed/described within paragraph 3.4 and shall include analyses of all trades and Project components making a significant contribution for total Project costs. The system shall provide for development of a Project cost model, monitoring the design process and periodic reviews of the cost estimates/forecasts to identify variances from the cost model. Additionally, the system shall identify variances between actual and budgeted or estimated costs or the Fixed Limit of Construction Cost and, consistent with paragraph 3.4.9, advise the Principal Representative and Architect/Engineer whenever projected costs are expected to exceed Project Budgets, Estimates of Construction Cost, the Fixed Limit of Construction Cost, or the Guaranteed Maximum Price as may be applicable.

3.5.10 The Construction Manager shall investigate and recommend materials and equipment that could be purchased by the Principal Representative; consider long lead time procurement and mass purchasing power in making such recommendations; recommend a schedule for such purchases after coordination with the Architect/Engineer in the schedule for preparation of Contract Documents; and expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates.

3.5.11 The Construction Manager shall: prepare necessary bidding information, bidding forms, and pre-qualification criteria for bidders; develop subcontractor interest in the Project; establish bidding schedules; advertise for bids; and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods. If the Construction Manager becomes aware prior to any bid date that less than three (3) pre-qualified subcontractors plan to bid any portion of any Bid Package or that anticipated bids from previously approved or pre-qualified subcontractors listed on **Exhibit F**, are likely to exceed the then current Schedule of Values or Estimate of Construction Cost, the Construction Manager shall promptly so notify the Principal Representative and Principal Representative shall be entitled to treat the situation as an unforeseeable circumstance pursuant to paragraph 7.2.2.

3.5.12 The Construction Manager shall receive and open bids when advertised, prepare a bid analysis, conduct pre-award conferences, and notify the Principal Representative and Architect/Engineer concerning which bids shall be accepted. The Principal Representative and Architect/Engineer shall be notified in advance of the time and place of all bid openings and may elect to attend such openings with their representatives. A proposal to accept other than a low bid shall be justified in writing by the Construction Manager and subject to prior approval by the Principal Representative.

3.5.13 The Construction Manager shall provide the requirements and assignment of responsibilities for safety precautions and programs as required for the execution of the Work, temporary project facilities and for equipment, materials and services for common use of subcontractors and verify that all are included in the Contract Documents.

3.5.14 The Construction Manager shall participate in Project design review sessions at the close of the Schematic Design Phase, the Design Development Phase, and as Construction Documents are finalized for each Bid Package. The Project design review sessions shall be attended by the Architect/Engineer and representatives of the Principal Representative. The purposes of the Project design review sessions are to (1) assure consistency with the design intent; (2) ensure complete, coordinated, constructible and cost-effective designs for all disciplines (e.g. architectural, structural, mechanical); (3) assure that the design documents are code compliant as per **Exhibit O**, Approved Building Codes Plan Reviews and Building Inspections; (4) endeavor to confirm that all Work has been included and described in sufficient detail to assure complete pricing of Work; and (5) allow for phased construction. The Architect/Engineer shall collect all design review comments from the various participants, provide reports to the Principal Representative, and ensure that with the issuance of each progress set of design documents all comments have either been incorporated or resolved to the satisfaction of the Principal Representative.

3.5.15 The Construction Manager shall provide not later than the first of each month a monthly report documenting the current status of the project's schedule, costs, minority and women owned business enterprises, requests for information, submittals, manpower, safety, and other pertinent information. The report shall be separate from the monthly schedule update/report. The report shall include a narrative discussion of the progress achieved, activities anticipated for the next month, and issues that are affecting the rate of progress. Progress photographs should be attached/included. This monthly report shall be provided in Design and Construction Phase of the project.

3.5.16 If the Construction Manager or any of its subcontractors of any tier participating in the Design Reviews observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, ordinances, rules or regulations, in any respect the Construction Manager shall promptly notify the Principal Representative in writing, noting the applicable drawing or specification, and recommending an appropriate alternative for correcting the design.

## **CONSTRUCTION PHASE SERVICES**

### **3.6 CONTROL OF THE WORK**

3.6.1 The Construction Manager shall supervise and direct the work of its subcontractors and coordinate the Work with the activities and responsibilities of the Principal Representative and the Architect/Engineer to complete the Project in accordance with the Principal Representative's objectives of cost, time and quality.

3.6.2 The Construction Manager shall establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team.

3.6.3 The Construction Manager shall schedule and conduct weekly progress meetings at which the Principal Representative, Architect/Engineer, and Construction Manager can discuss jointly such matters as procedures, progress, and problems.

### **3.7 SUPERVISION AND CONSTRUCTION PROCEDURES**

3.7.1 The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention. The Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and shall coordinate all portions of the Work under the Contract Documents.

3.7.2 The Construction Manager shall be responsible to the Principal Representative for the acts and omissions of the Construction Manager's employees, subcontractors of all tiers, their agents and employees, and any other persons performing any of the Work or furnishing materials under a contract with the Construction Manager.

3.7.3 The Construction Manager shall not be relieved from the Construction Manager's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect/Engineer in its administration of this Agreement, or by inspections, tests, or approvals required or performed by persons other than the Construction Manager. Nothing contained in this paragraph shall preclude the Construction Manager from asserting any rights it may have under this Agreement in the event of unreasonable delays to the Construction Manager in the making of any inspections, tests, approvals, or other action by the Architect/Engineer upon which the Construction Manager is dependent.

3.7.4 During the Construction Phase, the Construction Manager shall employ at a minimum on a full time basis a site based superintendent, together with such additional superintendence, project management, engineering and clerical support as may be reasonably required and appropriate to the stage of construction (as per the Construction Manager Designated Services and Method of Payment, Exhibit A). The Superintendent and Project Manager shall not be changed except with the consent of the Principal Representative, unless the Superintendent or Project Manager proves to be unsatisfactory to the Construction Manager or ceases to be in its employ. The Construction Manager shall employ the services of at least one person fully qualified

and with a minimum of 5 years' experience in critical path scheduling on projects of similar size and scope for the duration of the Work.

3.7.5 The Construction Manager shall at all times enforce strict discipline and good order among the Construction Manager's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to them.

### 3.8 ADMINISTRATION

3.8.1 The Architect/Engineer shall provide administration of this Agreement on behalf of the Principal Representative as described throughout this Agreement.

3.8.2 The Architect/Engineer shall be the Principal Representative's representative during construction and until the one (1) year warranty period has expired. The Architect/Engineer and the Construction Manager shall advise and consult with the Principal Representative. All instructions and communications by the Architect/Engineer to the Construction Manager shall be copied to the Principal Representative. The Architect/Engineer shall have authority to act on behalf of the Principal Representative only to the extent provided in the Contract Documents.

3.8.3 Except where expressly provided to the contrary in the Contract Documents, the Construction Manager's contact person shall forward all communications in writing and all documents to the Principal Representative's contact person and the Architect/Engineer's contact person simultaneously as listed below:

For the Principal Representative:

For the Architect/Engineer:

For the Construction Manager:

### 3.9 SCHEDULE, COORDINATION AND COST CONTROL

3.9.1 In the performance of the Work under this Agreement, the Construction Manager acknowledges that time is of the essence of this Agreement. The Construction Manager shall begin the Work upon receiving Notice to Proceed to Commence Construction Phase, in accordance with paragraph 6.1. The Construction Manager shall schedule and coordinate the work of all of its subcontractors on the Project including their use of the site. The Construction Manager shall keep the subcontractors informed of the Project construction schedule to enable the subcontractors to plan and perform the work properly. The Construction Manager shall carry the Work forward expeditiously with adequate forces and shall achieve completion of the Work prior to the Date of Completion specified in paragraph 6.3, as adjusted by Change Orders and Amendments.

#### 3.9.2 Preliminary Construction Schedule:

- .1 Within fourteen (14) calendar days after being authorized to proceed to commence construction phase, the Construction Manager shall submit for the Architect/Engineer's and the Principal Representative's review and acceptance a Preliminary Construction Schedule. The Preliminary Construction Schedule shall include the Work of the entire project, in a manner that is consistent with previously issued schedules, and shall comply with the Date of Completion of the Work authorized by the current Contract Documents. The submittal shall be developed in the Critical Path Method as agreed to in paragraph 3.5.7. Although the Preliminary Construction Schedule shall describe the entire construction work anticipated to be required by the Project, the schedule shall provide particular detail for the Work described

within the first Bid Package, for the remaining design activities for the balance of the Bid Packages, for the equipment procurement activities, and for the actions required from the Principal Representative.

- .2 The Preliminary Construction Schedule shall be the basis for progress payments during the first ninety (90) calendar days of the Contract while the Detailed Construction Schedule (discussed hereafter) is being developed and accepted. The Preliminary Construction Schedule shall be updated on a monthly basis while the Detailed Construction Schedule is being developed and approved.

#### 3.9.3 Detailed Construction Schedule:

- .1 Within forty-five (45) calendar days of receiving Notice to Proceed to Commence Construction Phase, the Construction Manager shall submit to the Architect/Engineer and Principal Representative a detailed Construction Schedule for the complete construction work scope.
- .2 Upon acceptance by the Principal Representative, the Construction Schedule shall be used as a basis for determining progress payments.

#### 3.9.4 Technical Requirements:

- .1 The Detailed Construction Schedule shall be developed utilizing commercially available scheduling software as approved by the Principal Representative and the Precedence Diagramming Method. The level of detail of the Construction Manager's schedule shall be a function of the complexity of the work involved. The milestones and total number of activities shall be subject to approval by the Principal Representative. The activities shall be coded such that the Schedule of Values can be sorted by CSI Division, funding sources, sub-trades, building systems, Bid Packages or combinations thereof. The specific coding structure, resource/cost loading guidelines and assumptions and the allocation of the cost estimates shall be mutually resolved between the Construction Manager, the Architect/Engineer prior to development of the first submission.
- .2 Schedule activities shall be cost-loaded as agreed to and the assigned dollar value (cost loading) of each activity of the network shall cumulatively equal the total Construction Cost. Costs for mobilization, bonds, permits, insurance costs may be shown separately. For any items that the Construction Manager intends to bill for stored materials, these items need to be shown as separate material procurement activities in the schedule and the material dollars only placed on these activities. Billing for stored materials on any other schedule activities not broken out in this manner shall not be allowed. General Conditions costs, overhead, profit, et cetera shall not be included within the cost loading and payment for these costs/fees shall be administered separately.
- .3 The Construction Manager shall assign manpower loading as agreed to for each activity of the network. In addition, the Construction Manager shall prepare and submit a separate manpower summary analysis in graphic format depicting manpower by subcontractor and aggregate. The graph(s) shall show the number of man-days of effort, by month, over the duration of the Construction Schedule.

- .4 For all major equipment and materials fabricated or supplied for this project, the network shall show a sequence of activities including, preparation of shop drawings and sample submissions, review and approval of shop drawings and samples, shop fabrication and delivery, erection or installation, and testing of equipment and materials.

3.9.5 SUBMITTALS:  
FOR THE DETAILED CONSTRUCTION SCHEDULE SUBMITTALS, AS WELL AS FOR EACH SCHEDULE UPDATE, THE CONSTRUCTION MANAGER SHALL SUBMIT THE FOLLOWING:

- .1 Hard copies of schedule reports, to include the following minimum items:
  - a. Cost report showing activity dollar value, dollar value of work in place to-date and dollar value for current period.
  - b. Cost report showing activity dollar value, dollar value of work in place to-date, and dollar value for current period summarizing to schedule of values.
  - c. Resource report showing man-day allocations by specific trade on each activity.
  - d. Variance report comparing current dates to target dates.
  - e. Cash flow report showing monthly projections of expenditures.
- .2 A narrative schedule report documenting:
  - a. Description of the actual work accomplished during the reporting period.
  - b. Description of any problem areas.
  - c. Description of current and anticipated delays with recommended corrective actions to mitigate such delays.
  - d. A list of proposed modifications, additions, deletions, and changes in logic to the approved construction schedule.
- .3 A Construction Manager's Schedule to the Principal Representative in an electronic format.

3.9.6 The Construction Manager shall utilize the Project Management Software to prepare and keep current, for the Architect's approval, a time schedule of submittals in a submittal log which is coordinated with the Construction Manager's construction schedule and allows the Architect a reasonable time to review submittals.

3.9.7 Schedule Management

- .1 Weekly Progress Meetings: Once each week, on a day mutually agreed to by the Principal Representative and the Construction Manager, a meeting shall be held to assess the progress achieved by the Construction Manager during previous work week, discuss and resolve issues affecting the progress, and review the critical activities anticipated for the following two weeks. The Construction Manager is to provide short interval schedules documenting the activities to be accomplished during the past week and the activities forecast for the next two weeks.
- .2 Monthly Project Review Meetings: Once each month on or about the 25<sup>th</sup> of the month, a meeting shall be held to review a draft pay application/schedule update, assess and agree to the progress achieved by the Construction Manager during the previous month, discuss

and resolve issues affecting the progress, and review the critical activities to be accomplished during the following 90 days. The Construction Manager is to provide a draft Pay Application and Schedule Update reflecting the work accomplished during the previous month. If necessary, a joint job-site walk through shall be completed to validate the progress on any questioned activities.

- .3 Monthly Schedule Reporting: Upon finalization of the Monthly Project Review and Joint Job Walk, but not later than the 28<sup>th</sup> of the month, the Construction Manager shall update the Construction Schedule and submit the Pay Application and the current submittal log consistent with paragraph 3.9.6
- .4 Schedule Modifications: If, as a result of the monthly Schedule Update, it appears the Construction Schedule no longer represents the actual /logical progression of the work or the Construction Manager's plan for prosecution and progress of the work, the Principal Representative shall require the Construction Manager to submit a revision to the Construction Schedule. Such revisions to the Schedule shall not alter any of the Project Milestone dates.
- .5 Schedule Impacts, Schedule Delays, Time Extensions: During the course of the Project, it may be appropriate to revise the Schedule to incorporate impacts or delay issues into the Project Schedule. If the Construction Manager feels he has encountered schedule impacts that he feels may warrant a time extension, he shall present an Impacted Schedule in accordance with Article 6, to the Principal Representative supporting his claim.
- .6 Recovery Schedule: In the event progress falls behind schedule dates, the Construction Manager shall prepare a recovery schedule indicating its revised plan to assure the timely completion of the Work. The recovery plan shall be subject to the Principal Representative's approval.

### 3.10 AMENDMENTS AND CHANGE ORDERS

3.10.1 The Construction Manager shall assist in developing and implementing a system for the preparation and processing of Amendments and Change Orders and recommend necessary or desirable changes to the Principal Representative and the Architect/Engineer.

### 3.11 PERMITS, FEES AND REGULATIONS

3.11.1 The Construction Manager shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for the proper execution and completion of the on-site Work which are customarily secured after execution of the Agreement for construction and which are legally required at the time the Guaranteed Maximum Price is provided to the Principal Representative.

3.11.2 The Construction Manager shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work.

### 3.12 SALES AND USE TAXES

Attached as Exhibit N are the following tax information forms applicable to this project:

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

Agency Tax exemption Number: \_\_\_\_\_

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

### **[List applicable forms]**

3.12.1 The Construction Manager shall include in the Contract Sum and Guaranteed Maximum Price and pay all applicable sales, consumer, use and other similar taxes for the Work which are legally enacted at the time bids are received, whether or not yet effective.

3.12.2 The Project is being constructed by the Principal Representative and may be exempt from local sales and use taxes. The Construction Manager is required to verify with the Principal Representative and the local jurisdiction prior to establishing the initial cost estimate as to whether the Project is exempt or if the Construction Manager is entitled to a refund of taxes paid. The Construction Manager shall take any and all appropriate action to obtain such exemption or refunds of taxes paid and shall not charge the Principal Representative for any such taxes. If the Project is not exempt or the Construction Manager is not entitled to receive any refunds of taxes paid, the Construction Manager shall pay all applicable sales and use taxes required to be paid and shall maintain such records in respect to its Work, which shall be separate and distinct from all other records maintained by the Construction Manager. The Construction Manager shall furnish such data as may be necessary to enable the State, acting by and through the Principal Representative, to obtain any refunds of such taxes which may be available under the laws, ordinances, rules or regulations applicable to such taxes.

3.12.3 The Construction Manager shall require each of its subcontractors of all tiers to comply with the requirements of 3.12.1 and 3.12.2, to maintain such records and furnish the Construction Manager with such data as may be necessary to obtain refunds of the taxes paid by such subcontractors.

3.12.4 No State sales taxes are to be paid on material to be used in the Work.

3.12.5 The Construction Manager shall exclude the amount of any applicable federal excise or manufacturer's taxes from its proposal. The Principal Representative shall furnish the Construction Manager, on its request, the necessary exemption certificates.

### **3.13 PRINCIPAL REPRESENTATIVE CONSULTANTS**

3.13.1 If required, the Construction Manager shall assist the Principal Representative in selecting and retaining the professional services of a surveyor and special consultants, and coordinate these services, without assuming any responsibility or liability of or for these consultants.

### **3.14 LABOR AND MATERIALS**

3.14.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

3.14.2 The Construction Manager shall provide the Principal Representative a letter of certification on company letterhead that states all products used in the Project are asbestos free. A copy of this letter shall be included in the operations and maintenance manual.

### **3.15 ROYALTIES AND PATENTS**

3.15.1 The Construction Manager shall pay all royalties and license fees. The Construction Manager shall defend all suits or claims for infringement of any patent rights, and shall hold the Principal Representative and the Architect/Engineer harmless against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs on account thereof, except that the Principal Representative or the Architect/Engineer, as the case may be, shall be responsible for all such loss when a particular design, process, or the product of a particular manufacturer or manufacturers is selected by the Principal Representative or Architect/Engineer or its consultants, provided, however, if the Construction



Manager knew or, by virtue of common knowledge in the construction industry, should have known that the design, process, or product selected is an infringement of a patent and failed to promptly notify the Principal Representative and Architect/Engineer in writing, the Construction Manager shall be responsible for any and all such claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs.

### 3.16 DOCUMENTS AND SAMPLES AT THE SITE

#### 3.16.1 The Construction Manager shall:

- .1 Maintain at the Project site on a current basis, one record copy of all Drawings, Specifications, Addenda, Amendments, Change Orders, and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data, and Samples. The record copies shall be documented within fourteen (14) days from the date performed in the field and available to the Architect/Engineer and Principal Representative;
- .2 Maintain at the Project site on a current basis a log to record receipt of all items set forth in paragraph 3.16.1 so as to record and permit the determination of the most current copies; and
- .3 Advise the Principal Representative on a current basis of all changes in the Work made during construction.

### 3.17 LAYOUT OF WORK

3.17.1 Based upon monuments or benchmarks furnished by the Principal Representative, the Construction Manager shall establish all lines, levels and marks necessary to facilitate the operations of all concerned in such Construction Manager's Work. The Construction Manager shall lay out the Work making permanent records of all lines and levels required for excavation, grading and foundations and for all other parts of the Work.

### 3.18 USE OF SITE

3.18.1 The Construction Manager shall confine all operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.

### 3.19 CUTTING AND PATCHING OF WORK

3.19.1 The Construction Manager shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.

3.19.2 The Construction Manager shall not damage or endanger any portion of the Work or the work of the Principal Representative or any separate contractors by cutting, patching, or otherwise altering any work, or by excavation. The Construction Manager shall not cut or otherwise alter the Work of the Principal Representative or any separate contractor except with the written consent of the Principal Representative and of such other contractor. No required consents shall be unreasonably withheld.

### 3.20 CLEANING UP

3.20.1 The Construction Manager shall keep the buildings and premises free from all surplus material, waste material, dirt and rubbish caused by its performance of the Work, including but not limited to its subcontractors of all tiers and suppliers, and at the completion of the Work, shall remove all such surplus material, waste material, dirt and rubbish, as well as all tools,

equipment and scaffolding and shall leave the Work thoroughly clean unless more exact requirements are specified elsewhere in the Contract Documents and where necessary, refit windows, doors and cabinet work. The Construction Manager shall also replace all broken and scratched glass and clean all window glass and all plumbing fixtures. The Construction Manager shall make such minor repairs and alterations in respect to its work as may be necessary to make the buildings and premises ready for occupancy.

3.20.2 If the Construction Manager fails to clean up within five (5) days after written notice from the Principal Representative, the Principal Representative may do so and the cost therefore shall be charged the Construction Manager.

