

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



**ARCHITECT/ENGINEER AGREEMENT
CONSTRUCTION MANAGER/GENERAL CONTRACTOR
(STATE FORM SC-5.2)**

DEPARTMENT ID:	N/A
CONTRACT ID #:	N/A
PROJECT #:	
PROJECT NAME:	
VENDOR NAME:	

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EXHIBITS:

- A. Architect/Engineer Proposal (including Design Services Schedule and Certificates of Insurance)
- B. Wage Rates Schedule
- C. Approved State Building Codes (Exhibit A of the Building Code Compliance Policy: Coordination of Approved Building Codes, Plan Reviews and Building Inspections)

- D.** Code Compliance Plan Review Procedures (Exhibit B of the Building Code Compliance Policy: Coordination of Approved Building Codes, Plan Reviews and Building Inspections)
- E.** Design Requirements/Facilities Program Plan/Sustainability Goals (as applicable)
- F.** Certification and Affidavit Regarding Unauthorized Immigrants (State Form UI-1), (required at contract signing prior to commencing work)
- G.** University Insurance Requirements - B

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OFFICE OF THE STATE ARCHITECT
STATE BUILDINGS PROGRAM

ARCHITECT/ENGINEER AGREEMENT
CONSTRUCTION MANAGER/GENERAL CONTRACTOR
(STATE FORM SC-5.2)

Department ID: N/A Contract ID #: N/A Project #: XX-XXX

1. PARTIES. THIS AGREEMENT is entered into by and between the STATE OF COLORADO, acting by and through the REGENTS OF THE UNIVERSITY OF COLORADO , a body corporate, acting by and through the UNIVERSITY OF COLORADO COLORADO SPRINGS , hereinafter referred to as the Principal Representative, and (vendor name) having its offices at (vendor address) engaged to serve as Architect/Engineer, hereinafter referred to as Architect Engineer.

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 Architect/Engineer 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 XX , Account Number XXXXXXXXXX ; and

WHEREAS, the State has **Appropriated** and the Principal Representative has been authorized to expend the total sum of XX Dollars (XX); for this project including all professional services, *Program Management services*: construction manager/general contractor services, construction/ improvements, project contingencies, furnishings, movable equipment, reimbursable expenses 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 3.5.*

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

WHEREAS, the Construction Manager/General Contractor shall establish a **Guaranteed Maximum Price** that is within this Fixed Limit of Construction Cost as established by the Principal Representative, at the completion of the Design Development Phase; and

WHEREAS, the Architect/Engineer was selected and determined to be the most qualified, and fees were negotiated in accordance with the provision of Title C.R.S. § 24-30-1401 et seq., as amended; and

NOW THEREFORE,

The Principal Representative and the Architect/Engineer, for the considerations hereinafter set forth, agree as follows:

ARTICLE 1. BASIC SERVICES OF THE ARCHITECT/ENGINEER

1.1 THE SERVICES

1.1.1 The Architect/Engineer's services shall be provided in conjunction with the services of the Construction Manager/General Contractor, hereinafter referred to as Construction Manager or CM, as set forth in the Contract between the State and Construction Manager, hereinafter referred to as the Construction Manager Contract. The Architect/Engineer's services shall consist of XX design phases hereinafter set forth and include normal architectural, structural, mechanical, electrical and civil engineering services; landscaping if any; space planning/interior layout; and any other services included in this Agreement as delineated in the proposal letter dated XX, submitted by the Architect/Engineer, which is attached hereto and made a part hereof by reference as **Exhibit A**. Numerous exhibits developed over a period of time are also attached to and made a part of this Agreement, some of which may be in conflict with other exhibits or portions of this Agreement. In the event of any conflict in any of these, the greater service shall be included in the professional services provided and the contract sum without additional compensation to be superseded by applicable amendment sum or supplement.

1.1.2 In the performance of the professional services, the Architect/Engineer acknowledges that time is critical for Project delivery and that portions of the work shall have their design completed as separate Bid Packages and ready for 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 a Construction Manager/General Contractor is a unique concept and that its feasibility requires maximum cooperation between all parties. It is also recognized that the services to be rendered by the Construction Manager and the interrelationships and coordinative aspects thereof are not traditional. The Architect/Engineer has, however, reviewed the Construction Manager Contract 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 responsibility or duties between the Architect/Engineer and the Construction Manager, or an absence of designation, the question shall be submitted to the Principal Representative for determination. The Architect/Engineer shall abide by the decision of the Principal Representative provided it does not require the performance of services beyond what was reasonably contemplated and accepted by the Architect/Engineer as its responsibility.

1.1.3 The Architect/Engineer further acknowledges that the Fixed Limit of Construction Cost recited above as the Principal Representative's expenditure limit is intended to cover the entire cost of the Project and is sufficient therefore and has been fully appropriated. The Architect/Engineer therefore agrees to cooperate fully with the Principal Representative in the design and construction aspects to keep within these limitations.

1.1.4 The number of Bid Packages shall be established at XX. Should the Principal Representative request additional or fewer Bid Packages than the established

number, the cost involved in development of additional or the deletion of proposed bid packs shall be reflected in an Amendment to the Agreement for Additional Services.

1.1.5 The Architect/Engineer shall participate in sessions at the close of Schematic Design Phase, Design Development Phase, and as Construction Documents are finalized for each Bid Package. These Project Design Review Sessions shall be attended by the Architect, and a representative of the Principal Representative. The purpose of the Project Design Review Sessions is to (1) ensure consistency with the design intent; (2) ensure complete, coordinated, constructible and cost-effective designs for all disciplines (e.g. architectural, structural, mechanical, electrical); (3) ensure that the design documents are code compliant; (4) endeavor to confirm that all Work has been included and described in sufficient detail to ensure complete pricing of the 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.

1.1.6 The Architect/Engineer shall participate in formal value engineering workshops at the end of the Schematic Design Phase and the Design Development Phase, bringing multidiscipline cost estimating and design experts to evaluate alternative designs, systems and materials.

1.1.7 The Architect/Engineer shall make certain to the best of its knowledge, information and belief, that the drawings and specifications prepared by it are in compliance with the Approved Codes as adopted by State Buildings Program (as a minimum standard) as indicated in **Exhibit C**, Approved Codes. Other more restrictive standards as specified by the Principal Representative are as indicated in **Exhibit C**. Drawings and specifications are to be reviewed by the State's approved Code Review Agents at the appropriate phases and with the required information as described in the attached Code Compliance Reviews, **Exhibit D**.

1.2 QUALIFICATIONS

1.2.1 The services shall be performed by the Architect/Engineer or by consultants licensed or registered by the State of Colorado as required by law. If these special consulting services are to be performed by professionals in the Architect/Engineer's employ, then the services must currently be and have been for at least two (2) years previously, regularly a service of the Architect/Engineer's organization.

1.2.2 In the event the Architect/Engineer does not have as part of its regular staff and services certain professional consultants and consulting services, such as but not limited to, architectural, structural, mechanical, electrical, civil, landscaping, and/or space planning/interior layout, then such consulting services shall be performed by practicing professional consultants.

1.2.3 All professional consultants, staff or practicing, must be retained for the duration of the Project, provided, however, that acceptable replacements must have prior approval, in writing, by the Principal Representative which approval shall not be unreasonably withheld.