### 3.21 PROTECTION OF PERSONS AND PROPERTY

3.21.1 In accordance with the provisions of paragraph 3.5.13, the Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

3.21.2 The Construction Manager shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- .1 All employees on the Work and all other persons who may be affected thereby;
- .2 All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Construction Manager or any of the Construction Manager's subcontractors of all tiers;
- .3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 The work of the Principal Representative or other separate contractors provided, however, that the Construction Manager shall not be responsible to furnish the safety programs or direct protection of the work of the Principal Representative or other separate contractors.

3.21.3 The Construction Manager and subcontractors shall follow all applicable federal, State and local laws/regulations pertaining to safety, health, pollution control, water supply, fire protection, sanitation facilities, waste disposal and other related items. The Construction Manager shall educate its employees and subcontractors as to the site specific Health and Safety Plan and enforce adherence to safe work procedures.

3.21.4 The Construction Manager shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable standards for safety and protection, including posting danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials, promulgating safety regulations, and notifying owners and users of adjacent utilities.

3.21.5 When the use of or storage of explosive or other hazardous materials or equipment is necessary for the execution of the Work, the Construction Manager shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel in accordance with all applicable federal, state, and local laws, rules and regulations.

3.21.6 The Construction Manager shall reasonably provide all necessary bracing, shoring, and tying of all decks, framing and structures or structural elements to prevent the failure of materials or temporary facilities required in the execution of the Work which could result in damage to property or the injury or death of persons; take all reasonable precautions to insure that no part of any structure of any description is loaded

beyond its carrying capacity with anything that will endanger its safety at any time during the execution of the Work; and reasonably provide for the adequacy and safety of all scaffolding and hoisting equipment. The Construction Manager shall not permit open fires. The Construction Manager shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep excavations, floors, pits, and trenches free of water. Nothing contained within this paragraph shall render the Construction Manager liable for any errors or omissions related to means, methods, techniques, sequences, or procedures on the part of the Architect/Engineer or its consultants unless the Construction Manager knew or in the exercise of reasonable care should have known of such error or omission and failed to act to prevent damage.

3.21.7 The Construction Manager shall take due precautions when obstructing sidewalks, streets, or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary to assure the safe passage of pedestrians and automobiles.

3.21.8 The Construction Manager shall promptly remedy all damage or loss (other than damage or loss insured under Article 11) to any property caused in whole or part by the Construction Manager, any subcontractor of any tier, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, except damage or loss attributable to the acts or omissions of the Principal Representative, the Architect/Engineer, or anyone employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations under Article 12.

3.21.9 The Construction Manager shall assign a qualified safety engineer from the Construction Manager's organization at the site whose duty shall be the prevention of accidents. This person shall report to the Construction Manager's Project Manager and shall be identified in writing to the Principal Representative.

3.21.10 In any emergency affecting the safety of persons or property, the Construction Manager shall act, at the Construction Manager's discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of the Contract Time claimed by the Construction Manager on account of emergency work shall be pursuant to the Construction Manager's written Notice of Claim and determined as provided in Articles 6 and 19 pertaining to Time of Commencement and Completion and Claims for Additional Costs and Damages respectively.

3.21.11 Should the Construction Manager observe a subcontractor or its employee engaged in an unsafe act or improperly utilizing equipment in such a manner that creates an inherently dangerous condition, which puts the life or safety of job site personnel at risk or in danger then the Construction Manager may immediately stop such Work or acts. The Construction Manager shall as soon as possible notify the subcontractor and the Principal Representative of the violation or hazard and record the incident. The Construction Manager or subcontractor shall correct the hazard or condition prior to resuming operation in the area.

3.21.12 The Construction Manager shall develop a written site safety program, maintain injury records as required by OSHA, keep the Principal Representative informed of all serious and/or lost time injuries, and make available to the Principal Representative information on injury logs, safety meetings and their topics, inspection reports and other items concerning Project safety.

3.21.13 The Construction Manager shall coordinate with the requirements of an industry standard Owner Controlled Insurance Program if provided by the Principal Representative.

## 3.22 START-UP

3.22.1 The Construction Manager, with the Principal Representative's maintenance and/or contracted testing personnel, shall direct the checkout of utilities, operations, systems and

equipment for readiness and assist in their initial start-up and testing by the subcontractors of all tiers.

3.22.2 Prior to the Date of Completion of the Work or earlier date for phased occupation of the Work as requested by the Principal Representative, the Construction Manager shall schedule and conduct with the Principal Representative and Architect/Engineer a complete review, commissioning, demonstration, start-up and operational testing of all equipment and mechanical and electrical systems installed by the Construction Manager or its subcontractors on the Project, and shall also review the operation and maintenance of such systems with the Principal Representative's maintenance personnel.

3.22.3 Subsequent to this review, the Construction Manager, with reasonable promptness and at no cost to the Principal Representative shall make all adjustments or corrections required by the Principal Representative or Architect/Engineer and shall balance all systems in order to make all equipment and systems perform as required by the Contract Documents and to reflect the actual use and occupancy of the Project. If necessary or requested by the Architect/Engineer or Principal Representative, the Construction Manager shall require the subcontractor, supplier or material supplier to make adjustments, corrections or balancing required by this process.

### 3.23 CONSTRUCTION METHODS

3.23.1 The Architect/Engineer shall not be responsible for or have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work and except for the Architect/Engineer's specifically enumerated Contract Administration duties such as observation of the Work, shall not be responsible for the Construction Manager's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer shall not be responsible for or have control or charge over the acts or omissions of the subcontractors of any tier or any of their agents or employees, or any other persons performing any of the Work.

### 3.24 ACCESS TO WORK

3.24.1 The Architect/Engineer and Principal Representative shall at all times have access to the Work wherever it is in preparation and progress. The Construction Manager shall provide safe and reasonable facilities for such access so that the Architect/Engineer and Principal Representative may exercise their rights and perform their functions under the Contract Documents.

### 3.25 ARCHITECT/ENGINEER'S AUTHORITY

3.25.1 The duties, responsibilities and limitations of authority of the Architect/Engineer as the Principal Representative's representative during construction as set forth in the Contract Documents, shall not be modified or extended without written consent of the Principal Representative, the Architect/Engineer, and the Construction Manager, which consent(s) shall not be unreasonably withheld.

### 3.26 NO RESPONSIBILITY FOR ARCHITECT/ENGINEER

3.26.1 The Construction Manager shall not be responsible for the failure of the Architect/Engineer or its consultants to properly discharge their duties and responsibilities as set forth in the Agreement between the Principal Representative and Architect/Engineer.

## **ARTICLE 4. DRAWINGS AND SPECIFICATIONS**

### 4.1 OWNERSHIP AND USE OF DOCUMENTS

4.1.1 All Drawings, Specifications, and other documents, including those in electronic form, prepared by the Architect/Engineer and the Architect/Engineer's consultants are Instruments of Service for

use solely with respect to this Project. The Architect/Engineer and the Architect/Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. The Architect/Engineer grants to the State a perpetual nonexclusive license to reproduce and use, and permit others to reproduce and use for the State, the Architect/ Engineer's Instruments of Service solely for the purposes of constructing, using and maintaining the Project or for future alterations, or additions to the Project.

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

## 4.2 REVIEW OF THE CONTRACT DOCUMENTS

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

4.2.2 If the Construction Manager or any of its subcontractors of any tier observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, ordinances, rules, or regulations, in any respect, the Construction Manager shall promptly notify the Principal Representative in writing, and any necessary changes shall be accomplished by appropriate Amendment or Change Order.

4.2.3 If the Construction Manager or any of its subcontractors of any tier perform any work with knowledge or reason to know that it is contrary to such laws, statutes, building codes, ordinances, rules, or regulations, and does not notify the Principal Representative, as required in paragraph 4.2.2, the Construction Manager shall assume full responsibility therefore and shall bear all costs attributable therefore.

4.2.4 Nothing contained in this paragraph 4.2 shall be construed to require the Construction Manager to fully coordinate all of the Drawings or undertake to provide a full and complete review of the Drawings and/or Specifications for compliance with all applicable codes.

## 4.3 INTERPRETATIONS

4.3.1 The Architect/Engineer shall be the initial interpreter of the requirements of the Contract Documents and the initial judge of the performance thereunder.

4.3.2 The Architect/Engineer shall render interpretations consistent with the intent of, and reasonably inferable from the Contract Documents, consisting of additional instructions by means of drawings or otherwise, necessary for the proper execution or progress of the Work, in accordance with agreed upon time limits and otherwise so as to cause no unreasonable delay. The Construction Manager may make written request to the Architect/Engineer for such interpretations and decisions.

## 4.4 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.4.1 Shop Drawings are drawings, diagrams, schedules, and other data specifically prepared for the Work by the Construction Manager or any subcontractor of any tier, manufacturer, supplier, or distributor, to illustrate some portion of the Work.

4.4.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Construction Manager to illustrate a material, product, or system for some portion of the Work.

4.4.3 Samples are physical examples which illustrate materials, equipment, or reasonable workmanship, and establish standards by which the Work shall be judged.

4.4.4 The Construction Manager shall furnish for approval, all samples as directed by the Architect/Engineer. The Architect/Engineer shall check and approve such samples with reasonable promptness.

4.4.5 The Construction Manager shall prepare, review, approve, and submit to the Architect/Engineer, with reasonable promptness and in such sequence as to cause no unreasonable delay in the Work or in the work of the Principal Representative or any separate Contractor, all Samples and sufficient copies of all Shop Drawings and Product Data required by the Contract Documents. Specific quantities, format, size, etc. of Samples, Shop Drawings, and Product Data shall be described in the Contract Documents prepared by the Architect/Engineer. All drawings shall contain identifying nomenclature and each submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures.

4.4.6 By preparing, approving, and submitting Shop Drawings, Product Data, and Samples, the Construction Manager represents that the Construction Manager has determined and verified all materials, field measurements, and field construction criteria related thereto, or shall do so with reasonable promptness, and has checked and coordinated the information contained within such submittal with the requirements of the Work, the Project, the Contract Documents and prior approvals.

4.4.7 The Construction Manager shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, or Samples unless the Construction Manager has specifically informed the Principal Representative and Architect/Engineer in writing of such deviation at the time of submission and the Architect/Engineer and Principal Representative have both given written approval to the specific deviation. The Construction Manager shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, or Samples by the Architect/Engineer's approval of them.

4.4.8 The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, or Samples, to revisions other than those requested by the Architect/Engineer on previous submittal.

4.4.9 No portion of the Work requiring submission of a Shop Drawing, Product Data, or Sample shall be commenced until the submittal has been approved by the Architect/Engineer as provided in paragraph 4.4.10. All such portions of the Work shall be in accordance with approved submittal. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, shall not be acceptable unless previously accepted in writing by the Principal Representative.

4.4.10 The Architect/Engineer shall review and approve or take other appropriate action upon the Construction Manager's submittal such as Shop Drawings, Product Data, and Samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no unreasonable delay. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Any and all approved substitutions shall be coordinated with the Contract Documents and all prior approvals.

4.4.11 Transmittal of Shop Drawings and Product Data copies to the Principal Representative is solely for convenience of the Principal Representative and shall neither create or imply a responsibility or duty of review by the Principal Representative.

4.4.12 As required in paragraph 3.4.14 and further described here, the Construction Manager shall utilize the integrated management control system(s) as established in cooperation with the Principal Representative: to develop a submittal log and schedule for managing and controlling the submission, review, and approval of Shop Drawings, Product Data and Samples.

The submittal log and schedule must be submitted to the Architect/Engineer for review and approval with the Preliminary Construction Schedule, within fourteen (14) days of receiving the Notice to Proceed to Commence Construction Phase for each Bid Package. The Construction Manager throughout the project, both the Preconstruction and Construction Phases, shall maintain the log.

## **ARTICLE 5. THE PRINCIPAL REPRESENTATIVE RESPONSIBILITIES**

### **5.1 THE RESPONSIBILITIES**

5.1.1 The Principal Representative shall furnish the Construction Manager with detailed program requirements, the Project Budget and Fixed Limit of Construction Cost established for the Work as detailed elsewhere in this Agreement.

5.1.2 The Principal Representative shall designate a representative (other than the Architect/Engineer) authorized to act on its behalf with respect to the Project (*as indicated in paragraph 3.8.3*).

5.1.3 The Principal Representative shall retain an Architect/Engineer for preparation of the design and Construction Documents for the Project. The Architect/Engineer's services, duties, and responsibilities are described in the Agreement between the Principal Representative and the Architect/Engineer, a copy of which has been previously furnished to the Construction Manager.

5.1.4 The Construction Manager shall be furnished, without charge \_\_\_\_\_ (\_\_\_) sets of copies of the drawings and specifications and one (1) set of reproducible. Additional sets, as mutually agreed upon to meet construction needs, shall be a direct cost of Work.

5.1.5 The Principal Representative shall furnish the site of the Project, all necessary surveys describing the physical characteristics, legal limitations, utility locations, and a legal description.

5.1.6 The Principal Representative shall identify and make available to Construction Manager copies of reports of geotechnical explorations and tests of subsurface conditions at the site which have been utilized by Architect/Engineer in preparing the Drawings and Specifications. The Principal Representative does not represent that these reports show completely and accurately the existing conditions and the Principal Representative does not guarantee any interpretation of the reports. Except as provided in paragraph 10.4, the Construction Manager expressly assumes all responsibility for deductions and conclusions which may be made as to the nature of the materials to be excavated, and the difficulties of making and maintaining the required excavations, and of doing other work affected by the geology of the site of the Work. The geotechnical information discussed above is for reference only and is not part of the Contract Documents.

5.1.7 The Principal Representative shall secure and pay for necessary approvals, permanent easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

5.1.8 The Principal Representative shall furnish such legal, accounting, and insurance counseling services as may be necessary for the Project, and such auditing services as the Principal Representative may require to ascertain how or for what purposes the Construction Manager has used the monies paid to it under this Agreement.

5.1.9 The services, information, surveys, and reports required by paragraphs 5.1.3 through 5.1.8 shall be furnished on a timely basis and at the Principal Representative's expense, and except as may be provided to the contrary elsewhere in this Agreement, the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

5.1.10 The Construction Manager recognizes that the Principal Representative is a governmental body with certain procedural requirements to be satisfied. The Construction Manager has and shall make reasonable allowance in its performance of the Work for such additional time as may be required for approvals

and decisions by the Principal Representative, in addition to the times specifically provided in paragraph 5.1.11.

5.1.11 In the review process of the final Design Development Documents and Construction Documents for each Bid Package, the Construction Manager expressly agrees to the following review times by the Principal Representative:

- .1 A period of fourteen (14) days for the review of the Design Development Documents; and
- .2 A period of fourteen (14) days prior to completion of the Construction Documents together with an additional seven (7) days after receipt of all bid documents for each Bid Package, commencing with the date of receipt by the Principal Representative of all documents and any other items which are required to be furnished to the Principal Representative by the terms of the Principal Representative's contract with the Architect/Engineer.

It is expressly understood and expected that the Construction Manager shall develop the Guaranteed Maximum Price as the Design Development Documents are developed and that the final establishment of the Guaranteed Maximum Price shall occur within twenty eight (28) days of receipt of the final full scope of the Design Development Drawings and Specifications, including all associated Addenda.

5.1.12 The foregoing are in addition to other duties and responsibilities of the Principal Representative enumerated elsewhere in the Contract Documents.

## **ARTICLE 6. TIME OF COMMENCEMENT AND COMPLETION**

### **6.1 COMMENCEMENT**

6.1.1 The Contract Time shall commence on the date of this Agreement but no work shall be performed prior to the delivery of all documents and certificates required to be furnished by the Construction Manager.

6.1.2 The Construction Phase shall commence on the date the first Bid Package is added to this Agreement by Amendment unless there is an Early Release Bid Package as approved by the Owner in accordance with paragraph 1.1.3 of this Agreement.

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

- .1 The Guaranteed Maximum Price and Schedule of Values have been approved and accepted by the Principal Representative;
- .2 The date for Completion of the Work has been approved and accepted by the Principal Representative;
- .3 **Exhibit I.8**, Certification and Affidavit Regarding Unauthorized Immigrants has been approved;
- .4 All required Performance and Labor and Material Payment Bonds and insurance certificates have been approved and accepted by State Buildings Program; and
- .5 **Exhibit I.9**, Notice to Proceed to Commence Construction Phase has been issued by the Principal Representative and made a part of the Contract Documents.

If any of the preceding material conditions to be performed by the Construction Manager have not been fully satisfied by reason of any act or omission on the part of the Construction Manager through no fault of the



Principal Representative, the Principal Representative shall give the Construction Manager written notice of any and all such deficiencies and allow ten (10) days from the date of such notice to correct and cure such deficiency or deficiencies, and in the event the deficiency or deficiencies are not fully corrected and cured within the ten (10) day period, the Principal Representative may declare the Construction Manager to be in default of this Agreement.

## 6.2 TIME OF ESSENCE

6.2.1 Time is of the essence of this Agreement. The Construction Manager shall begin the Work on the date of Commencement as defined in paragraph 6.1.1. The Construction Manager shall carry the Work forward expeditiously with adequate forces and shall achieve Completion of the Work within the Contract Time.

## 6.3 COMPLETION DATE

6.3.1 The Date of Completion shall be established per Bid Package Amendment. Upon approval by the Principal Representative of the Detailed Construction Schedule as outlined in paragraph 3.9.3, the Date of Completion may be revised by mutual agreement.

## 6.4 DELAYS AND EXTENSIONS OF DATE OF COMPLETION OF WORK

6.4.1 Extensions of the Contract Time required under any of the various contract clauses shall be granted only to the extent that the critical path was delayed or the time allowed for any activity or activities affected exceed the identified available float or slack that occurs, or should occur, along the channels involved.

6.4.2 Subject to the limitations as provided in paragraph 6.4.1, if the Construction Manager is delayed at any time in the progress of the Work by any act or neglect of the Principal Representative, the Architect/Engineer, or of any employee of either, or by any separate contractor, or by changes ordered in the Work, or by strikes, lockouts, fire, unusual delay in transportation, directed suspensions of the Work pursuant to paragraph 6.5.1, unavoidable casualties, or any other causes beyond the Construction Manager's control, the Contract Time shall be extended by the Principal Representative for such period of time as the Principal Representative may determine based upon the Construction Manager's showing of the delay to the critical path in accordance with paragraph 6.4.1 and that it could not have avoided the delay by the exercise of due diligence.

6.4.3 If adverse weather conditions are the basis for a claim for an extension of the Contract Time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and that the weather conditions complained of had an adverse effect on the critical path. Substantiation shall be based on a comparison of current conditions with recorded conditions for the same time period over the duration of the past 10 years.

6.4.4 If the Construction Manager intends to assert a claim for an extension of the Contract Time, the Construction Manager shall give written Notice of Claim for each such delay to the Architect/Engineer and the Principal Representative within fifteen (15) days from the beginning of the delay and shall submit its written claim for an extension of the Contract Time within fifteen (15) days after the period of delay has ceased. No claim for extension to the Contract Time shall be valid unless such written Notice of Claim and written claim are submitted as herein required. In the case of a continuing delay, only one written Notice of Claim shall be necessary.

6.4.5 If no schedule is prepared fixing the dates on which various detail drawings and instruction (not including final Construction Documents to be released for construction) will be needed, no extension to the Contract Time shall be allowed for failure to furnish such drawings or instructions as needed, except in respect of that part of any delay in furnishing drawings or instructions extending beyond a period of two (2) weeks after written demand for such drawings or instructions is received by the Architect/Engineer. In any event, any claim for an extension of the Contract Time for such cause shall be recognized only to the extent

of the delay directly caused by failure to furnish drawings or instructions pursuant to schedule, or such two (2) weeks demand, without fault on the part of the Construction Manager or those for whom the Construction Manager is responsible.

## 6.5 TEMPORARY SUSPENSION OF WORK

6.5.1 The Principal Representative shall have the authority to suspend the Work, either wholly or in part, for such period or periods as it may deem necessary due to:

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

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

6.5.3 Such Notice of Suspension of Work shall be in writing and the Construction Manager shall again proceed with the Work when so notified in writing. The Construction Manager may assert any claims for an adjustment of the Contract Sum, Guaranteed Maximum Price and Contract Time as provided in paragraphs 6 and 19 of this Agreement.

## 6.6 DELAY DAMAGES

6.6.1 The Principal Representative's liability for delay damages shall be limited to delays of Completion of the Work caused by:

- .1 Directed suspensions of the Work, except where the Construction Manager or those for whom the Construction Manager is responsible is at fault;
- .2 Any delay caused by the Principal Representative beyond the times allowed for each of the reviews of the Design Development Documents and Construction Documents as set forth in paragraph 5.1.11;
- .3 Any delay caused by any separate Contractor not assigned to the Construction Manager for coordination pursuant to Article 10;
- .4 The negligent or wrongful acts or omissions of the Principal Representative only;
- .5 The Principal Representative or the Architect/Engineer in the release of any separate Bid Packages or **Exhibit I.9**, Notice to Proceed to Commence Construction Phase, which delay is in excess of fourteen (14) days beyond the dates established in **Exhibit H.2**, Schedule for

Bid Package Descriptions and Issuance Dates for the release thereof, and in any subsequent Amendments or Change Orders, and further, is not caused in whole or in part by the Construction Manager and the associated cost has not been compensated otherwise; and/or;

- .6 Construction Manager's discovery of hazardous substances that have not been rendered harmless pursuant to paragraph 10.6

In the event of such delay the Construction Manager must give its written Notice of Claim within fifteen (15) days after the commencement of the event giving rise thereto, with full and complete documentation in support of the period of delay damages to be submitted within thirty (30) days after the commencement or such other time as the Principal Representative shall agree in writing, or such claim shall be forever barred. If a claim is so barred, the Principal Representative shall not be liable for delay damages under any circumstances giving rise to that claim for delay nor any damages Construction Manager suffered thereby.

#### 6.7 Liquidated Damages

6.7.1 If the Construction Manager shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Contract and the State of Colorado, acting by and through the Principal Representative, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in paragraph 21.9, Modification of Article 6.

6.7.2 The Construction Manager and the Construction Manager's Surety shall be jointly liable for and shall pay the Principal Representative, or the Principal Representative may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the entire Project is 1) substantially completed, and the Notice (or all Notices) of Substantial Completion are issued, 2) Finally Complete and accepted and the Notice (or all Notices) of Acceptance are issued, or 3) both. Delay in Substantial Completion shall be measured from the Date of the Notice to Proceed to Commence Construction Phase and delay in final completion and acceptance shall be measured from the Date of the Notice of Substantial Completion.

6.7.3 In the first instance, specified in paragraph 21.9 Modification of Article 6, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed to Commence Construction Phase, until the date of the Notice of Substantial Completion. Unless otherwise specified in any Supplementary General Conditions, in the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.

6.7.4 In the second instance, specified in paragraph 21.9, Modification of Article 6, liquidated damages, if any, shall be the amount specified in paragraph 21.9, Modification of Article 6 for each calendar day in excess of the number of calendar days specified in the Construction Manager's bid for the Project and stipulated in the Agreement to Finally Complete the Project (as defined by the issuance of the Notice of Acceptance) after the final Notice of Substantial Completion has been issued.

6.7.5 In the third instance, when so specified in both paragraphs 21.9 (1) and (2), both types of liquidated damages shall be separately assessed where those delays have occurred.

6.7.6 The parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Contract was formed; the liquidated damages in the first instance representing an estimate of damages due to the inability to use the Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all guarantees and warranties, the submittals of sales and use tax payment forms, and the calling for the final inspection and the completion of the Substantial Completion Punch List.

6.7.7 The parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed Substantial Completion or Final Acceptance. Such liquidated damages shall not be avoided by virtue of the fact of concurrent delay caused by the Principal Representative, or anyone acting on behalf of the Principal Representative, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with paragraph 6.4, Delays And Extensions Of Time.

## **ARTICLE 7. SUBCONTRACTS**

### **7.1 CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES OR COLORADO**

7.1.1 After the contract is awarded, the Construction Manager is required to provide written notice to the Principal Representative no later than twenty (20) days after deciding to perform services under this contract outside the United States or Colorado or to subcontract services under this contract to a subcontractor that will perform such services outside the United States or Colorado. The written notification must include, but need not be limited to, a statement of the type of services that will be performed at a location outside the United States or Colorado and the reason why it is necessary or advantageous to go outside the United States or Colorado to perform the services. All notices received by the State pursuant to outsourced services shall be posted on the Colorado Department of Personnel & Administration's website. *If the Construction Manager knowingly fails to notify the Principal Representative of any outsourced services as specified herein, the Principal Representative, at its discretion, may terminate this contract as provided in the Colorado Procurement Code or the applicable procurement code for institutions of higher education.* (Does not apply to any project that receives federal moneys)

### **7.2 SUBCONTRACTS**

7.2.1 The Construction Manager shall request and receive proposals from the subcontractors and subcontracts shall be awarded after the proposals are tabulated in a pre-approved format which compares to each GMP budgeted line item and, reviewed by the Architect/Engineer, Construction Manager, and Principal Representative.

- .1 Proposals for all subcontracts shall be opened in the presence of the Construction Manager, the Architect/Engineer, the Principal Representative and others as requested by the Principal Representative.
- .2 Should the Construction Manager submit a proposal for subcontract work (work not included in the Construction Manager's Construction Phase Fee and/or General Conditions), the proposal conditions used shall be the same as for all subcontractor proposals. These Construction Manager proposals for subcontract work shall be submitted to the Principal Representative twenty-four (24) hours prior to receipt of other subcontractor proposals and be opened with the other proposals.

### **7.3 SUBCONTRACTOR PREQUALIFICATION**

7.3.1 The Construction Manager shall use as subcontractors for the various major trades, subcontractors who have been pre-qualified by the Construction Manager and are acceptable to the Principal Representative, which acceptance shall not be unreasonably withheld. All major trade subcontractors prequalified by the Construction Manager and approved by the Principal Representative prior to signing this Agreement are set forth in **Exhibit F**.

7.3.2 In the event unforeseeable circumstances necessitate the use of any major trade subcontractors not set forth in **Exhibit F**, the Construction Manager shall pre-qualify one or more proposed major trade subcontractors to be added to **Exhibit F** and submit the same to the Principal Representative for review. The Principal Representative shall inform the Construction Manager in writing of the names of those subcontractors who are acceptable. The Construction Manager expressly recognizes its commitment

pursuant to the Contract Documents to complete the Work within the constraints set forth elsewhere in the Contract Documents and the necessity to use pre-qualified major trade subcontractors. Except as provided in paragraph 3.5.12 or where requested by the Construction Manager and with the prior written approval of the Principal Representative, proposed additions or substitutions of major trade subcontractors on **Exhibit F** because their price is less expensive than any pre-qualified subcontractors shall not constitute an unforeseeable circumstance or otherwise be a basis for any change.

7.3.3 Prior to the Notice to Proceed to Commence Construction Phase for the first construction phase, the Construction Manager shall submit to the Architect/Engineer and the Principal Representative a complete list of all other proposed pre-qualified subcontractors not provided for in accordance with paragraph 7.3.1, which shall be on a schedule prepared by the Construction Manager for such submittal. The Construction Manager shall not employ any subcontractor that the Architect/Engineer and Principal Representative, within ten (10) days after the date of receipt of the Construction Manager's prequalified subcontractors' lists, objects to in writing as being unacceptable to either the Architect/Engineer or the Principal Representative,

7.3.4 If the Principal Representative refuses to accept a subcontractor recommended by the Construction Manager pursuant to paragraph 7.3.3, the Construction Manager shall recommend an acceptable substitute and the Contract Sum and Guaranteed Maximum Price, if applicable, shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Amendment or Change Order shall be issued.

#### 7.4 SUBCONTRACT FORMS

7.4.1 All subcontracts shall be between the Construction Manager and the subcontractors. The form of subcontracts, including any Supplementary Conditions thereto, shall be furnished to the Principal Representative for review and consent as to form, which consent shall not be unreasonably withheld.

#### 7.5 CONSTRUCTION MANAGER RESPONSIBLE FOR SUBCONTRACTORS

7.5.1 The Construction Manager shall be responsible to the Principal Representative for the acts and omissions of its agents and employees, suppliers, subcontractors performing work under a contract with the Construction Manager, and such subcontractors' lower tier subcontractors, agents or employees.

#### 7.6 SUBSTITUTION OF SUBCONTRACTORS

7.6.1 The substitution of any subcontractor listed in the Construction Manager's approved lists in accordance with paragraphs 7.3.1 and 7.3.3 shall be justified in writing not less than ten (10) days after the date of the Notice to Proceed to Commence Construction Phase, and shall be subject to the approval of the Principal Representative. For reasons such as the Subcontractor's refusal to perform as agreed, subsequent unavailability or later discovered proposal errors, or other similar reasons, such substitution may be approved. The Construction Manager shall bear any additional cost incurred by such substitutions.

#### 7.7 SUBCONTRACTUAL RELATIONS

7.7.1 By an appropriate agreement, written where legally required for validity, the Construction Manager shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager, by these Documents, assumes toward the Principal Representative and the Architect/Engineer. Said agreement shall preserve and protect the rights of the Principal Representative and the Architect/Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof shall not prejudice such rights. Where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with their subcontractors. The Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the

Contract Documents to which the subcontractor shall similarly make copies of such Documents available to their sub-subcontractors. Each subcontractor shall be bound by this paragraph 7.7.1.

## **7.8 PRINCIPAL REPRESENTATIVE/SUBCONTRACTOR RELATIONSHIP**

7.8.1 The parties recognize that the bidding and subcontracting procedures prescribed herein are intended to promote pricing of the work that shall be fair and reasonable and based on full and open competition. The Construction Manager agrees to comply in a timely manner with reasonable requests for information concerning pre-qualification of a prospective subcontractor, the evaluation and award of bids, or other obligations under this contract concerning pre-qualification, bidding, and subcontracting. Upon notice by the State, the Construction Manager agrees to meet and confer with the state and other invited, interested persons at the Denver office of State Buildings Program or at the site, the choice of such location to be made by the State, or at some other location mutually agreeable to the State and Construction Manager, concerning its pre-qualification, bidding and subcontracting procedures. The Construction Manager agrees to meet within three (3) business days of an election by the State and to comply with reasonable requests for information to be provided at such meeting. The State agrees that this administrative procedure shall be exhausted prior to the State's exercising any contractual or other remedy relating to the pre-qualification, bidding, or subcontracting procedures specified herein.

7.8.2 Nothing contained in the Contract Documents, including this Agreement, shall be deemed to create any contractual relationship between any subcontractor of any tier and the Principal Representative. Further, consistent with paragraph 21.12, nothing in the Contract Documents, including this Agreement and the pre-qualification, bidding and subcontracting procedures specified herein, is intended to create or shall be deemed to create third party beneficiary or other rights inuring to the benefit of any prospective subcontractor, subcontractor, or any other third person.

## **ARTICLE 8. WORK BY PRINCIPAL REPRESENTATIVE OR BY SEPARATE CONTRACTORS**

### **8.1 PRINCIPAL REPRESENTATIVE'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

8.1.1 The Principal Representative reserves the right to perform work related to the Project with the Principal Representative's own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of this Agreement.

8.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term separate contractor in the Contract Documents in each case shall mean the contractor who executes each separate Principal Representative-Contractor Agreement.

### **8.2 COORDINATION**

8.2.1 To the extent separate contractors are not assigned to the Construction Manager for coordination pursuant to Article 10, the Principal Representative shall provide and be responsible for the coordination of the Work of the Principal Representative's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate therewith as provided in paragraph 8.3.1 through 8.4.1.

### **8.3 MUTUAL RESPONSIBILITY**

8.3.1 The Construction Manager shall afford to Principal Representative and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate the Work with theirs as required by the Contract Documents.

8.3.2 To insure the proper execution of its subsequent Work, if any part of the Construction Manager's Work depends for proper execution or results upon the Work of the Principal Representative or any separate contractor, the Construction Manager shall, prior to proceeding with the Work, inspect and

promptly report to the Principal Representative any apparent discrepancies or defects in such other work that renders it unsuitable for such proper execution and results. The Construction Manager shall also measure work already in place and shall promptly report to the Architect/Engineer any discrepancy between the executed work and the Drawings. Failure of the Construction Manager to so inspect, or report, shall constitute an acceptance of the Principal Representative's or separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the separate contractor's Work after execution of the Work.

8.3.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.

8.3.4 Should the Construction Manager cause damage to the Work or property of the Principal Representative or to other work or property on the site, the Construction Manager shall promptly remedy such damage.

8.3.5 Should the Construction Manager wrongfully delay or cause damage to the work or property of any separate contractor, the Construction Manager shall, upon due notice, promptly attempt to settle with such other separate contractor by agreement or otherwise to resolve the dispute. If such separate contractor sues the Principal Representative on account of any delay or damage alleged to have been caused by the Construction Manager, the Principal Representative shall notify the Construction Manager, the Principal Representative shall defend any proceedings, and if any judgment or award against the Principal Representative arises therefrom and to the extent that Construction Manager is responsible, the Construction Manager shall pay or satisfy it and reimburse the Principal Representative for all attorney's fees and court costs which the Principal Representative has incurred.

#### 8.4 PRINCIPAL REPRESENTATIVE'S RIGHT TO CLEAN UP

8.4.1 If a dispute arises between the Construction Manager and any separate contractors as to their respective responsibilities for cleaning up, the Principal Representative may clean up and charge the cost thereof to the Construction Manager and separate contractors responsible therefore as the Principal Representative shall determine to be just.

### **ARTICLE 9. COMPENSATION**

#### 9.1. Construction Manager's Fee and General Conditions

9.1.1 Subject to the provisions of Sections 6.6, 9.5, 9.6 and 20.2, and in consideration of the performance of this Agreement, the Principal Representative shall pay the Construction Manager in current funds as compensation for its services, a Total Fee amount and separate General Conditions amount as listed below:

Construction Manager's Fee			
	.1 Pre-Construction Phase Fee	\$	
	.2 Construction Phase Fee	\$	
	.3 Total Fee (.1+.2)	\$	0
General Conditions			
	.4 Direct Personal Expenses of On-Site CM/GC Staff (Not to Exceed)	\$	
	.5 Other Reimbursable General Conditions (Not to Exceed per paragraph 9.1.3)	\$	
	.6 Total General Conditions (including Direct Personnel Expenses of Staff) (.4+.5)	\$	0
	Total Fee and General Conditions (.3+.6)	\$	0

9.1.2 The Construction Manager's fee shall include all job indirect costs, and General Conditions costs as defined in **Exhibit A**, CM/GC Designated Services and Method of Payment, home office overhead, and profit, included but not limited to the following:

- .1 Salaries or other compensation of the Construction Manager's employees at the principal office and branch offices;
- .2 General operating expenses of the Construction Manager's principal and branch offices other than the field office;
- .3 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Project;
- .4 Overhead or general expenses of any kind;
- .5 Salaries of the Construction Manager's employees engaged on the road in expediting the production or transportation of materials and equipment;
- .6 Cost of all employee benefits and taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Construction Manager and included in the fee under paragraphs 9.1.2.1 through 9.1.2.5;
- .7 All transportation, traveling, moving, and hotel expenses of the Construction Manager or its officers or employees incurred in discharge of duties connected with the Work;
- .8 Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work;
- .9 Cost of the premium for all insurance which the Construction Manager is required to procure by this Agreement or is deemed necessary by the Construction Manager;
- .10 Minor expenses such as facsimile messages, telegrams, long distance telephone call telephone service at the site, express mail, and similar petty cash items in connection with the Work;
- .11 All other items set forth in **Exhibit A**, Designated Services and Method of Payment, that are specifically designated as Preconstruction Services Fee, Construction Services Fee or General Conditions. All Items listed in the columns designated as Required of Architect/Engineer and Required of Owner are not included in the Construction Manager's fee, and the items designated as Direct Cost of Work shall be included in the separate Bid Packages.
- .12 Except as expressly provided to the contrary elsewhere in this Agreement, costs in excess of the Guaranteed Maximum Price.

9.1.3 General conditions items, as set forth in paragraph 9.1.2, shall generally include the direct cost of Construction Phase on-site construction management staff and those temporary facilities, services and equipment to support the work of construction subcontractors. General conditions items are more fully identified in Exhibit A, DESIGNATED SERVICES AND METHODS OF PAYMENT, and shall be reimbursed at direct cost, without mark-up, based upon pre-approved not-to-exceed budgets. General conditions (exclusive of the Construction Manager's staff) provided directly by the Construction Manager must be at market competitive rates. Each monthly request for progress payment shall be justified with reasonable support for expenses to include:



- .1 Invoice or receipt for any vendors or suppliers for material, rented equipment, etc.
- .2 Labor/timesheet reports (by task number) for direct labor, provide bare labor rate & itemized breakdown of labor burden prior to initial billing.
- .3 Owned equipment shall be compensated per pre-negotiated rates established in accordance with the Colorado Procurement Code or the applicable procurement code for institutions of higher education. In no case shall cumulative/total cost of owned equipment exceed the value of the equipment minus salvage value. The Principal Representative shall approve all rental rates and salvage values in writing prior to initial billing.
- .4 Labor, material and equipment cost may be audited by the principal representative.

## 9.2 ADJUSTMENTS IN FEE

9.2.1 Adjustments in fee shall be made as follows: If, after the total Guaranteed Maximum Price is accepted, in writing, by the Principal Representative, the Principal Representative directs additions to or other changes made in the Work, the Construction Manager's fee shall be adjusted as follows:

- .1 If the changes in the aggregate increase the total Guaranteed Maximum Price the Construction Manager's fee for any and all other changes in the Work shall be calculated at the rate of FOUR percent (4%) (plus appropriate General Condition costs) of the estimated cost of such work and shall be agreed upon between the Construction Manager and the Principal Representative as a fixed fee for the effect of the change (or changes), prior to starting the changed work. The adjustments stated above shall only be deemed valid after the Principal Representative accepts the adjustments in writing and, are the only adjustments to the fee that shall be granted for changes authorized to the GMP. Adjustments to these fees beyond these values shall not be granted. However, General Condition costs directly attributable to time extensions may be charged in accordance with the provisions of paragraphs 6.4.1 through 6.4.5.

9.2.2 The Construction Manager shall also be paid an additional fee at the rate as set forth in paragraph 9.2.1.1 if the Construction Manager is placed in charge of the reconstruction of any insured loss.

9.2.3 If there is a material reduction in the scope of work greater than fifteen percent (15%) of the Fixed Limit of Construction Cost, the Principal Representative reserves the right to negotiate an equitable reduction in the Construction Phase fee and the General Conditions.

## 9.3 GUARANTEED MAXIMUM PRICE

9.3.1 At the conclusion of the Design Development Phase, the Construction Manager shall deliver to the Principal Representative, a Guaranteed Maximum Price proposal which shall agree to perform all of the work even though all of the Construction Documents have not all been finalized and released for construction, and guarantee the maximum price to the Principal Representative for the entire cost of the Work, as adjusted by deductive alternates required to maintain the Guaranteed Maximum Price below the Fixed Limit of Construction Cost which have been previously approved by the Principal Representative pursuant to paragraph 3.2.

9.3.2 The Guaranteed Maximum Price shall include all of the Construction Manager's obligations to be performed pursuant to the terms of the Contract Documents and may include, but not be limited to, the total of the following:

- .1 The total of all prices already received for all items bid before the establishment of the Guaranteed Maximum Price;

- .2 The Construction Manager's estimate of the cost of all other work to be performed but not yet bid, excluding the approved deductive alternates unless said work can be incorporated into the Contract Documents by application of the contingency per the provisions of paragraphs 3.4.1 through 3.4.5, with the consent of the Construction Manager which consent shall not be unreasonably withheld;
- .3 The installation cost of items to be procured by the Principal Representative and assigned to the Construction Manager for installation, as defined in the Contract Documents;
- .4 The estimated maximum cost of all work to be performed by the Construction Manager;
- .5 Construction Manager's fee as provided under this Agreement and General Condition costs, as provided under this Agreement;
- .6 The cost of all Performance and Labor and Material Payment Bonds furnished by the Construction Manager pursuant to Article 13;
- .7 The premiums for insurance to protect the Project pursuant to paragraph 11.2; and
- .8 Authorized adjustments as set forth elsewhere in this Agreement, to include but may not be limited to: taxes; fees for licenses, and royalties; special conditions, commissioning, startup services, and warranty support; and contingencies.