1.2.4 Prior to designating a professional to perform any of these services, the Architect/Engineer shall submit the name, together with a resume of training and experience in work of like character and magnitude of the project being contemplated, to the Principal Representative, and receive approval in writing therefrom.

1.2.5 No consultant shall be engaged or perform work on the Project wherein a conflict of interest exists, such as being connected with the sale or promotion of equipment or material which may be used on the Project, provided, however, that in unusual circumstances and with full disclosure to the Principal Representative of such interest, the Principal Representative may permit a waiver, in writing, in respect to the particular consultant.

1.2.6 The Architect/Engineer shall designate all of its consultants in **Exhibit A**, which list may only be modified in accordance with paragraph 1.2.4 or 1.2.5

1.3 PRE-DESIGN PHASE

1.3.1 As designated and defined in the Architect/Engineer's Proposal **Exhibit A**.

1.4 SCHEMATIC DESIGN PHASE

1.4.1 The Architect/Engineer or its duly authorized representative shall attend regular meetings with the Principal Representative and the Construction Manager, and such additional meetings as the Principal Representative may request or as may be requisite to a complete understanding of the Project. All regular meetings shall be scheduled by the Architect/Engineer with the agreement of the Construction Manager and approval of the Principal Representative. The Architect/Engineer shall document all such conference notes and distribute same to the Principal Representative.

1.4.2 The Architect/Engineer shall review the design program furnished by the Principal Representative and/or as prepared under separate contract by the Architect/Engineer, including the approved Facilities Program Plan, to ascertain the requirements of the Project and shall refine the design program in accordance with **Exhibit E**, reviewing and confirming the understandings of these requirements and other design parameters with the Principal Representative.

1.4.3 During the progress of the Schematic Design Phase, the Architect/Engineer shall keep the Construction Manager informed of changes in requirements or in materials, equipment, component systems and types of construction as the drawings and specifications are developed so that the Construction Manager can formulate the Estimates of Construction Cost and the Guaranteed Maximum Price appropriately.

1.4.4 The Architect/Engineer shall review with the Principal Representative and Construction Manager site use and improvements, selection of materials, building systems and equipment, construction methods, and methods of Project delivery.

1.4.5 Based on the mutually agreed upon design program and the Fixed Limit of Construction Cost, the Architect/Engineer shall prepare, for acceptance by the Principal Representative, Schematic Design Documents consisting of drawings, outline specifications and other documents illustrating the scale and relationship of Project components. Schematic Design Documents shall be prepared in sufficient detail and number to come to an agreement on the basic design of the Project.

1.4.6 At intervals appropriate to the progress of the Schematic Design Phase, the Architect/Engineer shall provide copies of schematic design studies for the Construction Manager's review, monitoring, and input, for the in-progress work and any completed

components thereof, which will be completed so as to cause no delay to the Architect/Engineer. The purpose of such input shall address efficiency of materials, constructability, availability of components and compatibility of systems.

1.4.7 At intervals appropriate to the progress of the Schematic Design Phase, the Architect/Engineer shall provide the Principal Representative with copies of all materials, documents, and studies necessary to permit the Principal Representative to monitor, review, provide input to, and any necessary acceptance of, the Schematic Design Phase in progress and completed components thereof. This reviewing process shall be made so as to cause no delay to the Architect/Engineer. The Architect/Engineer shall respond in writing to the Principal Representative's comments resulting from this reviewing process.

1.4.8 At the completion of the Schematic Design Phase, the Architect/Engineer shall:

- .1 Provide (X) complete sets of drawings, outline specifications and construction materials, and such other documents necessary to fully illustrate the Schematic Design Phase to the Principal Representative and solicit its acceptance;
- .2 Provide (X) complete sets of drawings and (1 reproducible) complete set, outline specifications and construction materials, and such other documents necessary for the Construction Manager to prepare an estimate of the cost of construction;
- .3 Assist the Construction Manager in reviewing and verifying such Estimates of Construction Cost;
- .4 Independent of the Construction Manager, prepare and submit to the Principal Representative a construction cost estimate which will serve as a Statement of Probable Cost.

1.4.9 The Architect/Engineer shall also prepare a written report, accompanied by drawings, setting forth the following as a minimum:

- .1 Analysis of the structure as it relates to the Approved Codes as defined in Exhibit D, including responses to the State's Code Review Agent;
- .2 Recommend site locations and scope of site development;
- .3 Correlation of spaces with approved State standards;
- .4 Conceptual drawings of floor plans, elevations, section, and site plan;
- .5 Conceptual drawings and descriptions of project plumbing, mechanical and electrical systems as necessary;
- .6 Area computations, gross square footage and net square footage, and volume;
- .7 Outline of proposed construction materials;
- .8 Review of time anticipated for the Construction Phase(s);

- .9 Written description of the bid packaging strategy agreed upon with the Construction Manager/General Contractor.

1.4.10 The above Schematic Design data shall be subject to the acceptance in writing by the Principal Representative, Construction Manager and State Buildings Program.

1.4.11 Architect/Engineer shall also assist the Construction Manager in the preparation of the Construction Manager's written report at the end of the Schematic Design Phase summarizing the Construction Manager's value engineering activities.

1.5 DESIGN DEVELOPMENT PHASE

1.5.1 Based on the written acceptance of the Schematic Design Documents and any adjustments authorized by the Principal Representative in the design program or the Fixed Limit of Construction Cost, if any, the Architect/Engineer shall prepare, for acceptance by the Principal Representative and State Buildings Program the Design Development Documents consisting of drawings, outline specifications, and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Design Development Documents shall be developed in sequence replicating the proposed Bidding Packages.

1.5.2 During the progress of the Design Development Phase the Architect/Engineer shall keep the Construction Manager informed of changes in requirement or in materials, equipment, component systems and types of construction as the drawings and specifications are developed so that the Construction Manager can formulate the Estimates of Construction Cost and the Guaranteed Maximum Price appropriately.

1.5.3 At intervals appropriate to the progress of the Design Development Phase, the Architect/Engineer shall provide copies of Design Development studies for the Construction Manager's review, monitoring and input, to the in-progress Work and any completed components thereof, which will be completed so as to cause no delay to the Architect/Engineer. The purpose of such input shall address efficiency of materials, systems, and components; constructability within acceptable means; availability of materials, systems, and components; and cost control.

1.5.4 At intervals appropriate to the progress of the Design Development Phase, the Architect/Engineer shall provide the Principal Representative with copies of all materials, documents, and studies necessary to permit the Principal Representative to monitor, review, provide input to, and any necessary acceptance of, the Design Development Phase in progress and completed components thereof. This reviewing process shall be made so as to cause no delay to the Architect/Engineer. The Architect/Engineer shall respond in writing to the Principal Representative's comments resulting from this reviewing process.

1.5.5 At the completion of the Design Development Phase, the Architect/Engineer shall provide:

- .1 (X) complete sets of drawings, outline specifications and construction materials, and such other documents necessary to fully illustrate the Design Development Phase to the Principal Representative and solicit its acceptance.

- .2 () complete sets of drawings and (1 reproducible) complete set, outline specifications and construction materials, and such other documents necessary for the Construction Manager to prepare an estimate of the cost of construction.