9.3.3 The Guaranteed Maximum Price proposal as set forth in paragraph 9.3.1 shall:

- .1 Set forth a stated dollar amount;
- .2 Set forth the Schedule of Values therefore which shall be consistent with previously approved Schedules of Values, as adjusted as required pursuant to Design Development cost estimating;
- .3 Contain no conditions or exceptions;
- .4 Not exceed the Fixed Limit of Construction Cost; and
- .5 Contain no allowances except for those set forth in **Exhibit H.4**, Allowance Schedule of which all allowances are to be a not-to-exceed dollar amount;
- .6 Be substantiated with complete supporting documentation acceptable to the Principal Representative, to clearly define the anticipated Work to be performed by the Construction Manager and facilitate a determination thereafter when final drawings and specifications are released for construction, as to whether there has been an increase in the Work required of the Construction Manager in the documents released for construction from the Design Development documents on which the Guaranteed Maximum Price was based. If at any time thereafter, any Claim is asserted by the Construction Manager for an increase to the Contract Sum or Guaranteed Maximum Price and/or extension of the Contract Time because of an alleged increase in the Work to be performed by the Construction Manager as contained in the drawings or specifications released for construction, the Construction Manager shall be required to satisfactorily demonstrate the increase in the Work; otherwise the Construction Manager shall be entitled to no increase in the Contract Sum, Guaranteed Maximum Price or extension of the Contract Time.

9.3.4 If, through no fault on the part of the Construction Manager, and after receiving reasonable cooperation by the Principal Representative and Architect/Engineer, the Construction Manager submits a Guaranteed Maximum Price proposal contrary to the provisions of paragraph 9.3.2 and 9.3.3, the proposal may be rejected by the Principal Representative; the Principal Representative shall be under no obligation to

award subsequent Bid Packages; the Principal Representative may declare the Construction Manager to be in default; and payment may be withheld from the Construction Manager, excepting the Construction Manager's fee for the Preconstruction Services, until a Guaranteed Maximum Price is furnished in accordance with the foregoing.

9.3.5 If, in developing a Guaranteed Maximum Price, the Construction Manager believes any documentation or information, consistent with the Design Development level of documentation, is not sufficiently complete to clearly define the anticipated work, the Construction Manager shall be responsible for making all necessary inquiries and requests to establish the same.

9.3.6 When the Guaranteed Maximum Price is agreed upon and accepted by the Principal Representative, it shall be made a part of the Contract Documents by Amendment, shall supersede updated summaries and all documents relating to Schedules of Values and Estimates of Construction Cost; and shall be subject to modification for Changes in the Work as provided in Article 10. If the Construction Manager, in good faith, furnishes the Principal Representative with a Guaranteed Maximum Price proposal which meets the criteria of paragraphs 9.3.1, 9.3.2, and 9.3.3 and the parties fail to mutually agree to that number as set forth above, the parties expressly agree that default termination of the Construction Manager shall not be a remedy therefore under this Agreement, and, the Principal Representative shall be entitled to proceed with the Project and Work as set forth elsewhere in this Agreement.

9.3.7 When the Construction Manager provides a Guaranteed Maximum Price, the trade contracts for the Work shall either be with the Construction Manager or shall contain the necessary provisions to allow the Construction Manager to control the performance of the Work. The Principal Representative shall also authorize the Construction Manager to take all steps necessary in the name of the Principal Representative to assure that any separate contractors, having separate contracts with the Principal Representative for the Project, perform their contracts in accordance with their terms.

#### 9.4 CONTRACT SUM

9.4.1 Subject to the provisions of Article 3, Article 9 and paragraph 20.2, the Contract Sum shall equal the total of:

- .1 The lump sum price for the aggregate of the Bid Packages added to the Construction Manager's Work by Amendment;
- .2 The cost of installation of items to be procured by the Principal Representative and assigned to the Construction Manager for installation;
- .3 The portions of the Construction Manager's total fee and General Conditions cost as set forth in paragraph 9.1.1;
- .4 The cost of all Performance and Labor and Material Payment Bonds furnished by the Construction Manager pursuant to Article 13;
- .5 The premiums for the property insurance to protect the Project pursuant to paragraph 11.4;
- .6 Authorized adjustments as set forth elsewhere in this Agreement;

and shall be the total amount payable by the Principal Representative to the Construction Manager for the performance of all Work under the Contract Documents.

## 9.5 PAYMENTS

9.5.1 Preconstruction Services Fee: For the performance of the Preconstruction Services, the fee therefore as set forth in paragraphs 9.1.1 shall be paid monthly based upon detailed invoices totaling the aggregate of all work previously performed as submitted by the Construction Manager, with the total payment not to exceed the fee for such services as set forth in paragraph 9.1.1.

9.5.2 Construction Services Fee: Notwithstanding the stated fee set forth in paragraph 9.1.1 for Construction Services, the portion of the fee to be paid to the Construction Manager for the Construction Phase shall be determined and paid as follows:

- .1 After execution of the first Amendment to the Agreement establishing and accepting the Guaranteed Maximum Price of the Work, the Construction Manager shall be paid the sum of Dollars (\$\_\_\_\_) for the mobilization and front end costs including the premiums to protect the Project;
- .2 With the addition of the second Amendment incorporating the first Bid Package and subsequent Amendments incorporating subsequent Bid Packages, the portion of the fee to be paid (total fee for all Construction Services less that paid pursuant to paragraph 9.5.2.1) shall be equivalent to the ratio of the dollar value of each Bid Package to the Guaranteed Maximum Price including the premiums for the Performance and Labor and Materials Payment Bonds with coverage up to the value of the Contract Sum.

The portion of the fee payable in accordance with paragraph 9.5.2.1 shall be due and payable with the first Certificate and Application for Contractor's Payment (State form SC-7s) after commencement of the Construction Phase. The remaining portion(s) of the Construction Manager's fee as determined above shall be included in each Certificate and Application for Contractor's Payment in proportion to the percent of the Work that is complete. Any balance of the fee shall be paid at the time of final payment.

## 9.5.3 Schedule of Values

- .1 At the time of the agreement and acceptance of the Guaranteed Maximum Price as set forth in paragraph 9.3, the Construction Manager shall submit to the Principal Representative, using the CPM Schedule developed in accordance with paragraph 3.9 and forms approved by State Buildings Program, a complete, detailed, and itemized Schedule of Values. The Schedule of Values shall be allocated to the various portions of the Work described by the CPM schedule activities; allow for tracking of progress based upon CSI Division, funding sources, sub-trades, combinations of sub-trades, building systems, Bid Packages or combinations thereof; aggregate to the total of the Guaranteed Maximum Price; and be supported by such data to substantiate its accuracy as the Architect/Engineer and the Principal Representative may require. The Construction Manager's fee and the estimated Project General Conditions costs shall be set forth as a separate line item(s).
- .2 At least ten (10) days before submission of the first Certificate and Application for Contractor's Payment for the Construction Phase, a conference attended by the Construction Manager, Architect/Engineer and Principal Representative shall be held to finalize the Schedule of Values. The finalized Schedule of Values shall serve as the basis for progress payments and shall be incorporated into the form of a Project Certificate and Application for Contractor's Payment acceptable to the Architect/Engineer and Principal Representative. Subject to the prior approval of the Principal Representative, the finalized Schedule of Values shall be adjusted to reflect changes made to the Work by Amendment.
- .3 As subsequent Bid Packages are added into this Agreement by Amendment or upon the agreement and acceptance of the Guaranteed Maximum Price as set forth in paragraph 9.3, whichever is first to occur, and at such other times as the Principal Representative shall approve and/or direct, the Construction Manager shall submit proposed revisions to the

Schedule of Values to more accurately reflect the actual values of the specific activities and other items, supported by such data to substantiate its accuracy as the Architect/Engineer and the Principal Representative may require. Except as provided above, the Construction Manager shall make no other adjustment to the currently approved Schedule of Values. Where a preliminary value has been assigned to any specific item on a Schedule of Values and that portion of the Work is to be performed by the Construction Manager, the Construction Manager shall determine as soon as practical the cost of such item and submit to the Principal Representative a final value to use in the then current Schedule of Values supported by such data to substantiate its accuracy as the Architect/Engineer and Principal Representative may require. If the Construction Manager shall fail or refuse to make such submission, the value approved by the Principal Representative in the then current approved Schedule of Values shall be used and the Construction Manager shall be entitled to no further compensation for that item beyond the then currently approved amount therefore until such requirements are fulfilled.

9.5.4 Applications for Payment: On or before the first day of each month and no more than five (5) days prior thereto, the Construction Manager shall submit to the Architect/Engineer an itemized Certificate and Application for Contractor's Payment covering the portion of the Work completed as of the date indicated in the Application together with the portion of the Construction Manager's fee and General Conditions then due as provided for in paragraph 9.5.10 together with such additional documentation substantiating the Construction Manager's right to payment as the Principal Representative and Architect/Engineer may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The form of Certificate and Application for Contractor's Payment shall be as furnished by the Principal Representative. All Project Certificates and Applications for Contractor's Payment, except the final Certificate and Application for Contractor's Payment, shall be subject to correction including revision to the next Project Certificate and Application for Contractor's Payment rendered following the discovery of any error.

9.5.5 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Principal Representative, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other documents or procedures satisfactory to the Principal Representative to establish the Principal Representative's title to such materials or equipment or otherwise protect the Principal Representative's interest, including applicable insurance and transportation to the site for these materials and equipment stored off the site.

9.5.6 The Construction Manager warrants that title to all Work, materials, and equipment covered by a Certificate and Application for Contractor's Payment shall pass to the Principal Representative either by incorporation in the construction or upon receipt of payment by the Construction Manager whichever occurs first, free and clear of all liens, claims, security interest, or encumbrances, hereinafter referred to in this Article 9 as liens; and that no work, materials, or equipment covered by a Certificate and Application for Contractor's Payment shall have been acquired by the Construction Manager, or by any other person performing work at the site or furnishing materials and equipment for the Work, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager or such other person. The warranty of this Article shall survive the termination of this Agreement.

9.5.7 Retainage Withheld: Unless otherwise provided in the Contract Documents, an amount equivalent to five percent (5%) of the amount shown to be due the Construction Manager on each Certificate and Application for Contractor's Payment for the Construction Phase shall be withheld until the Work required by the Contract Documents has been performed. The withheld percentages of the Contract Sum shall be administered according to C.R.S. § 24-91-103, as amended, and C.R.S. § 38-26-107, as amended, and shall be retained until the Work or discrete portions of the Work, have been completed satisfactorily, finally or partially accepted, and advertised for final settlement as further provided in Article 17.5.

9.5.8 Release of Retainage: The Contractor may, for satisfactory and substantial reasons shown to the Principal Representative's satisfaction, make a written request to the Principal Representative and the Architect/Engineer for release of part or all of the withheld percentage applicable to the Work of a Subcontractor which has completed the subcontracted Work in a manner finally acceptable to the Architect/Engineer, the Contractor, and the Principal Representative. Any such request shall be supported by a written approval from the Surety furnishing the Contractor's bonds and any surety that has provided a bond for the Subcontractor. The release of any such withheld percentage shall be further supported by such other evidence as the Architect/Engineer or the Principal Representative may require, including but not limited to, evidence of prior payments made to the Subcontractor, copies of the Subcontractor's contract with the Contractor, any applicable warranties, as-built information, maintenance manuals and other customary close-out documentation. Neither the Principal Representative nor the Architect/Engineer shall be obligated to review such documentation nor shall they be deemed to assume any obligations to third parties by any review undertaken.

The Contractor's obligation under these Contract Documents to guarantee Work for one year from the date of the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion of the applicable portion or phase of the Project, shall be unaffected by such partial release; unless a Notice of Partial Substantial Completion is issued for the Work subject to the release of retainage.

Any rights of the Principal Representative which might be terminated by or from the date of any final acceptance of the Work, whether at common law or by the terms of this Contract, shall not be affected by such partial release of retainage prior to any final acceptance of the entire Project.

The Contractor remains fully responsible for the Subcontractor's Work and assumes any risk that might arise by virtue of the partial release to the Subcontractor of the withheld percentage, including the risk that the Subcontractor may not have fully paid for all materials, labor and equipment furnished to the Project.

If the Principal Representative considers the Contractor's request for such release satisfactory and supported by substantial reasons, the Architect/Engineer shall make a "final inspection" of the applicable portion of the Project to determine whether the Subcontractor's Work has been completed in accordance with the Contract Documents. A final punch list shall be made for the Subcontractor's Work and the procedures of Article 17, Completion, Final Inspection, Acceptance and Settlement, shall be followed for that portion of the Work, except that advertisement of the intent to make final payment to the Subcontractor shall be required only if the Principal Representative has reason to believe that a supplier or Subcontractor to the Subcontractor for which the request is made, may not have been fully paid for all labor and materials furnished to the Project.

9.5.9 The Architect/Engineer shall, within five (5) days after the receipt of each Certificate and Application for Contractor's Payment, review the Project Application for Payment and either execute a Project Certificate for Payment to the Principal Representative for such amounts as the Architect/Engineer reasonably determines are properly due, or notify the Construction Manager in writing of the reasons for withholding a Certificate as provided in paragraph 9.5.15.

9.5.10 The issuance of a Certificate and Application for Contractor's Payment shall constitute a representation by the Architect/Engineer to the Principal Representative that, based on the Architect/Engineer's observations at the site as provided in Article 14 and the data comprising the Certificate and Application for Contractor's Payment, the Work has progressed to the point indicated; that, to the best of the Architect/Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon completion of the Work, to the results of any subsequent tests required by or performance under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate and Application for Contractor's Payment); and that the Construction Manager is entitled to payment in the amount certified. However, the issuance of a Certificate and Application for Contractor's Payment shall not be a representation that the Architect/Engineer has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, has reviewed the

construction means, methods, techniques, sequences, or procedures, or has made any examination to ascertain how or for what purpose the Construction Manager has used the monies paid on account of the Contract Sum.

9.5.11 Progress Payments: Shall be due per C.R.S. § 24-30-202(24) (correct notice of amount due), within forty-five (45) days of receipt by the Principal Representative of applications for payment that have been certified by the Architect/Engineer.

9.5.12 The Construction Manager shall promptly pay each subcontractor and supplier upon receipt of payment from the Principal Representative, out of the amount paid to the Construction Manager on account of such subcontractor's or supplier's work or materials furnished, the amount to which said subcontractor or supplier is entitled, reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of such subcontractor's or supplier's work or materials furnished. The Construction Manager shall, by an appropriate agreement with each subcontractor or supplier, require each subcontractor or supplier to make payments to their sub-subcontractors or suppliers in similar manner.

9.5.13 The Architect/Engineer may, on request and at the Architect/Engineer's discretion, furnish to any subcontractor or supplier, if practicable, information regarding the percentages of completion or the amounts applied for by the Construction Manager and the action taken thereon by the Architect/Engineer on account of work done by such subcontractor or supplier.

9.5.14 Neither the Principal Representative nor the Architect/Engineer shall have any obligation to pay or to see to the payment of any monies to any subcontractor of any tier or supplier.

9.5.15 Payments Withheld: The Architect/Engineer, following consultation with the Principal Representative, may decline to certify payment and may withhold execution of the Certificate and Application for Contractor's Payment in whole or in part to the extent necessary to reasonably protect the Principal Representative, if, in the Architect/Engineer's opinion, the Architect/Engineer is unable to make the representations to the Principal Representative as provided in paragraph 9.5.9, and to certify payment in the amount of the Project Application for Payment, the Architect/Engineer shall notify the Construction Manager as provided in paragraph 9.5.8. If the Construction Manager and the Architect/Engineer cannot agree on a revised amount, the Architect/Engineer shall promptly issue a Certificate and Application for Contractor's Payment for the amount for which the Architect/Engineer is able to make such representations to the Principal Representative. The Architect/Engineer may also decline to certify payment and the Principal Representative may decline to make payment, or because of subsequently discovered evidence or subsequent observations, the Architect/Engineer may nullify the whole or any part of any Certificate and Application for Contractor's Payment previously executed and the Principal Representative may withhold from any subsequent payments due to the Construction Manager, to such extent as may be necessary to protect the Principal Representative from loss because of:

- .1 Defective work not remedied;
- .2 Claims filed by third parties or reasonable evidence indicating probable filing of such claims;
- .3 Failure of Construction Manager to make payments properly to subcontractors, or for labor, materials, or equipment;
- .4 A reasonable doubt that this Agreement can be completed for the unpaid balance of the Contract Sum or Guaranteed Maximum Price;
- .5 Damage to the Principal Representative or any separate contractor;
- .6 Reasonable evidence that the Work will not be completed within the Contract Time;

- .7 Failure to carry out the Work in accordance with the Contract Documents;
- .8 Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinance, codes, rules or regulations;
- .9 Failure of the Construction Manager to keep its Work progressing in accordance with the construction schedule;
- .10 Failure to keep a Superintendent on the site; or
- .11 Unauthorized deviations by the Construction Manager from the Contract Documents.

The Principal Representative may also decline to pay and the Architect/Engineer may also decline to so certify or may nullify execution of any prior Project Certification and Application for Contractor's Payment, for the Construction Manager's failure or refusal to submit any Project schedule or monthly or other periodic update thereto.

9.5.16 When the grounds in paragraph 9.6.15 above are removed, payment shall be made for amounts withheld because of them.

9.5.17 No certification of a progress payment, or any partial or entire use or occupancy of the Project by the Principal Representative, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.5.18 Final Payment: Final payment constituting the unpaid balance of the Contract Sum shall be paid by the Principal Representative to the Construction Manager pursuant to the provisions of Article 17.

9.5.19 Failure to Make Payment: If the Principal Representative should fail to pay the Construction Manager within forty five (45) days after the date for payment of any amount due in accordance with paragraph 9.5.11, then the Construction Manager may, upon seven (7) additional days written notice to the Principal Representative and the Architect/Engineer, stop the Work until payment of the amount owing has been received.

9.5.20 Re-negotiation of Compensation: If the Work is suspended for more than six (6) months and is then resumed, the Construction Manager's Fee, Guaranteed Maximum Price and Contract Sum shall be subject to re-negotiation and any adjustment shall take into account the degree of fault on the part of the Construction Manager in the suspension.

## 9.6 CONDITIONS OF COMPENSATION/*CONDITION PRECEDENT*

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



9.6.2 *At the time of the execution of this Agreement, there are sufficient funds budgeted and appropriated to compensate the Construction Manager only for performance of the Work through and including \_\_\_\_\_. Therefore, it shall be a Condition Precedent to the Construction Manager's performance of the remaining Work specified in \_\_\_\_\_ and the State's liability to pay for such performance, sufficient funding must be made available to the Principal Representative for the Project prior to \_\_\_\_\_ and, as a further Condition Precedent, a written Amendment to this Agreement is entered into in accordance with the State of Colorado Fiscal Rules, stating that additional funds are lawfully available for the Project. If either Condition Precedent is not satisfied by \_\_\_\_\_, the Construction Manager's obligation to perform Work for \_\_\_\_\_ and the State Buildings Program' obligation to pay for such Work is discharged without liability to each other. If funding is eventually made available after \_\_\_\_\_, the Construction Manager has no right to perform the work under \_\_\_\_\_ of this Agreement and the State has no right to require the Construction Manager to perform said Work.*

9.6.3 The total cost of the Work including but not limited to the Construction Manager's Fee, all sums otherwise due the Construction Manager as the cost of construction, and any and all sums claimed by the Construction Manager to be due as set forth throughout this Agreement, are expressly subject to the limitations set forth in paragraphs 9.6.1, and 9.6.3 and nothing herein contained shall be construed or understood to commit the Principal Representative to a total expense greater than that which is provided in the appropriation or allocation. Further, no funds appropriated or allocated for any other purpose shall be expended for this Project. The Principal Representative agrees not to issue any directed Amendments or Change Orders or Modifications which would cause the sums due the Construction Manager pursuant to this Agreement to exceed the appropriation or allocation for the Work.

## **ARTICLE 10. CHANGES IN THE WORK**

### **10.1 AMENDMENTS AND CHANGE ORDERS**

10.1.1 The Principal Representative, with the approval of State Buildings Program and the State Controller, without invalidating this Agreement and without notice to any surety, may order extra work or make changes by altering, adding to, or deducting from the Work, the Contract Sum, Guaranteed Maximum Price and Contract Time being adjusted accordingly.

10.1.2 An Amendment is a written order to the Construction Manager signed by State Buildings Program, the State Controller, and the Principal Representative or its authorized agent, issued after the execution of this Agreement, authorizing a change in the Work, the method or manner of performance, an adjustment in the Contract Sum, Guaranteed Maximum Price, the Construction Manager's Fee, or the Contract Time. Each adjustment in the Contract Sum, Guaranteed Maximum Price or Contract Time resulting from an Amendment shall clearly separate the amount attributable to the cost of the Work and the Construction Manager's Fee, if any. The Contract Sum, Guaranteed Maximum Price and Contract Time may be changed only by Amendment.

10.1.3 Except as expressly authorized in this Agreement, Change Orders shall only be used to effect changes in the Work which apply the bidding and construction contingency amounts set forth in paragraphs 3.4.1 through 3.4.5. Any changes in the Work that result in an increase in said contingency shall be added to this Agreement by an Amendment pursuant to paragraph 10.1.2.

### **10.2 ADJUSTMENTS IN CONTRACT SUM WITHIN THE GUARANTEED MAXIMUM PRICE (for Subcontractor Direct Cost of Work)**

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

- .1 By estimate and acceptance in a lump sum;
- .2 By unit prices named in the Contract Documents or subsequently agreed upon;

- .3 By actual cost plus a fixed fee being agreed upon prior to starting the changed work; or
- .4 In the absence of agreement by the parties, by a unilateral determination by the Principal Representative of the costs attributable to the events or situation under such clauses with an adjustment to the subcontractor direct cost of work, all as computed by the Principal Representative pursuant to the applicable sections of any rules issued under the Colorado Procurement Code or the applicable procurement code for institutions of higher education, and subject to the provisions of C.R.S. § Title 24, Article 109.

The Construction Manager and subcontractor shall be required to submit cost or pricing data if any adjustment in subcontractor direct cost of work or Guaranteed Maximum Price is subject to the provisions of the Colorado Procurement Code or the applicable procurement code for institutions of higher education.

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

10.2.2 The Construction Manager shall keep and present a correct account of the several items of cost on the Change Order Form (State form SC-6.31), when applying bidding and construction contingencies. This requirement applies equally to work done by subcontractors of all tiers.

10.2.3 The Principal Representative reserves the right to contract with any person or firm other than the Construction Manager for any or all changed work.

10.2.4 The Construction Manager shall receive no markup on construction Change Orders, within the Guaranteed Maximum Price unless the Construction Manager is acting as a subcontractor consistent with the provisions of Article 7. Subject to the provisions of this paragraph 10.2 and paragraph 10.3.2, cost for changes shall be limited to the following: cost of materials, including applicable sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; the rental value of equipment and machinery; payments made by the Construction Manager to subcontractors for work performed by subcontractors, provided, however, the maximum amount to be paid to any subcontractor for all job indirect or General Condition costs, home office general and administrative or overhead costs and profit shall be fifteen percent (15%) of the subcontractor's direct costs; ten percent (10%) of any sub-tier contractor's direct costs; and property insurance and bond premiums. Construction Manager to submit fully executed copies of insurance and bonds which reflect the full amount of the contract sum incorporating the changes to the Work along with any Change Order to the Principal Representative for approval in writing.

- .1 In all cases where the value of the extra or changed work is not known based on unit prices in the Subcontractor's bid or the Agreement, a detailed change proposal shall be submitted by the Subcontractor on a Change Order Proposal (SC-6.312), or in such other format as the State Buildings Program approves, with which the Principal Representative may require an itemized list of materials, equipment and labor, indicating quantities, time and cost for completion of the changed work. Such detailed change proposals shall be stated in lump sum amounts and shall be supported by a separate breakdown, which shall include estimates of all or part of the following when requested by the Architect/Engineer or the Principal Representative:
  - a. Materials, indicating quantities and unit prices including taxes and delivery costs if any (separated where appropriate into general, mechanical and electrical and/or other Subcontractors' work; and the Principal Representative may require in its discretion any significant subcontract costs to be similarly and separately broken down).

- b. Labor costs, indicating hourly rates and time and labor burden to include Social Security and other payroll taxes such as unemployment, benefits and other customary burdens.
- c. Costs of project management time and superintendence time of personnel stationed at the site, and other field supervision time, but only where a time extension, other than a weather delay, is approved as part of the Change Order, and only where such project management time and superintendence time is directly attributable to and required by the change; provided however that additional cost of on-site superintendence shall be allowable whenever in the opinion of the Architect/Engineer the impact of multiple change requests to be concurrently performed shall result in inadequate levels of supervision to assure a proper result unless additional superintendence is provided.
- d. Construction equipment (including small tools). Expenses for equipment and fuel shall be based on customary commercially reasonable rental rates and schedules. Equipment and hand tool costs shall not include the cost of items customarily owned by workers.
- e. Workers' compensation costs, if not included in labor burden.
- f. The cost of commercial general liability and property damage insurance premiums but only to the extent charged the Subcontractor as a result of the changed work.
- g. Overhead and profit, as hereafter specified.
- h. Builder's risk insurance premium costs.
- i. Bond premium costs.
- j. Testing costs not otherwise excluded by these General Conditions.
- k. Sub Tier Subcontract costs.

.2 Overhead and profit shall not exceed the percentages set forth in the table below.

	OVERHEAD	PROFIT	COMMISSION
To the Subcontractor or Sub-tier contractors for the portion of work performed with their own forces:	10%	5%	0%
To the Subcontractor or Sub-tier contractors for work performed by others at a tier immediately below either of them:	5%	0%	5%

- .3 Overhead shall include: a) insurance premium for policies not purchased for the Project and itemized above, b) home office costs for office management, administrative and supervisory personnel and assistants, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) interest costs on capital, h) general office expenses except those attributable to increased rental expenses for temporary facilities, and all other indirect costs, but shall not include the Social Security tax and other direct labor burdens. The term "work" as used in the proceeding table shall include labor, materials and equipment and the "Commission" shall include all costs and profit for carrying the subcontracted work at the tiers below except direct costs as listed in items 1 through 11 above if any.
- .4 On proposals for work involving both additions and credits in the amount of the Contract sum, the overhead and profit shall be allowed on the net increase only. On proposals resulting in a net deduct to the amount of the Contract sum, profit on the deducted amount shall be returned to the Principal Representative at fifty percent (50%) of the rate specified. The inadequacy of the profit specified shall not be a basis for refusal to submit a proposal.

- .5 Except in the case of Change Orders or Emergency Field Change Orders agreed to on the basis of a lump sum amount or unit prices as described in paragraphs 10.2.1.1 and 10.2.1.2 above, The Value of Changed Work, the Contractor shall keep and present a correct and fully auditable account of the several items of cost, together with vouchers, receipts, time cards and other proof of costs incurred, summarized on a Change Order form (SC-6.31) using such format for supporting documentation as the Principal Representative and State Buildings Program approve. This requirement applies equally to work done by Subcontractors. Only auditable costs shall be reimbursable on Change Orders where the value is determined on the basis of actual cost plus a fixed fee, or where unilaterally determined by the Principal Representative on the basis of an equitable adjustment in accordance with the Procurement Rules.
- .6 Except for proposals for work involving both additions and credits, changed work shall be adjusted and considered separately for work either added or omitted. The amount of adjustment for work omitted shall be estimated at the time it is directed to be omitted, and when reasonable to do so, the agreed adjustment shall be reflected on the schedule of values used for the next Contractor's application for payment.
- .7 The Principal Representative reserves the right to contract with any person or firm other than the Contractor for any or all extra work; however, unless specifically required in the Contract Documents, the Contractor shall have no responsibility without additional compensation to supervise or coordinate the work of persons or firms separately contracted by the Principal Representative
- .8 The Principal Representative reserves the right to audit labor and equipment rates.

10.2.5 Except for the possible substantial increases to the Work to be performed as set forth in paragraph 10.1.1 which shall require the mutual agreement of the parties, the Construction Manager shall promptly proceed with the Work involved provided a written Amendment or Change Order signed by the Principal Representative, State Buildings Program and the State Controller is received.

### 10.3 VARIATIONS IN ESTIMATED QUANTITIES

10.3.1 Where the quantity of a pay item in this Agreement is an estimated quantity, and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this Agreement, an adjustment in the Construction Sum and Guaranteed Maximum Price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Principal Representative shall, upon receipt of a timely written request for an extension of the Contract Time prior to the date of final settlement of this Agreement, ascertain the facts and make such adjustment for extending the Contract Time as in the judgment of the Principal Representative the findings justify.

10.3.2 Adjustment of Price: Any adjustment in Contract Sum and Guaranteed Maximum Price made pursuant to this clause shall be determined in accordance with the Colorado Procurement Code or the applicable procurement code for institutions of higher education.

### 10.4 DIFFERING SITE CONDITIONS

10.4.1 The Construction Manager shall promptly, and before such conditions are disturbed, notify the Principal Representative in writing of:

- .1 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
- .2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

10.4.2 The Principal Representative shall promptly investigate the conditions, and if such conditions do materially so differ and cause an increase or decrease in the Construction Manager's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed as a result of such conditions, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made and this Agreement modified in writing by Amendment or Change Order.

10.4.3 No claim by the Construction Manager or Principal Representative for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

#### 10.5 MINOR CHANGES IN THE WORK

10.5.1 The Architect/Engineer shall have authority to make minor changes in the Work, not involving extra cost or an extension of the Contract Time, and not inconsistent with requirements of the Contract Documents, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by 1) a written Amendment, approved by the Principal Representative, State Buildings Program, and the State Controller prior to proceeding with the changed work; or 2) by an Emergency Field Change Order approved by the Principal Representative and State Buildings Program as hereafter provided in Article 10.7.1 EMERGENCY FIELD CHANGE ORDERS; or 3) by an allocation in writing of any allowance already provided in the encumbered contract amount, the Contract Sum being later adjusted to decrease the Contract by any unallocated or unexpended amounts remaining in such allowance. No change to the Contract Sum shall be valid unless so ordered.

#### 10.6 HAZARDOUS MATERIALS

10.6.1 The Principal Representative represents that it has undertaken an examination of the site of the Work and has determined that there are no hazardous substances, as defined below, which the Construction Manager could reasonably encounter in its performance of the Work. In the event the Principal Representative so discovers hazardous substances, the Principal Representative shall render harmless such hazards before the Construction Manager commences the work.

10.6.2 In the event the Construction Manager encounters any materials reasonably believed to be hazardous substances which have not been rendered harmless, the Construction Manager shall immediately stop work in the area affected and report the condition to the Principal Representative, in writing. For purposes of this Agreement, "hazardous substances" shall include asbestos, lead, polychlorinated biphenyl (PCB) and any or all of those substances defined as "hazardous substance", "hazardous waste", or "dangerous or extremely hazardous wastes" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA), and shall also include materials regulated by the Toxic Substances Control Act (TSCA), the Clean Air Act, the Air Quality Act, the Clean Water Act, and the Occupational Safety and Health Act. The Work in the affected area shall not therefore be resumed except by written agreement of the Principal Representative and the Construction Manager, if in fact materials that are hazardous substances have not been rendered harmless. The Work in the affected area shall be resumed only in the absence of the

hazardous substances or when it has been rendered harmless or by written agreement of the Principal Representative and the Construction Manager.

10.6.3 The Construction Manager shall not be required to perform work without consent in any areas where it reasonably believes hazardous substances that have not been rendered harmless are present.

## 10.7 EMERGENCY FIELD CHANGE ORDERS

10.7.1 The Principal Representative, without invalidating the Agreement, and with the approval of State Buildings Program and without the approval of the State Controller, may order extra work or make changes in the case of an emergency that is a threat to life or property or where the likelihood of delays in processing a normal change order will result in substantial delays and/or significant cost increases for the project. Emergency Field Change Orders are not to be used solely to expedite normal change order processing absent a clear showing of a high potential for significant and substantial cost or delay. Such changes in the work may be directed through issuance of an Emergency Field Change Order signed by the Contractor, the Principal Representative (or by a designee specifically appointed to do so in writing), and approved by the Director of State Buildings Program or his or her delegate. The change shall be directed using a State Change Order form (SC-6.31E) Emergency Field Change Order.

10.7.2 If the amount of the adjustment of the Contract price and time for completion can be determined at the time of issuance of the Emergency Field Change Order, those adjustments shall be reflected on the face of the Emergency Field Change Order. Otherwise, the Emergency Field Change Order shall reflect a not-to-exceed (NTE) amount for any schedule adjustment (increasing or decreasing the time for completion) and an NTE amount for any adjustment to Contract sum, which NTE amount shall represent the maximum amount of adjustment to which the Contractor shall be entitled, including direct and indirect costs of changed work, as well as any direct or indirect costs attributable to delays, inefficiencies or other impacts arising out of the change. Emergency Field Change Orders directed in accordance with this provision need not bear the approval signatures of the State Controller.

10.7.3 On Emergency Field Change Orders where the price and schedule have not been finally determined, the Contractor shall submit final costs for adjustment as soon as practicable. No later than seven (7) days after issuance, except as otherwise permitted, and every seven days thereafter, the contractor shall report all costs to the Principal Representative and the Architect/Engineer. The final adjustment of the Emergency Field Change Order amount and the adjustment of the Emergency Field Change Order amount and the adjustment to the Project time for completion shall be prepared on a normal Change Order form (SC-6.31) in accordance with the procedures described in paragraph 10.2. Unless otherwise provided in a writing signed by the Director of State Buildings Program to the Principal Representative and the Contractor, describing the extent and limits of any greater authority individual Emergency Field Change Orders shall not be issued for more than \$25,000, nor shall the cumulative value of Emergency Field Change Orders exceed an amount of \$100,000.

## **ARTICLE 11. INSURANCE**

### 11.1 GENERAL

The Construction Manager shall procure and maintain all insurance requirements and limits as set forth below, at his or her own expense, for the length of time set forth in Contract requirements. The Construction Manager shall continue to provide evidence of such coverage to State of Colorado on an annual basis

during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement. All below insurance policies shall include a provision preventing cancellation without thirty (30) days' prior notice by certified mail. A completed Certificate of Insurance shall be filed with the Principal Representative and State Buildings Program within ten (10) days after the date of the Notice of Award, said Certificate to specifically state the inclusion of the coverages and provisions set forth herein and shall state whether the coverage is "claims made" or "per occurrence".

#### 11.2 COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)

This insurance must protect the Construction Manager from all claims for bodily injury, including death and all claims for destruction of or damage to property (other than the Work itself), arising out of or in connection with any operations under this Contract, whether such operations be by the Construction Manager or by any Subcontractor under him or anyone directly or indirectly employed by the Construction Manager or by a Subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal Injury	\$1,000,000

The following coverages shall be included in the CGL:

1. Per project general aggregate (CG 25 03 or similar)
2. Additional Insured status in favor of the State of Colorado and any other parties as outlined in The Contract and must include both ONGOING Operations AND COMPLETED Operations per CG2010 10/01 and CG 2037 10/01 or equivalent as permitted by law.
3. The policy shall be endorsed to be **primary and non-contributory** with any insurance maintained by Additional Insureds.
4. A waiver of Subrogation in favor of all Additional Insured parties.
5. Personal Injury Liability
6. Contractual Liability coverage to support indemnification obligation per Article 53.I
7. Explosion, collapse and underground (xcu)

The following exclusionary endorsements are prohibited in the CGL policy:

1. Damage to Work performed by Subcontract/Vendor (CG 22-94 or similar)
2. Contractual Liability Coverage Exclusion modifying or deleting the definition of an "insured contract" from the unaltered SO CG 0001 1001 policy from (CG 24 26 or similar)
3. If applicable to the Work to be performed: Residential or multi-family
4. If applicable to the Work to be performed :Exterior insulation finish systems
5. If applicable to the Work to be performed: Subsidence or Earth Movement

The Construction Manager shall maintain general liability coverage including Products and Completed Operations insurance, and the Additional Insured with primary and non-contributory coverage as specified in this Contract for three (3) years after completion of the project.

#### 11.3 AUTOMOBILE LIABILITY INSURANCE and business auto liability covering liability arising out of any auto (including owned, hired and non-owned autos).

Combined Bodily Injury and Property Damage Liability (Combined Single Limit):	\$1,000,000 each accident
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Coverages:  
Specific waiver of subrogation

#### 11.4 WORKERS' COMPENSATION INSURANCE

The Construction Manager shall procure and maintain Workers' Compensation Insurance at his or her own expense during the life of this Contract, including occupational disease provisions for all employees per statutory requirements. Policy shall contain a waiver of subrogation in favor of the State of Colorado.

The Construction Manager shall also require each Subcontractor to furnish Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Construction Manager accepts full liability and responsibility for Subcontractor's employees.

In cases where any class of employees engaged in hazardous work under this Contract at the site of the Project is not protected under the Workers' Compensation statute, the Construction Manager shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

#### 11.5 UMBRELLA LIABILITY INSURANCE (for construction projects exceeding \$10,000,000, provide the following coverage):

The Construction Manager shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in Section B-D above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in Sections above may be satisfied by the Construction Manager purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned.

Each occurrence	\$5,000,000
Aggregate	\$5,000,000

#### 11.6 BUILDER'S RISK INSURANCE

Unless otherwise expressly stated in the Supplementary General Conditions (e.g. where the State elects to provide for projects with a completed value of less than \$1,000,000), the Construction Manager shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, or the Date of Notice specified on the Notice of Acceptance, State Form SBP-6.27 or whichever is later.

This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as named insureds.

All associated deductibles shall be the responsibility of the Construction Manager. Such policy may have a deductible clause but not to exceed ten thousand dollars (\$10,000.00).

Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsehood, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

Construction Manager shall maintain Builders Risk coverage including partial use by Owner.

The Construction Manager shall waive all rights of subrogation as regards the State of Colorado and the Principal Representative, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment For damages caused by fire or other causes of loss to the extent



covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. The Construction Manager shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts.

Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Construction Manager shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

The Principal Representative, with approval of the State Controller, shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.

#### **11.7 POLLUTION LIABILITY INSURANCE**

If Construction Manager is providing directly or indirectly work with pollution/environmental hazards, the Construction Manager must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. State of Colorado must be included as additional insureds on the policy. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor/Vendor.

#### **11.8 ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS**

Certificates of Insurance and/or insurance policies required under this Contract shall be subject to the following stipulations and additional requirements:

1. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Construction Manager;
2. If any of the said policies shall fail at any time to meet the requirements of the Contract Documents as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Contract Documents, the Construction Manager shall promptly obtain a new policy, submit the same to the Principal Representative and State Building Programs for approval if requested, and submit a Certificate of Insurance as hereinbefore provided. Upon failure of the Construction Manager to furnish, deliver and maintain such insurance as provided herein, this Contract, in the sole discretion of the State of Colorado, may be immediately declared suspended, discontinued, or terminated. Failure of the Construction Manager in obtaining and/or maintaining any required insurance shall not relieve the Construction Manager from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of the Construction Manager concerning indemnification;
3. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to the Principal Representative;
4. Receipt, review or acceptance by the Principal Representative of any insurance policies or certificates of insurance required by this Contract shall not be construed as a waiver or relieve the Construction Manager from its obligation to meet the insurance requirements contained in these General Conditions.

### **ARTICLE 12. INDEMNIFICATION**

#### **12.1 INDEMNIFICATION**

12.1.1 The Construction Manager shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and

attorney's fees, to the extent such claims are caused by any negligent act or omission of the Construction Manager, its employees, agents, subcontractors or assignees pursuant to the terms of this Contract, but not to the extent such claims are caused by any act or omission of, or breach of contract by, the State, its employees, agents, other contractors or assignees, or other parties not under control of or responsible to the Construction Manager.

12.1.2 In any and all claims against the Principal Representative, its agents or employees, by any employee of the Construction Manager, any subcontractor of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 12 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Construction Manager or any subcontractor of any tier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

12.1.3 The obligations of the Construction Manager under this Article 12 shall not extend to the liability of the Architect/Engineer, its consultants, agents or employees, arising out of: (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Amendments, Change Orders, designs or specifications; (2) the giving of or the failure to give direction or instructions by the Architect/Engineer, its consultants, agents or employees, provided such giving or failure to give is the primary cause of the injury or damage; or (3) any acts of the Architect/Engineer, its consultants, agents or employees outside of the scope of their duties pursuant to the Contract Documents.

## **ARTICLE 13. CONSTRUCTION MANAGER'S PERFORMANCE AND PAYMENT BONDS**

### **13.1 PERFORMANCE AND PAYMENT BONDS**

13.1.1 The Construction Manager shall furnish a Performance Bond and a Labor and Material Payment Bond on approved State forms, executed by a corporate surety licensed to transact such business in the State of Colorado, each in the full amount of the Contract Sum attendant with the Amendment for the addition of the first Bid Package to this Agreement. The Construction Manager shall also furnish such other bonds as may be required by the Supplementary Conditions. If subsequent Amendments are made to this Agreement which substantially increase the Contract Sum, increased bond limits shall be furnished by the Construction Manager upon the acceptance of the increase in the Contract Sum. The then current bonds shall apply to all work included within the scope of this Agreement, including but not limited to all prior work which may have been performed when previous bonds were in effect.