1.5.6 The Architect/Engineer shall prepare a written report and drawings outlining in detail Design Development Documents from the accepted Schematic Design study. The report, when submitted for acceptance by the Principal Representative and the Construction Manager shall include as a minimum:

- .1 Analysis of the structure as it relates to the Approved Codes defined in **Exhibit D**, including responses to the State's Code Review Agent;
- .2 Site development drawings, defining the proposed scope of development including earthwork, surface development, and utility infrastructure;
- .3 Plans in one-line format of the proposed structural, mechanical, and electrical systems as necessary to define size, location and quality of equipment, materials, and constructions;
- .4 Floor plans including proposed movable equipment and furnishings and exterior elevations;
- .5 Cut-sheets and/or samples of proposed materials, equipment and system components including all such items normally specified under the Construction Specifications Institute, Specifications Format Divisions;
- .6 Proposed architectural finish schedule, HVAC, plumbing and electrical fixture schedules;
- .7 Outline specifications, using CSI format, identifying conditions of the contract, materials, and standards;
- .8 Review of the time anticipated for the Construction Phase(s).

These documents shall be of sufficient detail to allow the Construction Manager to enter into an agreement for the execution of the construction based on a Guaranteed Maximum Price.

1.5.7 The Architect/Engineer shall assist the Construction Manager in the preparation of the Construction Manager's written report at the conclusion of the Design Development Phase summarizing the Construction Manager's value engineering activities.

1.5.8 The Architect/Engineer shall make certain that to the best of its knowledge, information, and belief the drawings and specifications prepared by it are in full compliance with applicable codes, regulations, laws and ordinances, including both technical and administrative provisions thereof. Such drawings and specifications shall conform to the list of Approved Codes as defined in **Exhibit C**. If the Architect/Engineer shall deviate from such codes, regulations, law or ordinance, without written authorization to do so from the Principal Representative, then the Architect/Engineer shall, at its own expense, make such corrections in the Construction Documents as may be necessary for compliance.

1.5.9 The final Design Development Documents, revised as required by the Construction Manager's approved Guaranteed Maximum Price established within the recited Fixed Limit of Construction Cost, shall be subject to acceptance in writing by the Principal Representative and State Buildings Program.

1.5.10 Independent of the Construction Manager, the Architect/Engineer shall prepare and submit a construction cost estimate which will serve as an update of the Statement of Probable Construction Cost.

1.6 CONSTRUCTION DOCUMENTS PHASE

1.6.1 Based on the Principal Representative and State Buildings Program accepted Design Development Documents and any further adjustments in the scope or quality of the Project or in the Construction Manager's Guaranteed Maximum Price, if any, authorized by the Principal Representative, the Architect/Engineer shall prepare, for acceptance by the Principal Representative, Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the Project.

1.6.2 During the progress of the Construction Document Phase, the Architect/Engineer shall keep the Construction Manager informed of any changes in requirements or in construction materials, systems or equipment.

1.6.3 At intervals appropriate to the progress of the Construction Document Phase, the Architect/Engineer shall provide copies of documents for the Principal Representative and the Construction Manager's review, monitoring and input to the in-progress Construction Document Phase and any completed components thereof, which will be completed so as to cause no delay to the Architect/Engineer. These intervals shall be no fewer than at 50% and 95% completion of the Construction Documents Phase. The Architect/Engineer shall respond in writing to the Principal Representative's review comments.

1.6.4 These Construction Documents, when each Bid Package is submitted for approval, shall include:

- .1 () complete sets and (1 reproducible) complete set of architectural, civil, site development, structural, mechanical and electrical drawings as appropriate to assist in the definition of the submitted Bid Package;
- .2 Complete Bidding Documents including architectural, structural, mechanical and electrical specifications for that Bid Package. The format for these technical specifications shall be the current edition of *MasterFormat* published by the Construction Specifications Institute;
- .3 The title sheet shall contain the International Building Code (I.B.C.) occupancy type, construction type, gross square footage and net square footage, and gross building volume;
- .4 Each Bidding Package, as appropriate, shall contain a Code Compliance Plan as per **Exhibit D**, Code Compliance Reviews, that defines area separation, fire and smoke barriers, exits, exit passages, and exit enclosures.

1.6.5 The Architect/Engineer shall assist the Construction Manager in preparation of the Construction Manager's written report summarizing the Construction Manager's value engineering activities through the completion of this phase of the work.

1.6.6 The final Construction Documents shall be subject to the final acceptance by the Principal Representative, Construction Manager and State Buildings Program in writing.

1.7 BIDDING PHASE

1.7.1 The Architect/Engineer, following the Principal Representative's and State Buildings Program' approval of the Construction Documents, shall assist the Construction Manager in obtaining bids conforming to the requirements of C.R.S. § 24-103-202(7), as amended, by rendering interpretations and clarifications of the drawings and specifications in appropriate written form. The Architect/Engineer shall assist the Construction Manager in conducting mandatory pre-bidding conferences with all principal bidders and pre-award conferences with successful bidders.

1.7.2 The Architect/Engineer shall consult with and make recommendations to the Principal Representative pertaining to the Construction Manager's proposed subcontractors.

1.7.3 In addition to the copies required for the preceding design phases, the Architect/Engineer shall furnish copies of the Construction Documents for each Bid Package as follows, subject to limitations hereinafter set forth

- .1 For Bidding Documents: (X) sets and (1 reproducible) complete set to ensure distribution among contractors and subcontractors in accordance with the advertisement for bids.
- .2 For Contract Documents: The Principal Representative will require (X) sets of Contract Documents. The Contract Documents for each Bid Package, bearing the professional seal and signature of the Architect/Engineer and the appropriate responsible professional engineering consultants, are to be signed by the Construction Manager and Principal Representative at each contract signing conference. The Architect/Engineer acknowledges that prior to the contract signing conference and State Buildings Program authorizing the Notice to Proceed to Commence Construction Phase State Form SBP-7.26 a Letter of Compliance must be obtained from the State's Code Review Agent verifying that the contract Documents and all addenda, value engineering recommendations and all other changes to the bidding documents are in compliance with the applicable codes as adopted by State Buildings Program as indicated in **Exhibit C**.
- .3 For Construction: The Construction Manager shall be furnished with (X) sets or partial sets of the Contract Documents to insure prompt prosecution of the work.
- .4 (X) complete sets of drawings and specifications shall be the maximum required to be furnished by the Architect/Engineer. The Principal Representative will pay for all other sets of documents or partial sets of documents required at the cost of reproduction.

1.7.4 The Architect/Engineer shall assist the Principal Representative and Construction Manager in the preparation of the necessary bidding information, bidding forms and amendments to the Construction Manager Contract, to include the respective Bid Packages.

1.7.5 The Architect/Engineer shall assist the Principal Representative and Construction Manager in connection with the Principal Representative's responsibility for filing documents required for approvals of governmental authorities having jurisdiction over the Project.

1.7.6 At the completion of each bidding package, the Architect/Engineer shall prepare independent of the Construction Manager and present to the Principal Representative an update of the Design Development Statement of Probable Construction Cost for each specific Bid Package and the project total.

1.7.7 Prior to the Authorization to Commence Construction Phase for the first Bid Package, the Architect/Engineer and the Construction Manager shall certify that the entire Project has been completed through at least the Design Development Phase of the Architect/Engineer's Agreement and the Construction Manager shall certify that the sum of all proposed individual Bid Package Guaranteed Maximum Prices total the Project Guaranteed Maximum Price. This Project Guaranteed Maximum Price shall be equal or less in sum to the Fixed Limit of Construction Cost. It is agreed that only when those conditions are met and accepted by the Principal Representative may the Authorization to Commence Construction Phase be issued for the first Bid Package.