13.1.2 The Performance Bond shall remain in effect until at least one (1) year after the date when final payment becomes due, except as otherwise provided by law or regulation or by the Contract Documents. The Labor and Material Payment Bond shall remain in effect for not less than the required statutory period. All Bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Account, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act. All Bonds must be acceptable to the Principal Representative and State Buildings Program.

13.1.3 The initial Bonds shall be filed with the Principal Representative at the time of execution of the initial Bid Package Amendment.

13.1.4 If the surety on any Bond furnished by Construction Manager is declared a bankrupt, becomes insolvent, its right to do business in the State of Colorado is terminated or it ceases to meet the requirements of paragraphs 13.1.1 and 13.1.2, Construction Manager shall within ten (10) days thereafter, substitute another bond and surety, both of which must be acceptable to the Principal Representative and State Buildings Program.

13.1.5 Upon the issuance and acceptance of the Performance and Labor and Material Payment Bonds, the premium therefore shall be included in the first Project Certificate and Application for Contractor's Payment. The premiums for all Bonds and increases thereto to be provided by the Construction Manager as

well as those subcontractors required to be bonded by the Construction Manager shall be included in the Guaranteed Maximum Price, Contract Sum and the price of each Amendment and Change Order, and the Construction Manager shall not be entitled to additional compensation therefore.

#### **ARTICLE 14. ACCESS TO WORK AND OBSERVATION**

##### **14.1 ARCHITECT/ENGINEER'S WORK**

14.1.1 The Architect/Engineer shall be in the first instance, the judge of the performance of the Construction Manager as it relates to compliance with the Contract Documents and quality of workmanship and material.

14.1.2 The Architect/Engineer and its professional consultants, staff or practicing, shall make visits to the site appropriate to the stage of construction to become familiar with the progress and quality of the Work, and to determine that the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials. The Architect/Engineer shall exercise due diligence to safeguard the Principal Representative against defects, deficiencies, non-compliance with the Contract Documents, and unsatisfactory materials and workmanship.

14.1.3 In addition to the services to be provided under paragraph 14.1.2, the Architect/Engineer shall also observe the following for compliance with the Contract Documents:

- .1 Shop Drawings;
- .2 Bearing surfaces of excavations before concrete is poured;
- .3 Reinforcing steel after installation and before concrete is poured;
- .4 Structural concrete;
- .5 Laboratory reports on all concrete;
- .6 Structural steel during and after erection and prior to its being covered or enclosed;
- .7 Mechanical work following its installation and prior to its being covered or enclosed;
- .8 Electrical work following its installation and prior to its being covered or enclosed;
- .9 Compaction testing;
- .10 Any special testing required in the Contract Documents;
- .11 Compliance with applicable buildings codes; and
- .12 Elements of construction relating to the building envelope.

14.1.4 The Architect/Engineer shall have authority to reject work which does not conform to the Contract Documents, and to require special inspection or testing whether or not such work is fabricated, installed, or completed, but shall take such action only after consultation with the Principal Representative. However, the Architect/Engineer's authority to act under this paragraph 14.1.4 and any decision made by it in good faith either to exercise or not to exercise such authority shall not give rise to any duty on the part of the Architect/Engineer to the Construction Manager, any subcontractor of any tier, any of their agents or employees, or any other person performing any of the work.

## 14.2 SAMPLES AND QUALITY CONTROL TESTING

14.2.1 Samples: The Construction Manager shall furnish for approval, with such promptness as to cause no delay in its work or in that of the Principal Representative or any separate Contractor, all samples as directed by the Architect/Engineer. The Architect/Engineer shall check and approve such samples with reasonable promptness. The work shall be uniformly in accordance with approved samples.

14.2.2 Quality Control Testing - General: The Construction Manager shall provide all tests and collect and forward all samples called for in **Exhibit A**, Designated Scope of Services and Method of Payment. The Construction Manager shall provide such equipment and facilities as the Architect/Engineer may require for conducting quality control field tests and for collecting and forwarding of samples. The Construction Manager shall not use any materials or equipment represented by samples until tests, if required, have been made and the materials or equipment found to be acceptable. Any materials which become unfit for use after approval thereof shall not be incorporated into the Work. All materials or equipment proposed to be used may be tested at any time during their preparation or use. Products may be sampled either prior to shipment or after being received at the site of the Work. Tests shall be made by an accredited testing laboratory. Except as otherwise provided, sampling and testing of all materials, and the laboratory methods and testing equipment shall be in accordance with the latest standards and testing methods of the American Society of Testing Materials (A.S.T.M.). The Construction Manager shall pay for all testing services as described in **Exhibit A**, Designated Scope of Services and Method of Payment.

## 14.3 QUALITY ASSURANCE AND OTHER TESTING

14.3.1 The Principal Representative shall retain an independent testing agent to perform quality assurance testing services for the project. The testing agent's services, duties and responsibilities include tests/inspections performed as described in the various Divisions of the Specifications and shall include but not be limited to: asphaltic concrete, cast-in-place concrete, mortar and grout, structural steel welds and bolt connections, steam pipe welding, and geotechnical investigation.

14.3.2 The Construction Manager is responsible to:

1. Provide sufficient notification in advance of operations to permit laboratory personnel assignment and scheduling.
2. Coordinate with laboratory personnel and provide access to the Work and manufacturer's operation.
3. Furnish casual labor to facilitate sample handling and testing at the project site.
4. Provide facilities for laboratory's exclusive use to store and cure samples.
5. Supply preliminary representative samples of products and materials, if required.
6. Supply mill test report if required.
7. Retain separate equally qualified independent testing lab to perform additional services required for Construction Manager's convenience and when initial service indicate products, material and work do not comply with the Contract Documents.

14.3.3 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Construction Manager shall give the Principal Representative timely notice of its

readiness so the Principal Representative and the Architect/Engineer may observe such inspection, testing or approval. The Construction Manager shall bear all costs of inspections, tests or approvals which were legally required when this Agreement was executed, whether or not yet effective or merely scheduled to go into effect. The Principal Representative shall bear all costs of inspections, tests or approvals which may be required thereafter.

14.3.4 If the Principal Representative determines that any Work requires special inspection, testing or approval which paragraph 14.2 and paragraph 14.3.1 do not include, the Construction Manager shall, upon written authorization from the Principal Representative order such special inspection, testing or approval, and the Construction Manager shall give notice as provided in paragraph 14.3.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Construction Manager shall bear all direct costs thereof, including compensation for the Architect/Engineer's additional services made necessary by such failure; otherwise the Principal Representative shall bear such costs, and an appropriate Amendment or Change Order shall be issued.

14.3.5 Required certificates of inspection, testing, or approval shall be secured by the Construction Manager and the Construction Manager shall promptly deliver them to the Principal Representative and the Architect/Engineer.

## **ARTICLE 15. UNCOVERING OF AND CORRECTION OF WORK**

### **15.1 UNCOVERING OF WORK**

15.1.1 If any portion of the Work should be covered contrary to the reasonable request of the Architect/Engineer, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect/Engineer, be uncovered for its observation and shall be replaced at the Construction Manager's expense.

15.1.2 If any other portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to its being covered, it may request to see such work and it shall be uncovered by the Construction Manager. If such work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Amendment or Change Order, be charged to the Principal Representative. If such work is found not in accordance with the Contract Documents, the Construction Manager shall pay such costs unless it is found that this condition was caused by the Principal Representative or a separate Contractor as provided in Article 8, in which event, the Principal Representative shall be responsible for the payment of such costs.

### **15.2 CORRECTION OF WORK**

15.2.1 The Construction Manager shall promptly remove from the premises all materials and correct all work rejected by the Architect/Engineer as defective or as failing to conform to the Contract Documents, whether observed before or after completion of the Work and whether or not fabricated, installed or completed. The Construction Manager shall bear all costs of correcting such rejected work, including compensation for the Architect/Engineer's additional services made necessary thereby.

15.2.2 If the Construction Manager fails to remove rejected materials and/or correct defective or non-conforming work, the Principal Representative may remove the same and/or correct it. In such case, an appropriate Amendment or Change Order shall be issued deducting from the payments then or thereafter due to Construction Manager, all costs of removing such materials and correcting such deficiencies, including compensation for the Architect/Engineer's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Principal Representative.

15.2.3 If the Construction Manager does not proceed with the correction of such defective or non-conforming work within a reasonable time fixed by written notice from the Architect/Engineer issued through

the Principal Representative, the Principal Representative may remove it and store the materials or equipment at the expense of the Construction Manager. If the Construction Manager does not pay the cost of such removal and storage within ten (10) days thereafter, the Principal Representative may, upon ten (10) additional days written notice, sell such work at auction or at private sale, and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Construction Manager, including compensation for the Architect/Engineer's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Construction Manager should have borne, the difference shall be charged to the Construction Manager and an appropriate Amendment or Change Order shall be issued. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Principal Representative.

15.2.4 The costs for correcting rejected work and for making good any other work of the Principal Representative or separate contractors destroyed or damaged by such correction or removal shall be allocated in accordance with paragraph 3.4.5.

15.2.5 Should any defective work or material be discovered during the progress of construction, or should reasonable doubt arise as to whether certain material or work is in accordance with the Contract Documents, the value of such defective or questioned material or work shall not be included in any Project Application for Payment, or if previously included, shall be deducted by the Architect/Engineer from the next application submitted by the Construction Manager.

15.2.6 Nothing contained in this paragraph 15.2 shall be construed to establish a period of limitation with respect to any other obligation which the Construction Manager might have under the Contract Documents, including Article 18 hereof.

### 15.3 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

15.3.1 If the Principal Representative prefers to accept defective or non-conforming work, the Principal Representative may do so instead of requiring its removal and correction, in which case an Amendment or Change Order shall be issued to reflect a reduction in the Contract Sum and Guaranteed Maximum Price where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### 15.4 PRINCIPAL REPRESENTATIVE'S RIGHT TO CARRY OUT THE WORK

15.4.1 If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within seven (7) days after receipt of written notice from the Principal Representative to commence and continue correction of such default or neglect with diligence and promptness, the Principal Representative may, and without prejudice to any other remedy the Principal Representative may have, make good such deficiencies. In such case, an appropriate Amendment or Change Order shall be issued deducting from the payments then or thereafter due the Construction Manager, all costs of correcting such deficiencies, including compensation for the Architect/Engineer's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Principal Representative.

## **ARTICLE 16 RIGHT OF EARLY OCCUPANCY**

### 16.1 RIGHT OF OCCUPANCY

16.1.1 Subject to the provisions of paragraph 11.4.2, the Principal Representative shall have the right to take possession of and to use any completed or partially completed portions of the Work, even if the time for Completion of the Work or such portions of the Work has not expired and even if the Work has not been finally accepted. Such possession and use shall not constitute an acceptance of such portions of the Work.

16.1.2 If the Principal Representative elects to take possession of and to use any completed or partially completed portions of the Work prior to the time for Completion of the Work or portion thereof, prior to any such possession or use, an inspection shall be made by the Architect/Engineer, the Principal Representative and the Construction Manager. The Construction Manager shall assist the Principal Representative in completing and executing Form SBP-01, Approval of Occupancy/Use, prior to the Principal Representative's possession and use. Any and all areas so occupied will be subject to a final inspection when the Construction Manager complies with Article 17, Completion, Final Completion, Acceptance and Final Payment.

16.1.3 At the time of the inspection made pursuant to paragraph 16.2, the parties shall also agree upon the responsibilities of the Principal Representative and the Construction Manager for security, maintenance, heat, utilities, and damage to the Work. If the Construction Manager can also satisfactorily demonstrate to the Principal Representative any actual cost for warranties for the period prior to the date of Notice of Substantial Completion, the Principal Representative shall reimburse the Construction Manager for that portion of such cost attributable to the portion of the Work occupied by the Principal Representative for the period of time of such occupancy. In the event the Construction Manager believes there will be additional cost associated with completion of the Work while the Principal Representative occupies the Work in whole or in part, the Construction Manager shall advise the Principal Representative of all such costs at or before the time of inspection and an agreement shall be reached on the responsibilities of the Principal Representative and the Construction Manager therefore. If the Construction Manager fails or refuses to furnish such cost information as required, the Construction Manager hereby waives any and all rights to assert any claim therefore at any time thereafter.

## **ARTICLE 17. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT**

### **17.1. NOTICE OF COMPLETION**

17.1.1 When the Work, or a discrete physical portion of the Work (as hereafter described) which the Principal Representative has agreed to accept separately, is Substantially Complete and ready for final inspection, the Construction Manager shall file a written Notice with the Architect/Engineer that the Work, or such discrete physical portion, in the opinion of the Construction Manager, is Substantially Complete under the terms of the Contract. The Construction Manager shall prepare and submit with such Notice a comprehensive list of items to be completed or corrected prior to final payment, which shall be subject to review and additions as the Architect/Engineer or the Principal Representative shall determine after inspection. If the Architect/Engineer or the Principal Representative believe that any of the items on the list of items submitted, or any other item of work to be corrected or completed, or the cumulative number of items of work to be corrected or completed, shall prevent a determination that the Work is Substantially Complete, those items shall be completed by the Construction Manager and the Notice shall then be resubmitted.

### **17.2. FINAL INSPECTION**

17.2.1 Within ten (10) days after the Construction Manager files written Notice that the Work is Substantially Complete, the Architect/Engineer, the Principal Representative, and the Construction Manager shall make a "final inspection" of the Project to determine whether the Work is Substantially Complete and has been completed in accordance with the Contract Documents. State Buildings Program shall be notified of the inspection not less than three (3) business days in advance of the inspection.

17.2.2 The Construction Manager shall provide the Principal Representative and the Architect/Engineer an updated Punch List in sufficient detail to fully outline the following:

- .1 work to be completed, if any; and
- .2 work not in compliance with the Drawings or Specifications, if any.

17.2.3 A Punch List shall be made by the Architect/Engineer in sufficient detail to fully outline to the Construction Manager:

- .1 work to be completed, if any;
- .2 work not in compliance with the Drawings or Specifications, if any; and
- .3 unsatisfactory work for any reason, if any.

17.2.4 The required number of copies of the Punch List shall be countersigned by the authorized representative of the Principal Representative and shall then be transmitted by the Architect/Engineer to the Construction Manager, the Principal Representative, and State Buildings Program. The Architect/Engineer's final Punch List shall control over the Construction Manager's preliminary Punch List.

### 17.3. NOTICE OF SUBSTANTIAL COMPLETION

17.3.1 Notice of Substantial Completion shall establish the Date of Substantial Completion of the Project. The Construction Manager acknowledges and agrees that because the departments, agencies and institutions of the State of Colorado are generally involved with the business of the public at large, greater care must be taken in establishing the Date of Substantial Completion than might otherwise be the case to ensure that a project or building or discrete physical portion of the Work is fully usable and safe for public use, and that such care necessarily raises the standard by which the concept of Substantial Completion is applied for a public building.

17.3.2 The Notice of Substantial Completion shall not be issued until the following have been fully established:

- .1 All required building code inspections have been called for and the appropriate code officials have affixed their signatures to the Building Inspection Record indicating successful completion of all required code inspections;
- .2 All required corrections noted on the Building Inspection Record shall have been completed unless the Architect/Engineer, the Principal Representative and State Buildings Program, in their complete and absolute discretion, all concur that the condition requiring the remaining correction is not in any way life threatening, does not otherwise endanger persons or property, and does not result in any undue inconvenience or hardship to the Principal Representative or the public;
- .3 The building, structure or Project can be fully and comfortably used by the Principal Representative and the public without undue interference by the Construction Manager's employees and workers during the completion of the Substantial Completion Punch List taking into consideration the nature of the public uses intended and taking into consideration any stage or level of completion of HVAC system commissioning or other system testing required by the Specifications to be completed prior to issuance of the Notice of Substantial Completion;
- .4 The Project has been fully cleaned as required by these General Conditions, and as required by any stricter requirements of the Specifications, and the overall state of completion is appropriate for presentation to the public; and
- .5 The Construction Manager has provided a schedule for the completion of each and every item identified on the Substantial Completion Punch List which specifies the Subcontractor or trade responsible for the work, and the dates the completion or correction of the item shall be commenced and finished, with the exception of only those items which are beyond the control of the Construction Manager despite due diligence. The schedule shall provide for a reasonable punch list inspection process. Unless liquidated damages have been specified, the cost to the Principal Representative, if any, for re-inspections due to failure to adhere to the Construction Manager's proposed Substantial Completion Punch List completion schedule shall be the responsibility of the Construction Manager and may be deducted by the Principal Representative from final amounts due to the Construction Manager.



17.3.3 Substantial Completion of the entire Project shall not be conclusively established by a decision by the Principal Representative to take possession and use of a portion, or all of the Project, where portions of the Project cannot meet all the criteria noted above. Notice of Substantial Completion for the entire Project shall, however, only be withheld for substantial reasons when the Principal Representative has taken possession and uses all of the Project in accordance with the terms of Article 16, Right Of Early Occupancy. Failure to furnish the required completion schedule shall constitute a substantial reason for withholding the issuance of any Notice of Substantial Completion.

17.3.4 The Construction Manager shall have the right to request a final inspection of any discrete physical portion of the Project when in the opinion of the Architect/Engineer a Pre-Acceptance Punch List can be reasonably prepared, without confusion as to which portions of the Project are referred to in any subsequent Notice of Partial Final Settlement which might be issued after such portion is finally accepted. Discrete physical portions of the Project may be, but shall not necessarily be limited to, such portions of the Project as separate buildings where a Project consists of multiple buildings. Similarly, an addition to an existing building where the Project also calls for renovation or remodeling of the existing building may constitute a discrete physical portion of the Project. In such circumstances, when in the opinion of the Principal Representative, the Architect/Engineer and State Buildings Program, the requirements for issuance of a Notice of Substantial Completion can be satisfied with respect to the discrete portion of the Project, a partial Notice of Substantial Completion may be issued for such discrete physical portion of the Project. The ability to beneficially occupy a discrete physical portion of the Project shall also be considered.

#### 17.4. NOTICE OF ACCEPTANCE

17.4.1 The Notice of Acceptance shall establish the final completion date of the Project. It shall not be authorized until the Construction Manager shall have performed all of the work to allow completion and approval of the Pre-Acceptance Checklist (SBP-05).

17.4.2 Where partial Notices of Substantial Completion have been issued, partial Notices of Final Acceptance may be similarly issued when appropriate for that portion of the Work. Partial Notice of Final Acceptance may also be issued to exclude the work described in Change Orders executed during late stages of the Project where a later completion date for the Change Ordered work is expressly provided for in the Contract as amended by the Change Order, provided the work can be adequately described to allow partial advertisement of any Notice of Partial Final Settlement to be issued without confusion as to the work included for which final payment shall be made.

#### 17.5 SETTLEMENT

17.5.1 Final payment and settlement shall be made on the date fixed and published for such payment except as hereafter provided. The Principal Representative shall not authorize final payment until the Notice of Acceptance is issued, and the Notice of Contractors Settlement is published. If the Work shall be Substantially Completed, but Final Acceptance and thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of the Construction Manager, the Principal Representative in his or her discretion may release all amounts due to the Construction Manager except such amounts as may be in excess of three (3) times the cost of completing the unfinished work or the cost of correcting the defective work, as estimated by the Architect/Engineer and approved by State Buildings Program. Before the Principal Representative may issue the Notice of Contractor's Settlement and advertise the Project for final payment, the Construction Manager shall have corrected all items on the Substantial Completion Punch List except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have:

- .1 Delivered to the Architect/Engineer:
  - a. All guarantees and warranties;
  - b. All statements to support local sales tax refunds, if any;
  - c. Three (3) complete bound sets of required operating maintenance instructions; and,

- d. One (1) set of as-built Contract Documents showing all job changes.
- .2. Demonstrated to the operating personnel of the Principal Representative the proper operation and maintenance of all equipment.
- .3. Delivered to the State of Colorado Department of Personnel & Administration in accordance with the Colorado Procurement Code or the applicable procurement code for institutions of higher education:
  - a. A written disclosure of the five most costly goods incorporated into the project, including iron, steel, or related manufactured goods and the total cost and country of origin of those five goods and whether the project was subject to any existing domestic content preferences.

17.5.2 Upon completion of the foregoing, the Project shall be advertised in accordance with the Notice of Contractor's Settlement by two publications of Notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Project or the Construction Manager from Subcontractors, suppliers or materialmen based on good faith disputes; the resolution of the question of payment in such cases being directed by statute.

17.5.3 Except as hereafter provided, on the date of final settlement thus advertised, provided the Construction Manager has submitted a written Notice to the Architect/Engineer that no claims have been filed, and further provided the Principal Representative shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due the Construction Manager, the Principal Representative and the State Controller shall withhold from the Construction Manager on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as the Principal Representative reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to complete unfinished work or the cost to repair defective work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Construction Manager, as set forth in the published Notice of Contractor's Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a Notice of such action at law shall have been filed with the Principal Representative. At the expiration of the ninety (90) day period, the Principal Representative shall release to the Construction Manager all other money not the subject of such action at law or withheld based on the cost to complete unfinished work or the cost to repair defective work.

17.5.4 Notices of Partial Final Settlement may be similarly advertised, provided all conditions precedent have been satisfied as though that portion of the work affected stood alone, a Notice of Partial Acceptance has been issued, and the consent of surety to the partial final settlement has been obtained in writing. Thereafter, partial final payments may be made to the Construction Manager subject to the same conditions regarding unpaid claims.

## **ARTICLE 18. WARRANTIES**

### **18.1 WARRANTY TIME AND DOCUMENTATION**

18.1.1 The Construction Manager warrants to the Principal Representative and the Architect/Engineer that all materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from faults and

defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect/Engineer or the Principal Representative, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of paragraph 18.1.2.

18.1.2 The Construction Manager shall warrant and guarantee the Work or a designated portion thereof for a period of one (1) year after the Notice of Substantial Completion. If, within one (1) year after the Notice of Substantial Completion, or within such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Construction Manager shall correct it promptly after receipt of a written notice from the Principal Representative to do so unless the Principal Representative has previously given the Construction Manager a written acceptance of such condition. This obligation shall survive both final payment for the Work or designated portion thereof and termination of this Agreement. The Principal Representative shall give such notice promptly after discovery of the condition and in any event no later than one (1) year after the issuance of the Notice of Substantial Completion.

18.1.3 In case of work performed for which other warranties are required by the Contract Documents, the Construction Manager shall secure the required warranties and deliver the same to the Principal Representative through the Architect/Engineer in accordance with paragraph 17.3.2. These warranties shall not in any way lessen the Construction Manager's responsibilities under the Contract Documents. Whenever guarantees or warranties are required by the Contract Documents for a longer period than one (1) year, such longer period shall govern.

18.1.4 The establishment of the time periods noted in paragraph 18.1.2, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Construction Manager to correct the Work, and has no relationship to the time within which the Construction Manager's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to the Construction Manager's obligations other than specifically to correct the Work.

## 18.2 WARRANTY INSPECTIONS AFTER COMPLETION

18.2.1 The Architect/Engineer, the Principal Representative, and the Construction Manager together shall make two (2) complete inspections of the Work after issuance of the Final Notice of Substantial Completion. The Six-Month Warranty Inspection shall be made approximately six (6) months after the issuance of the Notice of Substantial Completion. The Eleven-Month Warranty Inspection shall be made approximately eleven (11) months after the issuance of the Final Notice of Substantial Completion. The Principal Representative shall schedule and so notify all parties concerned of these inspections.

18.2.2 Written lists and reports of these inspections shall be made by the Construction Manager and forwarded to the Principal Representative, Architect/Engineer and all of the other participants within ten (10) days after the completion of each inspection. The Construction Manager shall immediately initiate such remedial work as may be necessary to correct any deficiencies or defective work shown by these reports, and shall promptly complete all such remedial work in a matter satisfactory to the Architect/Engineer and the Principal Representative.

18.2.3 If the Construction Manager fails to promptly correct all deficiencies and defects shown by any report, the Principal Representative may do so after giving the Construction Manager ten (10) days written notice of its intention to do so, and the Principal Representative shall be entitled to collect from the Construction Manager and its surety all costs and expenses incurred by it in correcting such deficiencies and defects, as well as all damages directly resulting from such deficiencies and defects.

## **ARTICLE 19. CLAIMS FOR ADDITIONAL COSTS AND DAMAGES**

### **19.1 CLAIMS FOR ADDITIONAL COSTS**

19.1.1 If, for any reason, the Construction Manager claims that it is entitled to an increase in the Contract Sum or Guaranteed Maximum Price or an extension of agreed completion date (paragraph 6.3), the Construction Manager shall give the Principal Representative its written Notice of Claim thereof within fifteen (15) days or such other time period as may be specifically set forth elsewhere in this Agreement, whichever is the lesser, after the occurrence of the event giving rise to such claim and in all cases before proceeding to execute the work, except in an emergency endangering life or property in which case the Construction Manager shall proceed in accordance with paragraph 3.22.10. No such claim shall be valid unless so made. Any approved change in the Contract Sum or Guaranteed Maximum Price resulting from such claim shall be authorized by Amendment.

### **19.2 INJURY TO PERSON OR DAMAGE TO PROPERTY**

19.2.1 Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of the other party's employees, agents, or others for whose acts such party is legally liable, Notice of Claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **19.3 COST RECORDS**

19.3.1 In all claims for changes to the Contract Sum or Guaranteed Maximum Price, the Construction Manager shall keep a correct accounting of the extra costs, in such reasonable form as the Principal Representative may require, and shall present such account, supported by receipts. The Principal Representative shall be entitled to reject any claim for extra costs if such documentation is not provided.

19.3.2 Any payments to the Construction Manager with respect to claims for increases in the Contract Sum or Guaranteed Maximum Price shall be limited to reimbursement for the additional expenditure by the Construction Manager, with the costs to be determined in accordance with paragraph 10.2 and the Construction Manager's Fee to be determined in accordance with paragraph 9.2.1, as limited and controlled by paragraph 6.4.2, when applicable.

### **19.4 RIGHTS AND REMEDIES**

19.4.1 The Construction Manager's attention is directed to the Colorado Procurement Code or the applicable procurement code for institutions of higher education pertaining to remedies, all of which shall apply to this Agreement.

19.4.2 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights or remedies otherwise imposed or available by law.

19.4.3 No action or failure to act by the Principal Representative or the Architect/Engineer shall constitute a waiver of any right or duty afforded any of them under the Contract Documents nor shall any such action or failure to act constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **19.5 WRITTEN NOTICE**

19.5.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving the notice.

Any notice to be given to the Principal Representative shall be given or sent to:

Attn:

With a Copy:

Any notice to be given to the Construction Manager shall be given to:

Attn:

With a Copy To:

## **ARTICLE 20 PRINCIPAL REPRESENTATIVE'S RIGHT TO TERMINATE CONTRACT**

### **20.1 TERMINATION FOR DEFAULT**

20.1.1 If the Construction Manager should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed to take over its affairs, or if it should fail to prosecute the Work with due diligence and carry the Work forward in accordance with its work schedule or if it should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by it, the Principal Representative may service written notice on the Construction Manager and the surety on its Performance and Labor and Material Payment Bonds, stating its intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies, at once, having first obtained a certificate from the Architect/Engineer that sufficient causes exist to justify such action.

#### **20.1.2 Conditions and Procedures:**

- .1 The Principal Representative may terminate the services of the Construction Manager, which termination shall take effect immediately upon service of notice thereof on the Construction Manager and its surety, whereupon the surety shall have the right to take over and perform the Agreement. If the Surety does not commence performance of this Agreement within ten (10) days after service of the Notice of Termination, the Principal Representative may take over the Work, take possession of and use all materials, tools, equipment, and appliances on the premises, and prosecute the Work to completion by such means as it shall deem best. In the event of such termination of its service, the Construction Manager shall not be entitled to any further payments under this Agreement until the Work is completed and accepted. If the Principal Representative takes over the Work and if the unpaid balance of the Contract Sum or Guaranteed Maximum Price exceeds the cost of completing the Work, including compensation for any damages and expenses incurred by the Principal Representative through the default of the Construction Manager, such excess shall be paid to the Construction Manager. If, however, the cost, expenses, and damages as certified by the Architect/Engineer exceed such unpaid balance of the Contract Sum, Guaranteed Maximum Price or Fixed Limit of Construction Cost as the case may be, the Construction Manager and its surety shall pay the difference to the Principal Representative.

- .2 The Principal Representative may take control of the Work and either make good the deficiencies of the Construction Manager or direct the activities of the Construction Manager in doing so, employing such additional help as the Principal Representative deems advisable. In such event the Principal Representative shall be entitled to collect from the Construction Manager and its surety, or to deduct from any payment then or thereafter due the Construction Manager, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of the Construction Manager, provided the Architect/Engineer approves the amount thus charged to the Construction Manager.
- .3 The Principal Representative may require the surety on the Construction Manager's Performance Bond to take control of the Work at once and see to it that all the deficiencies of the Construction Manager are made good, with due diligence. As between the Principal Representative and the surety, the cost of making good such deficiencies shall all be borne by the surety. If the surety takes over the Work, either upon termination of the services of the Construction Manager or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern in respect to the work done by the surety, the surety being substituted for the Construction Manager as to such provisions, including provisions as to payment for the Work and provisions of this Article as to the right of the Principal Representative to do the Work or to take control of the Work.

## 20.2 TERMINATION FOR CONVENIENCE OF STATE

20.2.1 The performance of work under this Agreement may be terminated, in whole or from time-to-time in part, by the Principal Representative whenever for any reason the Principal Representative shall determine that such termination is in the best interest of the Principal Representative. Termination of Work hereunder shall be effected by delivery to the Construction Manager of a Notice of Termination specifying the extent to which performance of Work under this Agreement is terminated and the date upon which such termination becomes effective.

20.2.2 After receipt of the Notice of Termination, the Construction Manager shall cancel its outstanding commitments hereunder covering the procurement of all materials, supplies, equipment, and miscellaneous items. In addition, the Construction Manager shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the Notice. With respect to such canceled commitments, the Construction Manager agrees to:

- .1 Settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Principal Representative, to the extent it may require, which approval and ratification shall be final for all purposes of this clause; and
- .2 Assign to the Principal Representative in the manner, at the time and to the extent directed by the Principal Representative, all of the right, title, and interest in the Construction Manager under the orders and subcontractors so terminated, in which case the Principal Representative shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

20.2.3 The Construction Manager shall submit its termination claim to the Principal Representative promptly after receipt of a Notice of Termination, but in no event later than one (1) month from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request of the Construction Manager within such one year period or authorized extension thereof. Upon failure of the Construction Manager to submit its Termination Claim within the time allowed, the Principal Representative may determine, on the basis of information available to it, the amount, if any, due to the Construction Manager by reason of the termination, and shall thereupon pay to the Construction Manager the amount so determined.

20.2.4 Costs claimed, agreed to, or determined pursuant to paragraphs 20.2.3 and 20.2.5 shall be in accordance with the provisions of the Colorado Procurement Rules or the applicable procurement code for institutions of higher education as in effect on the date of this Agreement all of which is limited to the authorized expenditure noted in the recitals of this Agreement and the provisions of paragraphs 9.6.1, 9.6.2, and 9.6.3. The sums to be paid to the Construction Manager shall not include any compensation, loss, or lost profit on work unperformed by the Construction Manager or any of its subcontractors of any tier or suppliers.

20.2.5 Subject to the provisions of paragraph 20.2.3 above, the Construction Manager and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to the Construction Manager by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Construction Manager and any reasonable loss upon outstanding commitments for personal services which it is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which the Construction Manager is unable to cancel, the Construction Manager shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an Amendment to this Contract, and the Construction Manager shall be paid the agreed amount.

20.2.6 The Principal Representative may from time to time, under such terms and conditions as it may prescribe, make partial payment against costs incurred by the Construction Manager in connection with the terminated portion of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such payment is within the amount to which the Construction Manager shall be entitled hereunder.

20.2.7 The Construction Manager agrees to transfer title and deliver to the Principal Representative, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if this Agreement had been completed, would have been required to be furnished to the Principal Representative, including:

- .1 Completed or partially completed plans, drawings (including As-Built Drawings), and information; and
- .2 Materials and 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 termination of this Agreement may, with the written approval of the Principal Representative, be sold or acquired by the Construction Manager under the conditions prescribed by and at a price or prices approved by the Principal Representative. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Principal Representative to the Construction Manager under this Contract, or shall otherwise be credited to the price or cost of Work covered by this Agreement, or paid in such other manner as the Principal Representative may direct. Pending final disposition of property arising from the termination, the Construction Manager agrees to take such action as may be necessary, or as the Principal Representative may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Construction Manager, and in which the Principal Representative has or may acquire an interest.

20.2.8 Any dispute as to questions of fact which may arise hereunder shall be subject to the provisions of the Colorado Procurement Code or the applicable procurement code for institutions of higher education.

## 20.3 CONSTRUCTION MANAGER'S RIGHT TO STOP WORK AND/OR TERMINATE CONTRACT

20.3.1 If the Work shall be stopped under an order of any court or other public authority for a period of three (3) months through no act or fault of the Construction Manager or of anyone employed by it, then the

Construction Manager may on seven (7) days written notice to the Principal Representative and the Architect/Engineer stop work or terminate this Agreement and recover from the Principal Representative payment for all work executed, and losses sustained on any plant or material and a reasonable profit. If the Principal Representative shall fail to issue any Project Certificate and Application for Contractor's Payment within ten (10) days after it is due, or if the Principal Representative shall fail to pay the Construction Manager within thirty (30) days after its maturity and presentation of any sum certified by the Architect/Engineer, then the Construction Manager, on ten (10) days written notice to the Principal Representative and the Architect/Engineer, may stop work and give written notice of intention to terminate this Agreement. If the Principal Representative shall thereafter fail to pay the Construction Manager within ten (10) days after receipt of such notice, then the Construction Manager may terminate this Agreement and recover from the Principal Representative payment for all work executed and losses sustained upon any plant or materials, and a reasonable profit.

## **ARTICLE 21. MISCELLANEOUS PROVISIONS**

### **21.1 ARCHITECT/ENGINEER**

It is expressly understood that the Principal Representative shall be directly retaining the services of an Architect/Engineer.

### **21.2 LABOR AND WAGES**

In accordance with the laws of Colorado, C.R.S. § 8-17-101(1), as amended, Colorado Labor shall be employed to perform at least eighty percent of the work. If the Federal Davis-Bacon Act shall be applicable to the Project, the minimum wage rates to be paid on the Project shall be the prevailing Federal Davis-Bacon wage rates at the time of bidding of each bid package. If the box is marked below, the Federal Davis-Bacon Act shall be applicable to the Project.

☐ Principal Representative Initial: \_\_\_\_\_ date: \_\_\_\_\_

### **21.3 NON-DISCRIMINATION**

The Construction Manager agrees to comply with the letter and spirit of all State and federal laws respecting discrimination and unfair employment practices.

### **21.4 LIENS**

Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, Sections C.R.S. § 38-26-107 et seq., as amended, provided adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment or services toward construction of the particular public work in that final payment may not be made to a Construction Manager until all such creditors have been put on notice by publication in the public press of such pending payment and given opportunity to stop payment to the Construction Manager in the amount of such claims.

### **21.5 EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated Agreement between the Principal Representative and the Construction Manager and supersedes all prior negotiations, representations, or agreements, either written or oral. When Drawings and Specifications are complete, they shall be identified by Amendment or Change Order to this Agreement. This Agreement may be amended only by written instrument signed by all signatories hereto.

The invalidity of any one or more of the covenants, phrases, sentences, clauses or provisions of this Agreement or any part thereof shall not affect the remaining portions of this Agreement or any part thereof and in the event any one of the same shall be declared invalid, this Agreement shall be construed as if such invalid portion had not been inserted provided the same does not work a substantial injustice.



## 21.6 BENEFITS AND ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their partners, heirs, personal representatives, successors and duly approved assigns. The Construction Manager shall not assign the whole or any part of this Agreement or any monies due or to become due hereunder without the prior written consent of the Principal Representative. No assignment, without said prior approval, shall be valid. In case the Construction Manager makes any assignment of any monies which is consented to by the Principal Representative, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Construction Manager shall be subject to all claims of all persons, firms, or corporations for services rendered or materials supplied for the performance of the work called for in this Agreement, whether such service or materials were supplied prior to or after the assignment.

## 21.7 MISCELLANEOUS

It is contemplated by the parties that certain exhibits hereto shall not be accomplished or finalized at the time this Agreement is executed as such exhibits must, by the nature of the provisions relative thereto, be executed by the parties subsequent to the execution of this Agreement. The parties shall be diligent in accomplishing such exhibits at the earliest appropriate time in accordance with the provisions hereof.

The terms of this Agreement shall supersede any inconsistent provision contained in the General Conditions, the Special Supplementary General Conditions, or any other of the Contract Documents.

## 21.8 NO THIRD PARTY BENEFICIARIES

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

## 21.9 MODIFICATION OF ARTICLE 6. TIME OF COMMENCEMENT AND COMPLETION

If an amount is indicated immediately below, liquidated damages shall be applicable to this Project as, and to, the extent shown below. Where an amount is indicated below, liquidated damages shall be assessed in accordance with and pursuant to the terms of Article 6, Time Of Commencement and Completion, in the amounts and as here indicated. The election of liquidated damages shall limit and control the parties' right to damages only to the extent noted.

1. For the inability to use the Project, for each day after the number of calendar days specified in the Construction Manager's bid for the Project and the Agreement for achievement of Substantial Completion, until the day that the Project has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Construction Manager agrees that an amount equal to \_\_\_\_\_ (\$ ) shall be assessed against Construction Manager from amounts due and payable to the Construction Manager under the Contract, or the Construction Manager and the Construction Manager's Surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.

2. For damages related to or arising from additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period, for each day in excess of the number of calendar days specified in the Construction Manager's GMP Proposal for the Project and the Agreement to Finally Complete the Project (as defined by the issuance of the Notice of Final Acceptance) after the issuance of the final Notice of Substantial Completion, the Construction Manager agrees that an amount equal to \_\_\_\_\_ (\$ \_\_\_\_\_) shall be assessed against Construction Manager from amounts due and payable to the Construction Manager under the Contract, or the Construction Manager and the Construction Manager's Surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due but amounts remaining are insufficient to cover the entire assessment.

21.10 CONTROLLER'S APPROVAL. C.R.S. § 24-30-202(1)

This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

21.11 FUND AVAILABILITY. C.R.S. § 24-30-202(5.5)

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

21.12 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 Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.; 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. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

21.13 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 (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.**

21.14 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.

21.15 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.

#### 21.16 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 C.R.S. §24-106-109. 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.

#### 21.17 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.

#### 21.18 EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST C.R.S. § 24-18-201 and C.R.S. § 24-50-507

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.

#### 21.19 VENDOR OFFSET AND ERRONEOUS PAYMENTS C.R.S. § 24-30-202 (1) and C.R.S. § 24-30-202.4

*[Not Applicable to intergovernmental agreements]* The State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State Agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in §39-21-101, et seq. C.R.S.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** 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.

#### 21.20 PUBLIC CONTRACTS FOR SERVICES. C.R.S. § 8-17.5-101

*[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* 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 Department program established pursuant to C.R.S. § 8-17.5-102(5)(c), 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 **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, **(b)** shall notify the subcontractor and the contracting State Agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. § 8-17.5-102(5), 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 C.R.S. § 8-17.5-101 et seq., 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.

#### 21.21 PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. § 24-76.5-101

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

#### 21.22 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 anytime thereafter, this shall apply. Contractor agrees to be governed by and comply with the Colorado Procurement Code or the applicable procurement code for institutions of higher education, 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 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.

#### 21.23 CORA DISCLOSURE

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under the Colorado Procurement Code or the applicable procurement code for institutions of higher education, if any, are subject to public release through the Colorado Open Records Act, C.R.S. § 24-72-201, et seq.