1.8 CONTRACT ADMINISTRATION PHASE FOR MULTIPLE SEPARATE BID PACKAGES

1.8.1 The Construction Phase will commence with the award of the initial Bid Package and, together with the Architect/Engineer's obligation to provide basic services under this Agreement, will end upon expiration of the one (1) year warranty period from the Notice of Substantial Completion or the Notice of Partial Substantial Completion of the construction.

1.8.2 The Architect/Engineer shall provide the Contract Administration and perform all of the duties to be provided by the Architect/Engineer for the Project as set forth in this Agreement and in the Contract Documents. The Architect/Engineer acknowledges that while most of the construction of the Project will be constructed through the Construction Manager, the State has reserved the right to perform portions of the work on the Project through its own forces or through separate contractors. The Architect/Engineer expressly agrees to perform all of the same services set forth herein and in the Contract Documents with the Construction Manager for any and all separate contractors engaged by the Principal Representative to perform work designed by the Architect/Engineer on the Project.

1.8.3 The Architect/Engineer and Construction Manager shall advise and consult with the Principal Representative during the construction phases. All instructions and written communications with 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.

1.8.4 The Architect/Engineer and its structural, mechanical and electrical engineers will visit the site at intervals appropriate to the stage of construction or otherwise agreed by the Principal Representative in writing to become generally familiar with the progress and quality of

the Work to determine in general if the Work is being performed in a manner indicating that the Work when completed will be 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. However, the Architect/Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality of the Work. On the basis of observation as an architect/engineer, the Architect/Engineer shall keep the Principal Representative informed of the progress and quality of the Work, and shall endeavor to guard the Principal Representative against defects and deficiencies in the Work.

1.8.5 If through no fault of the Architect/Engineer, trips to observe construction during the Construction Phase of the project are required in excess of those reasonably necessary to perform all Architectural/Engineering services described herein, the Architect/Engineer's compensation for the Construction Administration Phase shall be adjusted as an Additional Service for the cost to the Architect/Engineer of such trips, and paid in accordance with Article 3.2.

1.8.6 The Architect/Engineer shall provide notice to the Principal Representative of specific visits to be made during the various phases of construction and provide a written report of conditions observed, instructions given, and actions agreed to.

1.8.7 If requested by the Principal Representative, the Architect/Engineer shall provide, in addition to the above, a full-time representative on site during all regularly scheduled work hours. This representative shall have a minimum of 10 years' experience in work closely related to construction management/general contractor construction field administration and shall be approved by the Principal Representative in writing. If requested by the Principal Representative, the Architect/Engineer's compensation for the Contract Administration Phase shall be adjusted as an Additional Service and paid in accordance with paragraph 3.2.4. The Construction Manager shall provide the full-time representative with a suitable private office supported with standard office equipment including access to copiers, fax machines, etc.

1.8.8 From the time of the Construction Manager's on-site mobilization to the issue of the final Notice of Final Acceptance, the Architect/Engineer, or an appropriate consultant, shall observe for contract compliance, the following without limitation:

- .1 Bearing surfaces of excavations before concrete is placed
- .2 Reinforcing steel after installation and before concrete is placed
- .3 Structural concrete
- .4 Laboratory reports on all concrete testing
- .5 Structural steel during and after erection and prior to its being covered or enclosed
- .6 Steel welding
- .7 Mechanical and plumbing 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 reports

.10 Any special or quality control testing required in the Contract Documents

1.8.9 The observation contemplated in this article does not include the responsibility to conduct testing but does include the responsibility to confirm that tests were conducted as required in the Contract Documents as well as a review of the test results.

1.8.10 The Architect/Engineer shall exercise due diligence to safeguard the State against defects, deficiencies, noncompliance with the Contract Documents, and/or unsatisfactory workmanship. If, in the opinion of the Architect/Engineer, the Work is not being carried out in a sound, efficient, workmanlike and skillful manner, the Architect/Engineer shall promptly notify the Principal Representative and Construction Manager setting forth the reasons.

1.8.11 The Architect/Engineer shall keep accurate records with respect to the construction on the Project including fiscal accounting, changes in the work, directives, and other documentation to establish a clear history of the Project.

1.8.12 If at any time the Architect/Engineer delegates any of its responsibility for the observation of the Work to some other person, such other person must be properly qualified by training and experience to observe the work. The Principal Representative and State Buildings Program may review and approve the qualifications of all persons in writing, other than the Architect/Engineer, performing the functions of the Architect/Engineer in respect to the services required by this Agreement.

1.8.13 The Principal Representative and State Buildings Program may also have a representative observing the construction and its progress. Nothing contained herein shall in any way relieve the Architect/Engineer of its responsibilities for Contract Administration.

1.8.14 The Architect/Engineer shall attend all weekly or periodic job progress meetings.

1.8.15 The Architect/Engineer shall not be responsible for, nor have control or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project. The Architect/Engineer shall not be responsible for, nor have control over, the acts or omissions of the Construction Manager, subcontractors, any of their agents or employees, or any other persons performing any part of the construction, nor shall the Architect/Engineer be responsible for the Construction Manager's obligations.

1.8.16 The Architect/Engineer shall at all times have access to the construction wherever it is in preparation or progress.

1.8.17 The Architect/Engineer shall assist the Principal Representative in the review of the Construction Manager's Schedule of Values submitted in accordance with the Contract Documents. Further the Architect/Engineer shall attend a conference with the Construction Manager and the Principal Representative to finalize the Schedule of Values. The finalized Schedule of Values will serve as the basis for progress payments and will be incorporated into the form of Project Applications for Payment acceptable to the Architect/Engineer and the Principal Representative. The Architect/Engineer shall further participate in any revisions to the Schedule of Values as provided in the Contract Documents.

1.8.18 The Architect/Engineer shall see to the proper issuance of State form SC-7.2 used as the Construction Manager's Project Certificate and Application for Payment. The Architect/Engineer will, within five (5) working days after the receipt of each Project Application for Payment, review the Project Application for Payment and either execute a Project Certificate and Application for Payment to the Principal Representative for such amounts as the Architect/Engineer determines are properly due, or notify the Principal Representative and Construction Manager in writing of the reasons for withholding a Certificate.

1.8.19 The execution and issuance of a Project Certificate and Application for Payment, State form SC-7.2 shall constitute a representation by the Architect/Engineer to the Principal Representative that, based on the Architect/Engineer's observations at the site and on the data comprising the Construction Manager's Project Application for Payment, the construction has progressed to the point indicated; that, to the best of the Architect/Engineer's knowledge, information and belief, the quality of construction is in accordance with the Contract Documents and that the Construction Manager is entitled to payment in the amount certified. However, the issuance of a State form SC-7.2, Construction Manager's Project Certificate for Payment shall not be a representation that the Architect/Engineer has made any examination to ascertain how or for what purpose the Construction Manager has used the monies paid on account of the previously issued Certificates.

1.8.20 The Architect/Engineer shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Construction Manager and all subcontractors. The Architect/Engineer shall render interpretations necessary for the proper execution or progress of construction, with reasonable promptness.