**SIGNATURE APPROVALS:**

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

Persons signing for Contractor/Consultant hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.  
**Principal is not a recognized title and will not be accepted.**

**THE CONTRACTOR/CONSULTANT:**

**STATE OF COLORADO**, acting by and through:  
(Insert Name of Agency or IHE)

\_\_\_\_\_  
Legal Name of Contracting Entity

By: \_\_\_\_\_  
(Insert Name & Title of Principal Representative  
for Agency or IHE)

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

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

**APPROVED**  
DEPARTMENT OF PERSONNEL & ADMINISTRATION  
STATE BUILDINGS PROGRAM  
State Architect (or authorized Delegate)

By \_\_\_\_\_  
Name (print) Title

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

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

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

**APPROVED**  
DEPARTMENT OF LAW  
ATTORNEY GENERAL (or authorized Delegate)

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

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

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

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

**APPROVED:**

STATE OF COLORADO  
STATE CONTROLLER'S OFFICE  
State Controller (or authorized Delegate)

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

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

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT A**

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**CMGC DESIGNATED SERVICES AND METHOD OF PAYMENT  
(attached)**

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: PRECONSTRUCTION	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
ARCHITECTURAL SELECTION						X
STRUCTURAL, MECHANICAL AND ELECTRICAL (CONSULTANT)					1	2
SPECIAL CONSULTANT SELECTION						X
SURVEYOR SELECTION						X
SITE SELECTION RECOMMENDATIONS					2	1
REVIEW DESIGN CONCEPTS	X					
DEVELOP BID PACKAGES/SUB- CONTRACTING STRATEGY	1				2	
SITE USE RECOMMENDATIONS	2				1	
MATERIAL SELECTION RECOMMENDATIONS	2				1	
BUILDINGS SYSTEMS RECOMMENDATIONS	2				1	
BUILDING EQUIPMENT RECOMMENDATIONS (MOVEABLE)	2				2	1
BUILDING EQUIPMENT RECOMMENDATIONS (FIXED)	2	2			1	
CONSTRUCTION FEASIBILITY RECOMMENDATIONS	X					
PROJECT MASTER SCHEDULING	X					
BID PACKAGE RECOMMENDATIONS	1				2	
LIFE CYCLE COSTING ANALYSIS	2				1	
INFORMAL AND FORMAL VALUE ENGINEERING	X					
ENERGY USE ANALYSIS AND RECOMMENDATIONS	2				1	
PRELIMINARY TOTAL COST FEASIBILITY REVIEW	X					
LABOR AVAILABILITY REVIEW (SUBCONTRACTORS)	X					
MATERIAL EQUIPMENT AND CONTRACTOR AVAILABILITY	X					

Responsibility: x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: PROJECT BUDGETING AND COST CONTROL	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
TOTAL PROJECT COST BUDGET						X
CONSTRUCTION COST BUDGET	X					
CONSTRUCTION COST BUDGET ESTIMATES	X					
PRELIMINARY COST MODEL	X					
SCHEMATIC DESIGN PHASE ESTIMATES	X					
DESIGN DEVELOPMENT PHASE ESTIMATES	X					
BID PACKAGE/SUBCONTRACT ESTIMATES	X					
CASH FLOW PROJECTIONS	X					
PHASE FUNDING MODELING	X					
MATERIAL SURVEYS	X					
TRADE CONTRACTOR ESTIMATES	X					
CHANGE ORDER ESTIMATES			X			
SET-UP COST ACCOUNTING			X			
SET-UP REPORTING METHODS			X			
SET-UP PAYMENT PROCEDURES			2			1
SET-UP CHANGE ORDER PROCEDURES			1		2	1
CONTINUAL PROJECT COST MONITORING			1		2	1

Responsibility:

x = Total

1 = Primary

2 = Secondary



## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES PHASE: SUB-CONTRACTING SELECTION AND PURCHASING	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
SET PRE-QUALIFICATION CRITERIA	X					
RECOMMEND CONTRACTOR SELECTION METHODS	X					
RECOMMEND CONTRACTOR AWARD SELECTION METHODS	X					
DEVELOP CONTRACTOR INTEREST	X					
PREPARE BIDDING SCHEDULES	X					
CONDUCT PRE-BID CONFERENCE AND ISSUE PLANS	X					
RECEIVE BIDS	X					
ANALYZE BIDS	X					
RECOMMEND AWARD	1				2	
VERIFY UNIT COSTS	X					
NEGOTIATE UNION RATES AND MANPOWER COSTS REQUIRED		X				
CONDUCT PRE-AWARD CONFERENCE			X			
PREPARE CONTRACTS	X					
SUPPLIER AND SUBCONTRACTOR REVIEW	X					
ORIGINATE RFI'S AFTER SCREENING			X			
PREPARE CHANGE ORDERS			2		1	
VERIFY CORRECTNESS OF QUANTITIES AND PRICES OF CHANGE ORDERS			1		2	
COORDINATE OWNER-SUPPLIED FIXED EQUIPMENT			2		1	1

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: CONTRACT DOCUMENTS COORDINATION	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
FEASIBILITY REVIEW AND RECOMMENDATIONS	X					
CONSTRUCTABILITY REVIEW AND RECOMMENDATIONS	X					
SUBCONTRACTOR WORK SCOPING	X					
RESPONSIBILITY FOR: SAFETY PRECAUTIONS			X			
SAFETY PROGRAMS			X			
TEMPORARY FACILITIES			X			
COMMON USE EQUIPMENT			X			
COMMON USE SERVICES			X			
REVIEW FOR: JURISDICTIONAL OVERLAP	X					
INCLUSION OF ALL WORK	X					
PHASE CONSTRUCTION COORD.	X					
IDENTIFY LONG LEAD ITEMS	X					
OBTAIN AGENCY APPROVALS					2	1
ASSIST IN OBTAINING PERMITS (AS NEEDED)			X			

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: CONSTRUCTION PHASE STAFF	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
PROJECT MANAGER (AS REQUIRED)			X			
PROJECT SUPERINTENDENT (AS REQUIRED)			X			
ASSISTANT PROJECT SUPERINTENDENT			X			
MECHANICAL COORDINATOR (AS REQUIRED)			X			
ELECTRICAL COORDINATOR (AS REQUIRED)			X			
OFFICE ENGINEER (AS REQUIRED)			X			
ENGINEERING AND LAYOUT (AS REQUIRED)				X		
FIELD ENGINEER-LINE AND GRADE (AS REQUIRED)				X		
DRAWING CHECKER (AS REQUIRED)			X			
TIME KEEPER/CHECKER (AS REQUIRED)			X			
SCHEDULING ENGINEER (AS REQUIRED)			X			
PROJECT COORDINATOR			X			
COST ENGINEER (AS REQUIRED)			X			
CLERK-TYPIST (AS REQUIRED)			X			
RODMAN AND HELPERS (AS REQUIRED)				X		
SAFETY ENGINEER (AS REQUIRED)			X			

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: TRAVEL AND LODGING	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
STAFF TRAVEL COST		X				
STAFF TRANSPORTATION		X				
PROJECT STAFF MOVING EXPENSES		X				
PROJECT STAFF SUBSISTENCE COSTS			X			
PHASE: TEMPORARY FACILITIES						
SAFETY EQUIPMENT AND FIRST AID SUPPLIES			X			
HANDRAILS AND TOE BOARDS			X			
OPENING PROTECTION			X			
FIRE EXTINGUISHERS			X			
WATCHMAN SERVICE				X		
OFFICE OR TRAILER RENTAL			X			
WATERBOY CUPS			X			
TEMPORARY STAIRS			X			
PROJECT SIGNS			X			
BULLETIN BOARDS			X			
CONSTRUCTION FENCING			X			
BARRICADES AND COVERED WALKWAYS (AS REQUIRED)				X		
SAFETY NETS (AS REQUIRED)				X		
A/E TEMPORARY OFFICE			X			
TEMPORARY TOILETS			X			

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: ON-SITE UTILITIES AND SERVICES	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
TEMPORARY TELEPHONE INSTALLATION AND EXPENSE (INCLUDING LOCAL A/E)			X			
TEMPORARY POWER SERVICE			X			
POWER SERVICE			X			
TEMPORARY WATER AND HEATING			X			
HEATING ENERGY CHARGES				X		
TEMPORARY WIRING				X		
LIGHT BULBS				X		
DAILY CLEAN-UP			1	2		
WEEKLY TRASH-REMOVAL			1	2		
FINAL CLEAN-UP			1	2		
DUMP PERMITS AND FEES				X		
DEBRIS HAULING/REMOVAL				X		
FLAGMAN/TRAFFIC CONTROL (AS REQUIRED)				X		
FUELS FOR INITIAL TANK FILLING				X		
TEMPORARY ROADS				X		
ROADWAY MAINTENANCE				X		
DUST CONTROLS				X		
TEMPORARY EROSION CONTROL				X		
TEMP. WATER /SEWER EXPENSE & WATER EXPENSES - SITE GRADING & COMPACTION				X		
TWO-WAY RADIO EQUIPMENT (AS REQUIRED)			X			
TRASH CHUTE AND HOPPERS (AS REQUIRED)				X		

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: ON-SITE EQUIPMENT	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
AUTOMOBILE AND FUEL (AS REQUIRED)			X			
PICK-UP TRUCK AND FUEL (AS REQUIRED)			X			
FLATBED TRUCK AND FUEL (AS REQUIRED)			X			
WATER TRUCK (AS REQUIRED)				X		
AIR COMPRESSOR AND FUEL (AS REQUIRED)				X		
DEWATERING EQUIPMENT AND FUEL (AS REQUIRED)				X		
TEMPORARY GENERATOR AND FUEL (AS REQUIRED)			X			
DEBRIS REMOVAL/HAULING EQUIPMENT (AS REQUIRED)				X		
SNOW REMOVAL (AS REQUIRED)			X			
TIRES AND MAINTENANCE COST (AS REQUIRED)			X			
FORKLIFT OPERATOR				X		
MATERIAL HOIST OPERATOR			X			
PERSONNEL OPERATOR			X			
FIXED CRANE OPERATOR				X		
TRAVEL CRANE OPERATOR				X		

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: TEMPORARY HEATING	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
REMOVE SNOW AND ICE (AS REQUIRED)			X			
TEMPORARY ENCLOSURES (AS REQUIRED)				X		
PIPING COST IN BUILDING (AS REQUIRED)			X			
FUEL COST FOR HEATING (AS REQUIRED)				X		
POWER COST FOR HEATING (AS REQUIRED)			X			
FURNACE RENTAL (AS REQUIRED)			X			
HEATER RENTAL (AS REQUIRED)			X			
BOILER RENTAL (AS REQUIRED)			X			
OPERATOR - TEMPORARY SYSTEMS (AS REQUIRED)			X			
OPERATION FIRE WATCH (AS REQUIRED)				X		
CLEANING COST (AS REQUIRED)				X		
MAINTENANCE COST (AS REQUIRED)				X		
EXTENDED WARRANTY COST (AS REQUIRED)				X		
FILTER CHANGE (AS REQUIRED)				X		
TEMPORARY OFFICE HEATING (AS REQUIRED)			X			
TEMP WEATHER PROJECTION & HEATING FOR SUBCONTRACTORS (AS REQ'D)				X		

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: REPRODUCTION/PRINTING AND DATA PROCESSING	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
COST STUDY DOCUMENTS					X	
SYSTEMS STUDY DOCUMENTS					X	
BID PACKAGE SETS (SEE PARAGRAPH 5.1.4)				2		1
BIDDING INSTRUCTIONS	X					
CONSTRUCTION DOCUMENTS ORIGINAL					X	
POSTAGE AND EXPRESS COSTS (CM/GC ISSUES PLANS)			X			
AS-BUILT SUB-DOCUMENTS				X		
AS-BUILT DOCUMENTS			X			
ACCOUNTING FORMS		X				
FIELD REPORTING FORMS			X			
SUBCONTRACT AGREEMENT FORMS	X					
SCHEDULE REPORT FORMS			X			
ESTIMATING FORMS	X					
COST REPORTING FORMS	X					
VALUE ANALYSIS STUDIES PRINTING	X					
DATA PROCESSING (MAIN OFFICE)		X				
REFERENCE MATERIALS			X			
SHOP DRAWING PRINTING				X		
ON-SITE FAX AND COPIER			X			
DATA PROCESSING (ON-SITE)			X			
MAINTENANCE MANUALS (FROM SUBS) AND OPERATIONS MANUALS (FROM SUBS)				X		

Responsibility: x = Total

1 = Primary

2 = Secondary



## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: QUALITY CONTROL	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
FIELD INSPECTOR (AS REQUIRED)			X			
INSPECTORS' OFFICE (AS REQUIRED)			X			
INSPECTORS' TRANSPORTATION (AS REQUIRED)			X			
INSPECTORS' EQUIPMENT (AS REQUIRED)			X			
SPECIAL INSPECTION CONSULTANTS						X
SPECIAL TESTING CONSULTANTS						X
CONCRETE SUBSTRUCTURE- OBSERVATIONS						X
CONCRETE TESTING						X
MASONRY TESTING						X
COMPACTION TESTING						X
WELDING TESTING						X
PIER INSPECTION/TESTING						X
SOILS INVESTIGATION						X
SPECIAL TESTING SERVICES (EXCEPT AS NOTED)						X
PROJECT PHOTOGRAPHS			X			
WARRANTY INSPECTIONS		1			2	
AIR AND WATER BALANCING				X		
OPERATOR ON-SITE TRAINING			X			
PREPARE OPERATION/MAINTENANCE MANUALS			2	1		

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: PERMITS AND SPECIAL FEES	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
STORAGE YARD RENTAL				X		
PARKING LOT RENTALS AND SHUTTLE EXPENSES (AS REQUIRED)				2		1
FIELD OFFICE STAFF PARKING FEES			X			
SIGN PERMITS			X			
STREET/CURB PERMIT				X		
BUILDING PERMITS						X
PLAN CHECK FEES						X
WATER SYSTEM DEV. FEE						X
SEWER USE & DRAINAGE PERMIT/DEV. FEE						X
STORM CONNECTION FEE						X
GAS AND POWER SERVICE CHARGE (PERMANENT)						X
GAS AND POWER SERVICE CHARGE (TEMPORARY)				X		
STEAM SERVICE CHARGE						X
CHILLER WATER SERVICE CHARGE						X
SPECIAL TAP FEES						X
CONTRACTORS LICENSES		X				
CONSTRUCTION EQUIPMENT LICENSES		X				
CONSTRUCTION EQUIPMENT PERMITS				X		

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: INSURANCE AND BONDS	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
BUILDERS RISK INSURANCE			X			
GENERAL LIABILITY, INCLUDING AUTOMOBILE			X			
PRODUCT LIABILITY			X			
EXCESS LIABILITY COVERAGE			X			
WORKERS COMPENSATION (FIELD OFFICE STAFF)			X			
FICA INSURANCE (FIELD OFFICE STAFF)			X			
FEDERAL UNEMPLOYMENT (FIELD OFFICE STAFF)			X			
STATE UNEMPLOYMENT (FIELD OFFICE STAFF)			X			
CONSTRUCTION MANAGER'S PAYMENT BOND			X			
CONSTRUCTION MANAGER'S PERFORMANCE BOND			X			
STATE/LOCAL BONDS				X		
* SUBCONTRACTOR BONDS				X		

Responsibility: x = Total

1 = Primary

2 = Secondary

\* ONLY AS MUTUALLY AGREED UPON BETWEEN THE PRINCIPAL REPRESENTATIVE AND THE CM.

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: OTHER COSTS	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
CONSTRUCTION EQUIPMENT				X		
CONSTRUCTION SERVICES LABOR				X		
CONSTRUCTION MATERIALS				X		
COST OF DESIGN AND ENGINEERING						X
A/E FAST TRACK COST EXTRAS						X
PRELIMINARY SOILS INVESTIGATION						X
TITLE/DEVELOPMENT COST						X
BUILDING OPERATION AFTER MOVE-IN						X
BUILDING MAINTENANCE AFTER MOVE-IN						X
MOVING COORDINATION						X
MOVING COSTS						X
COSTS OF EMERGENCY WORK				X		
CM GENERAL OVERHEAD COST		X				
CM PROFIT MARGIN		X				
GMP FINANCIAL RESPONSIBILITIES		X				
STATE REQUIRED INSPECTIONS						X

Responsibility:

x = Total

1 = Primary

2 = Secondary

## Designated Services and Method of Payment

CONSTRUCTION MANAGEMENT SERVICES	REQUIRED OF CM/GC				REQUIRED OF ARCH	REQUIRED OF OWNER
PHASE: OFF-SITE SERVICES	PRE- CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK		
CORPORATE EXECUTIVES (AS REQUIRED)	X	X				
PRINCIPAL IN CHARGE (AS REQUIRED)	X	X				
PROJECT EXECUTIVE (AS REQUIRED)	X	X				
LEGAL - BASIC SERVICES (AS REQUIRED)	X	X				
ACCOUNTING (AS REQUIRED)		X				
PURCHASING (AS REQUIRED)	X					
SAFETY OFFICER (AS REQUIRED)		X				
EEO OFFICER (AS REQUIRED)	X	X				
SECRETARIAL AND CLERK-TYPIST (AS REQUIRED)	X	X				
BENEFITS AND VACATIONS FOR ABOVE	X	X				

Responsibility:

x = Total

1 = Primary

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**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT B**

---

**CONSTRUCTION MANAGER'S CERTIFICATION**

I hereby certify:

- a. That I am the \_\_\_\_\_ and duly authorized representative  
of the firm of: \_\_\_\_\_;  
and
- b. That the wage rates and other factual unit costs supporting the compensation to be paid by the  
State for these professional services are accurate, complete, and current; and
- c. That I understand the original contract price and any additions shall be adjusted to exclude any  
significant sums by which the State determines the contract price had been increased due to  
inaccurate, incomplete, or non-current wage rates and other factual unit costs;  
and
- d. That all such contract adjustments shall be made within one year following the end of this contract.

CONSTRUCTION MANAGER

\_\_\_\_\_  
Signature

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT C**

---

**CONSTRUCTION MANAGER'S CERTIFICATE OF LIABILITY INSURANCE**

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT D**

---

**CERTIFICATION AND AFFIDAVIT REGARDING UNAUTHORIZED IMMIGRANTS**  
(required at contract signing prior to commencing work)



**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT E**

---

**(Not Used)**

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT F**

---

**LIST OF PRE-QUALIFIED SUBCONTRACTORS**  
(when approved by the Principal Representative and prior to bidding)

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT G**

---

**SCHEMATIC DESIGN ESTIMATE SUMMARY AND UPDATED SUMMARIES  
(when approved by the Principal Representative)**

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT H**

---

**FIRST AMENDMENT (INCORPORATING GMP) EXHIBITS**

- H.1    Guaranteed Maximum Price Documents, Drawings, and Specifications including Addenda and Modifications (when approved by the Principal Representative)
- H.2    Schedule of Bid Package Descriptions and Issuance Dates
- H.3    Schedule of Values
- H.4    Allowance Schedule

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT I**

---

**SECOND AND SUBSEQUENT AMENDMENT (INCORPORATING BID PACKAGES) EXHIBITS**

- I.1 Contract Document Drawings and Specifications (when approved by the Principal Representative)
- I.2 All Addenda and Modifications
- I.3 Schedule of Values (consistent with GMP Schedule of Values), include Labor Overhead (direct labor burdens) for each Subcontractor to be applied to all change orders and amendments
- I.4 Allowance Schedule (consistent with GMP Allowance Schedule)
- I.5 Performance Bond
- I.6 Labor and Material Payment Bond
- I.7 Property Insurance Certificate
- I.8 Certification and affidavit regarding unauthorized Immigrants (UI-1)
- I.9 Notice to Proceed to Commence Construction Phase (Form SC 7.26)
- I.10 Preliminary and Detailed Construction Schedules (when approved by the Principal Representative).
- I.11. Notice of Substantial Completion (Form SBP-07).
- I.12. Notice of Approval of Occupancy/Use (Form SBP-01).

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT J**

---

**NOTICE OF ACCEPTANCE**

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT K**

---

**NOTICE OF CONTRACTOR'S SETTLEMENT**

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT L**

---

**REQUEST FOR PROPOSAL (DATED \_\_\_\_\_)**



**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT M**

---

**CONSTRUCTION MANAGER'S FEE PROPOSAL**

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT N**

---

**SALES AND USE TAX FORMS**

**STATE OF COLORADO  
OFFICE OF THE STATE ARCHITECT  
STATE BUILDINGS PROGRAM**

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AGREEMENT  
(STATE FORM SC-6.4)**

**EXHIBIT O**

---

**BUILDING CODE COMPLIANCE POLICY: COORDINATION OF APPROVED BUILDING  
CODES, PLAN REVIEWS AND BUILDING INSPECTIONS**