1.8.21 All interpretations and decisions of the Architect/Engineer shall be consistent with the intent of, and reasonably inferable from the Contract Documents, and shall be in writing or in graphic form and the Architect/Engineer shall send a copy to the Principal Representative and Construction Manager.

1.8.22 The Architect/Engineer's decision in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents and neutral in terms of cost impact.

1.8.23 The Architect/Engineer shall have authority to reject constructed work which does not conform to the Contract Documents, and whenever, in the Architect/Engineer's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect/Engineer shall have authority to require special inspection or testing of constructed work in accordance with the provisions of the Contract Documents, whether or not such constructed work be then fabricated, installed or completed; but the Architect/Engineer shall take such action only after consultation with the Principal Representative. However, the Architect/Engineer's authority to act under the Contract Documents and any decision made by the Architect/Engineer 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 construction.

1.8.24 The Architect/Engineer shall review and approve or take other appropriate action upon Construction Manager's submittals such as shop drawings, product data and samples as indicated in the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activity of the Principal Representative, Construction Manager or separate

contractors, while allowing sufficient time in the Architect/Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Construction Manager, all of which remain the responsibility of the Construction Manager to the extent required by the Contract Documents. The Architect/Engineer's review shall not constitute approval of a specific item nor indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

1.8.25 All changes in the work shall be documented on Change Order or Amendment State forms SC-6.31 and SC-6.0, supplied by the Principal Representative, and the Architect/Engineer shall keep a current record of all variations or departures from the Agreement as originally approved.

1.8.26 The Architect/Engineer shall prepare all Change Orders and Amendments for the Principal Representative and recommend for approval or disapproval in accordance with the Contract Documents, the Contract Sum, the Contract Time and Code Compliance. If necessary the Architect/Engineer shall prepare, reproduce and distribute drawings and specifications to describe Work to be added, deleted or modified. The Architect/Engineer shall review all requests for changes in the Work with such reasonable promptness as to cause no delay in the Work or in the activities of the Principal Representative, Construction Manager or separate contractors, while allowing sufficient time in the Architect/Engineer's professional judgment to permit adequate review.

1.8.27 The Architect/Engineer shall prepare and issue Emergency Field Change Orders as required by the Principal Representative, but such Emergency Field Change Orders shall be issued only in accordance with the policies of State Buildings Program to 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.

1.8.28 When the Work is substantially complete in the opinion of the Construction Manager, the Construction Manager is required to file a written Notice with the Architect/Engineer with an attached preliminary punch-list of remaining items to be completed or corrected. The Architect/Engineer shall thereafter notify State Buildings Program and the Principal Representative, that the work, in the opinion of the Construction Manager, is substantially complete under the terms of the Contract. This Notice shall receive prompt action by the notified parties.

1.8.29 When the Architect/Engineer determines after review of the Construction Manager's written Notice that the Work or a portion of the Work is ready for an inspection to determine whether the Work is substantially complete, the Architect/Engineer with the Principal Representative and the Construction Manager shall, within ten days of receipt of the Construction Manager's Notice, conduct a final inspection to determine whether the Work is substantially complete and in accordance with the requirements of the Contract Documents. State Buildings Program shall be notified of the final inspection. If the construction has been completed to the required state, a punch list shall be made by the Architect/Engineer in concert

with the Principal Representative and Construction Manager in sufficient detail to fully outline to the Construction Manager:

- (a) Work to be completed, if any;
- (b) Work not in compliance with the Drawings or Specifications, if any;
- (c) Unsatisfactory work for any reason, if any;
- (d) Date for Completion of the Punch List Items.

1.8.30 If the Architect Engineer determines, after consultation with the Principal Representative, that the Work or a portion of the Work is complete, then the Architect/Engineer shall prepare the Notice of Substantial Completion, State form SBP-07 which the Architect Engineer shall transmit in writing to the Construction Manager and the Principal Representative for signature. The required number of copies of the punch list must be countersigned by the Construction Manager and the Principal Representative and will then be transmitted by the Architect/Engineer to the Construction Manager, the Principal Representative, and State Buildings Program. The Construction Manager shall immediately initiate such remedial work as may be necessary to correct any deficiencies or defective work shown by this report, and shall promptly complete all such remedial work in a manner satisfactory to the Architect/Engineer and State Buildings Program.

1.8.31 The Principal Representative may require the Architect/Engineer to make a reasonable number of additional inspections to confirm the completion of the punch list by the Construction Manager.

1.8.32 The Notice of Substantial Completion, or the Notice of Partial Substantial Completion, shall establish the Date of Substantial Completion or the Date of Partial Substantial Completion and such date shall be the date of commencement of the Construction Manager's twelve month guarantee, except to the extent stated otherwise in accordance with the limited exceptions provided in the General Conditions of the Contract. The Notice of Substantial Completion, or the Notice of Partial Substantial Completion, shall state the responsibilities of the Principal Representative and the Construction Manager for security, maintenance, heat, utilities, property insurance premiums and damage to the finished construction as required. The Notice of Substantial Completion, or the Notice of Partial Substantial Completion, shall be submitted to the Principal Representative and the Construction Manager for their written acceptance of the responsibilities assigned to them in such Notice. The Notice of Substantial Completion, or the Notice of Partial Substantial Completion, shall attach and incorporate the Architect/Engineer's final punch list and Construction Manager's schedule for the completion of each and every item identified on the final punch list.

1.8.33 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 completing the entire Work or portions of the Work has not expired and even if the Work has not been finally accepted, and the Architect/Engineer shall fully cooperate with the Principal Representative to allow such possession and use. Such possession and use shall not constitute an acceptance of such portions of the work. Prior to any occupancy of the Project, an inspection shall be made by the Architect/Engineer, State Buildings Program and the Construction Manager. Such inspection shall be made for the purpose of ensuring that the building is secure, protected by operation safety systems as designed, operable exits, power, lighting and HVAC systems, and otherwise ready for the occupancy intended and the Notice of Substantial Completion has been issued for the occupancy intended. The inspection shall also document existing finish conditions to allow assessment of any damage by occupants. The Architect/Engineer shall assist the Principal Representative in completing and executing State

Form SBP-01 Notice of 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.

1.8.34 The Construction Manager shall forward the completed close-out documents to the Architect/Engineer for signature. Upon receipt from the Construction Manager of written notice that the Architect/Engineer's final punch list is sufficiently complete the Architect/Engineer shall make a final inspection of work remaining on the final punch list and prepare the Pre Acceptance Checklist State form SBP-05. The Architect/Engineer upon receipt and verification that the close-out documents and the items of work are complete, shall prepare and forward to the Principal Representative a letter (including the signed close-out documents) stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of observations and inspections, the Work, or designated portion thereof, has been completed in accordance with the terms and conditions of the Contract Documents and is ready for the issuance of a Notice of Acceptance or Notice of Partial Acceptance as appropriate. A Notice of Partial Acceptance shall be based only upon the work for which a Notice of Partial Substantial Completion has been executed and all necessary items of work and other requirements have been completed.

1.8.35 Upon receipt from the Architect/Engineer of the letter recommending issuance of a Notice of Final Acceptance or a Notice of Partial Final Acceptance, the Principal Representative shall sign the Notice of Acceptance, State form SC-6.27, and forward to the Construction Manager for its approval and signature. The date of the Notice of Acceptance shall establish the date of final completion of the project. The Notice of Acceptance must be fully executed before final payment is authorized or the project advertised for Final Settlement.

1.8.36 The Architect/Engineer shall receive and forward to the Principal Representative for review, written warranties and related close-out documents assembled by the Construction Manager and reviewed and approved by the Architect/Engineer as consistent with the Contract Documents. A summary of all such requirements shall be located consistently within individual sections of the Specifications. When such materials have been received and approved the Architect/Engineer shall certify the Construction Manager's Final Application for Payment and forward the same to the Principal Representative

1.8.37 Except as otherwise agreed below in 1.9, POST CONSTRUCTION PHASE, the Architect/Engineer, the Principal Representative and the Construction Manager shall make at least two complete inspections of the work after the work has been accepted. One such inspection, the Six-Month Warranty Inspection, shall be made approximately six (6) months after the Date of Substantial Completion or the Date of Partial Substantial Completion; and another such inspection, the Eleven-Month Warranty Inspection, shall be made approximately eleven (11) months after the Date of Substantial Completion or the Date of Partial Substantial Completion. The Principal Representative shall schedule and so notify all parties concerned, including State Buildings Program, of these inspections.

1.8.38 Written lists of defects and deficiencies and reports of these observations shall be made by the Architect/Engineer and forwarded to the Construction Manager, and all of the other participants within ten (10) days after the completion of each observation. The Construction Manager is obligated in its agreement with the Principal Representative to immediately initiate such remedial work as may be necessary to correct any deficiencies or defective work shown by this report, and shall promptly complete all such remedial work in a manner satisfactory to the Architect/Engineer and the Principal Representative. The Architect/Engineer shall follow through on all list items and notify the Principal Representative when such have been completed.

1.9 POST CONSTRUCTION PHASE

1.9.1 (As designated and defined in the Architect/Engineer's Proposal **Exhibit A.**)

ARTICLE 2. REIMBURSABLE EXPENSES

2.1 REIMBURSEMENT

2.1.1 Reimbursable expenses are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Architect/Engineer and Architect/Engineer's employees, associate Architect/Engineer, and consultants in the interest of the Project. Pay requests for reimbursable expenses shall be submitted with receipts, statements or other acceptable supporting data. The Architect/Engineer understands and agrees that a lump sum dollar amount as enumerated in line (h) of Paragraph 3.1.1 has been established for all reimbursable expenses.

2.1.2 The Architect/Engineer shall be reimbursed for:

- .1 All copies over those as required in accordance with the provisions in Articles 1.3, Pre-Design Phase; 1.4.8 Schematic Design Phase; 1.5.5, Design Development Phase; and 1.6.4, Construction Documents Phase; 1.7.3, Bidding Phase, and 1.8, Contract Administration for each of the Bid Packages;
- .2 The cost of all items furnished by the Architect/Engineer in accordance with paragraphs 5.1.5, and 5.1.6 as requested by the Principal Representative.
- .3 Fees of special consultants, if their employment is authorized in advance by the Principal Representative for other than the required architectural, structural, mechanical, electrical and civil engineering services; landscaping, if any; space planning/interior layout; and any other services included in this Agreement;
- .4 Expense of data processing and photographic production techniques when used in connection with Additional Services;
- .5 Expense of long distance telecommunications related to the performance of Basic Services;
- .6 Expense of renderings, models and mock-ups requested by the Principal Representative other than those described in the designated services;
- .7 Expense of mail, deliveries, mileage for local travel other than that necessary for the performance of Basic Services, and expense travel for special consultants as per Article 1 Basic Professional Services. Reimbursement of travel expenses is to be based on reasonable and necessary travel costs within the limits of State/Federal per diem rates as published in the travel section of the State Controller's Fiscal Rules, Meal and Incidental Per Diem Rates, Appendix A1;

- .8 Expense of any additional insurance coverage or limits, including professional liability insurance, requested by the Principal Representative in excess of that required in Article 8.

ARTICLE 3. BASIS OF COMPENSATION

3.1 PAYMENT

3.1.1 The total compensation for Basic Services fees (b through f), including a lump sum price for Reimbursable Expenses and, if applicable, Pre-Design and Post Construction Services fees (a and/or g), shall be allocated as follows:

(a) Pre-Design Phase (if applicable)	\$ _____
(b) Schematic Design Phase	\$ _____
(c) Design Development Phase	\$ _____
(d) Construction Documents Phase	\$ _____
(e) Bidding Phase	\$ _____
(f) Contract Administration Phase	\$ _____
(g) Post Construction Phase (if applicable)	\$ _____
(h) Reimbursable Expenses (Lump Sum)	\$ _____
TOTAL COMPENSATION	\$ _____

3.1.2 Payments to the Architect/Engineer shall be made monthly based upon Architect/Engineer's performance and progress, through a properly executed Application for Payment (SC-7.1). 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 the Applications for Payment.

3.2 ADDITIONAL COMPENSATION

3.2.1 The Scope of Services to be provided pursuant to this Agreement includes all architectural and engineering services described herein, all services to be provided by the Architect/Engineer as described in **Exhibit A**, Architect/Engineer's Proposal including items which under usual contracting for Architectural/Engineering services could be considered as additional services, and reimbursable items excepting those specifically identified in Article 5 of this Agreement to be reimbursed. All compensation set forth in Article 3.1 hereof shall fully compensate the Architect/Engineer and there shall be no further reimbursement or payment therefore, other than for Additional Services as hereinafter described. For purposes of this Agreement, Additional Services are defined as those not included within the Scope of Services as set forth in Article 3.1 or reasonably inferable therein, are not consistent with the approved Project program, and are specifically requested and approved in writing by the Principal Representative.

3.2.2 Subject to the provisions of paragraphs 6.5.1 and 6.5.2, if the Architect/Engineer is caused Additional Service, drafting or other expense due to changes ordered by the Principal Representative or by other circumstances beyond the Architect/Engineer's control and not

occasioned by any neglect or default of Architect/Engineer, then the Architect/Engineer shall be reimbursed for such Additional Service.

3.2.3 Direct personnel expense is defined as the direct salaries of all the Architect/Engineer's personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

3.2.4 The cost of such Additional Service including Principal Architect/Engineer's time, shall be paid at the agreed upon rates shown in the attached Wage Rate Schedule, **Exhibit B**.

3.2.5 For Additional Services of consultants, including associate Architect/Engineer, structural, mechanical, electrical and civil engineering services, the multiple 1.15 times the amounts billed to the Architect/Engineer for such services.

3.2.6 In addition, the Architect/Engineer shall also be reimbursed as described in Article 2.1 and paid as detailed in paragraph 3.2.2 related to the Additional Services.

3.2.7 The Architect/Engineer shall maintain an accurate cost accounting system as to all such additional expenses and shall make available to the Principal Representative all records, canceled checks and other disbursement media to substantiate any and all requests for payments hereunder.

3.2.8 The expenditures under this provision shall be disapproved unless the Architect/Engineer first shall have filed with the Principal Representative an estimate of the maximum cost of such Additional Service and been authorized, in writing, by the Principal Representative to proceed. If such an estimate is filed with the Principal Representative, then payment shall not exceed the maximum cost estimated by the Architect/Engineer and approved by the Principal Representative.

3.2.9 Payment for such Additional Services shall be monthly upon presentation of the Architect/Engineer's statement of services rendered.

3.3 PAYMENTS WITHHELD

3.3.1 No deductions shall be made from the Architect/Engineer's fee on account of penalty, liquidated damages, or other sums withheld from payments to the Construction Manager or on account of changes in Construction other than those for which the Architect/Engineer is held legally liable.

3.4 ARCHITECT/ENGINEER'S ACCOUNTING RECORDS

3.4.1 Records of the Architect/Engineer's Direct Personnel, Consultant, and Reimbursable Expense pertaining to this Project and records of accounts between the Principal Representative and Construction Manager shall be kept on a generally recognized accounting basis and shall be available to the Principal Representative or his authorized representative at mutually convenient times and extending to three (3) years after final payment under this Agreement.

3.5 CONDITION PRECEDENT

3.5.1 (At the time of the execution of this Agreement, there are sufficient funds budgeted and appropriated to compensate the Architect/Engineer only for performance of the services through and including XX. Therefore, it shall be a Condition Precedent to the Architect/Engineer's performance of the remaining services specified in XX and the State's Liability to pay for such performance, sufficient funding must be appropriated and made available to the Principal Representative for the Project prior to XX and, as a further Condition Precedent, a written Amendment 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 XX, the Architect/Engineer's obligation to perform services for (scope of work) XX and the State's obligation to pay for such service is discharged without liability to each other. If funding is eventually made available after XX, the Architect/Engineer has no right to perform services under XX (article referencing scope of work) of this Agreement and the State has no right to require the Architect/Engineer to perform the said services.)

ARTICLE 4. TIME

4.1 DESIGN SERVICES SCHEDULE

4.1.1 The Architect/Engineer shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect/Engineer shall submit for the Principal Representative's approval, a schedule (Design Services Schedule), **Exhibit A**, for the performance of the Architect/Engineer's services which may be adjusted as required as the Project proceeds, and which shall include allowances for periods of time required for the Principal Representative's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. The Architect/Engineer shall consult with the Construction Manager to coordinate the Architect/Engineer's time schedule with the Project Schedule. This schedule, when approved by the Principal Representative, shall not, except for reasonable cause, be exceeded by the Architect/Engineer.

4.2 TERM

4.2.1 The term of this Agreement will end upon expiration of the one (1) year warranty period, or upon subsequent completion and acceptance by the Principal Representative of the Warranty Work identified or in progress at the end of such one (1) year warranty period, following the date of the Notice of Acceptance for the last remaining portion of work.

ARTICLE 5. PRINCIPAL REPRESENTATIVE

5.1 THE RESPONSIBILITIES

5.1.1 The Principal Representative shall provide full information regarding requirements for the Project through the State Buildings Program delegate, including assisting in developing a completed Design Program/Facilities Program Plan, **Exhibit E**, which shall set forth the State's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements. If a State Buildings Program delegate has not been authorized, then the Principal

Representative together with State Buildings Program will designate an individual to act on behalf of the Principal Representative as designated in Article 12.10.

5.1.2 The Principal Representative shall establish the Fixed Limit of Construction Cost.

5.1.3 The Principal Representative shall designate a representative authorized to act in the Principal Representative's behalf with respect to the Project as indicated in Article 12.10. The Principal Representative, acting by and through such designated representative shall examine the documents submitted by the Architect/Engineer and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Architect/Engineer's services.

5.1.4 The Principal Representative shall retain a Construction Manager to manage and construct the Project. The Construction Manager's services, duties and responsibilities will be as described in the Construction Manager Contract. Once executed, the terms and conditions of the Construction Manager Contract will not be modified without notification to the Architect/Engineer.

5.1.5 The Principal Representative shall furnish a legal description and a certified land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning location of service and utility lines, both public and private, above and below grade, including inverts and depths.

5.1.6 The Principal Representative shall furnish the services of geotechnical engineers or other technical or highly specialized consultants when such services are deemed necessary by mutual agreement between the Principal Representative and the Architect/Engineer. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests including necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional recommendations.

5.1.7 The services, information, surveys and reports as required and described in the preceding paragraphs 5.1.1 through 5.1.6, shall be furnished at the Principal Representative's expense, and the Architect/Engineer shall be entitled to rely upon their accuracy and completeness.

5.1.8 The Principal Representative shall furnish such legal, accounting and insurance counseling services as may be necessary for the Project, including such auditing services as the Principal Representative may require to verify the Project Applications for Payment or to ascertain how or for what purposes the Construction Manager has used the monies paid by or on behalf of the Principal Representative. This shall not relieve the Architect/Engineer of reviewing the Construction Manager's Application for Payment for consistency with the current Schedule of Values.

5.1.9 If the Principal Representative observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Principal Representative to the Architect/Engineer.

5.1.10 The Architect/Engineer recognizes that the Principal Representative is a governmental body with certain procedural requirements to be satisfied. The Architect/Engineer has and will make reasonable allowance in its performance of services for such additional time as may be required for approvals and decisions by the Principal Representative and any other necessary government agency. Such time shall be identified in the preliminary project schedule including, without limitation, time for the State's Code Review consultants.

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

- .1 A period of ____ (____) working days for the review of the Design Development Documents plus an additional ____ (____) working days for final development of the Guaranteed Maximum Price.
- .2 A period of ____ (____) working days at 50% and 95% completion of the construction documents together with an additional ____ (____) working days after receipt of all bid documents for each bid package.

ARTICLE 6. CONSTRUCTION COSTS

6.1 BUDGETING AND FIXED LIMIT OF CONSTRUCTION COST

6.1.1 The Principal Representative shall provide a preliminary Project Budget to the Architect/Engineer which shall set forth a dollar amount available for the total Construction Cost of the Project, and include contingencies for bidding and construction and other costs which are the responsibility of the Principal Representative. The Architect/Engineer shall assist the Construction Manager in evaluating the Principal Representative's preliminary project budget.

6.1.2 A Fixed Limit of Construction Cost for the Project shall be established by the Principal Representative incorporating the portion of the Project Budget for construction of all elements of the Project designed or specified by the Architect/Engineer. The Fixed Limit of Construction Cost for the Project shall be subject to change only by the determination, in writing, of the Principal Representative.

6.2 CONSTRUCTION COST

6.2.1 When preparing any Estimates of Construction Cost or Statement of Probable Construction Cost, such documents shall include, but without duplication:

- .1 All labor, materials, equipment, tools, construction equipment and machinery, water and heat utilities, transportation, construction easements, and other facilities and services necessary for the proper execution and completion of the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Project;
- .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 State furnished equipment which has been designed, specified, selected or specifically provided for by the Architect/Engineer;

- .4 The Construction Manager's compensation for on-site personnel services and the cost of work provided by the Construction Manager;
- .5 All bond and property insurance premiums; and
- .6 Contingencies for bidding, price escalation, and construction as set forth above.

6.2.2 The Statement of Probable Construction Cost shall not include the compensation of the Architect/Engineer, the Architect/Engineer's consultants or any other sums due the Architect/Engineer under this Agreement, the costs of land, rights of way, financing or other costs which are the responsibility of the Principal Representative, or equipment installed by the Principal Representative under separate contract unless the Architect/Engineer is required by the Principal Representative to prepare drawings and specifications and observe the installation of such equipment.

6.3 CONSTRUCTION MANAGER COST ESTIMATES

6.3.1 By the terms of the Construction Manager Contract, the Construction Manager is obligated to prepare and furnish to the Principal Representative and the Architect/Engineer, Estimates of Construction Cost for the construction, and a Guaranteed Maximum Price proposal. 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, components systems and types of construction are to be included in the Contract Documents, to recommend reasonable adjustments in the scope of the construction, and to include in the Contract Documents reasonable alternate items for bid so as to permit the adjustment of the Estimate of Construction Cost to the Fixed Limit of Construction Cost.

6.3.2 The Architect/Engineer shall provide reasonable cooperation to the Construction Manager in the development of Estimates of Construction Cost and the Guaranteed Maximum Price.

6.3.3 The Architect/Engineer shall promptly review the Estimate of Construction Cost and the Guaranteed Maximum Price proposal prepared and submitted by the Construction Manager, and advise the Principal Representative as to whether the Architect/Engineer concurs with each such estimate and the Guaranteed Maximum Price proposal and, if not, the reasons and details of where the Architect/Engineer disagrees.

6.4 ARCHITECT/ENGINEER COST ESTIMATES

6.4.1 The Architect/Engineer, as a design professional familiar with the construction industry, in addition to the Estimates of Construction Cost for the Project and Guaranteed Maximum Price proposal as developed by the Construction Manager, shall develop with the Schematic Design Phase its own Statement(s) of Probable Construction Cost.

6.5 FIXED LIMIT OF CONSTRUCTION COST EXCEEDED

6.5.1 It is recognized that neither the Architect/Engineer nor the Principal Representative has control over the cost of labor, materials or equipment, over the subcontractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect/Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the project budget or the Fixed Limit

of Construction Cost. Nothing contained in this Article 6 shall otherwise relieve the Architect/Engineer from the responsibility of providing the services required to keep the Project within the Fixed Limit of Construction Cost for the Project. Responsibility for developing the final Statement of Probable Construction Cost and Estimate of Construction Cost, specifically the identification and resolution of all significant differences between the Statement and the Estimate, is a shared responsibility between the Architect/Engineer and the Construction Manager. Should disagreement or confusion involving overlapping or conflicting responsibilities or disagreement as to the Construction Manager's Estimate or Architect/Engineer's Statement of Probable Construction Cost arise, the question shall be submitted and the correct interpretation shall be determined by the Principal Representative consistent with paragraph 1.1.2 and the requirements of this Article 6.

6.5.2 If the Fixed Limit of Construction Cost for the Project, as established by the Principal Representative, is exceeded or projected to be exceeded by:

- .1 The lowest figures from responsible proposals, if any, and the Construction Manager's estimate for other elements of the Project; and/or the Architect/Engineer's Statement of Probable Construction Cost for the balance of the Project; or
- .2 The Construction Manager's Guaranteed Maximum Price proposal; then, in either event, the Principal Representative shall, in its sole discretion, do one of the following:
 - .a revise the Project scope and quality as required to reduce the Construction Cost.
 - .b give written approval for the increase in the Fixed Limit of Construction Cost for the Project;
 - .c authorize rebidding or renegotiation of the Project or portions of the Project within a reasonable time;
 - .d abandon the Project, terminating this Agreement in accordance with Article 9; or

6.5.3 In the case of clause .a in the preceding paragraph, the Architect/Engineer shall, at no additional cost to the State, modify the drawings and specifications for any or all of the separate Bid Packages and/or any other appropriate items as may be necessary, to keep the cost of the Project within the Fixed Limit of Construction for the Project, UNLESS: (1) such increase is specifically attributable to a scope increase in the Project requested by the Principal Representative; or (2) the projected cost overrun occurs within the scope of an Estimate of Construction Cost or Guaranteed Maximum Price proposal furnished by the Construction Manager to the Architect/Engineer and upon which the Architect/Engineer promptly communicated in writing to the Principal Representative the Architect/Engineer's refusal to concur, together with the reasons and details therefore.

ARTICLE 7. OWNERSHIP OF DOCUMENTS

7.1 INSTRUMENTS OF SERVICE

7.1.1 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.

7.1.2 Upon execution of this Agreement, 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. The Architect/Engineer shall obtain similar nonexclusive licenses from the Architect/Engineer's consultants consistent with this Agreement. If and upon the date the Architect/Engineer is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the State to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for the purposes of completing, using and maintaining the project, or for future alterations, or additions to the Project.

7.1.3 Any unilateral use by the State of the Instruments of Service for completing, using, maintaining, adding to or altering the Project or facilities shall be at the State's sole risk and without liability to the Architect/Engineer and the Architect/Engineer's consultants; provided, however, that if the State's unilateral use occurs for completing, using or maintaining the Project as a result of the Architect/Engineer's breach of this Agreement, nothing in this Article shall be deemed to relieve the Architect/Engineer of liability for its own acts or omissions or breach of this Agreement.

7.2 AS-BUILT DRAWINGS/RECORD DRAWINGS

7.2.1 The Architect/Engineer and its consultants shall, upon completion of the Construction Phase, receive redline As-Built Drawings from the Construction Manager. These redline changes shall describe the built condition of the Project. This information and all of the incorporated changes directed by Bidding Addenda, Change Order/Amendment or Architect/Engineer's Supplementary Instructions shall be incorporated by the Architect/Engineer and its consultants into a Record Drawings document provided to the Principal Representative in the form of an electro-media format and a reproducible format as agreed between the parties. The Architect/Engineer shall also provide the Principal Representative with the As-Built Drawings as received from the Construction Manager.

ARTICLE 8. INSURANCE – Reference Exhibit G

~~8.1 GENERAL~~

~~The Architect/Engineer 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 Architect/Engineer 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".~~

~~8.2 COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)~~

~~This insurance must protect the Architect/Engineer 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 Architect/Engineer or by any Subcontractor under him or anyone directly or indirectly employed by the Architect/Engineer 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	\$1,000,000
Products — Completed Operations Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
Personal Injury	\$1,000,000

~~The following coverages shall be included in the CGL:~~

- ~~1. Additional Insured status in favor of the State of Colorado.~~
- ~~2. The policy shall be endorsed to be **primary and non-contributory** with any insurance maintained by Additional Insureds.~~
- ~~3. A waiver of Subrogation in favor of all Additional Insured parties.~~

~~8.3 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~~

~~Coverages: Specific waiver of subrogation~~

~~8.4 WORKERS' COMPENSATION INSURANCE~~

~~The Architect/Engineer 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 Architect/Engineer 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 Architect/Engineer 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 Architect/Engineer shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.~~

~~8.5 PROFESSIONAL ERRORS AND OMISSIONS LIABILITY~~

~~The Architect/Engineer promises and agrees to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts (indicated in the following table) as minimum coverage or such other minimum coverage as determined by the Principal Representative and approved by the State Buildings Program. The policy, including claims-~~

~~made forms, shall remain in effect for the duration of this Agreement and for at least three (3) years beyond the completion and acceptance of the Work. The Architect/Engineer shall be responsible for all claims, damages, losses or expenses including attorney's fees, arising out of or resulting from the performance of Professional Services contemplated in this Agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Architect/Engineer, any consultant or associate thereof, or anyone directly or indirectly employed by the Architect/Engineer. The Architect/Engineer shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of Renewals of the said policy as they occur.~~

For a Fixed Limit of Construction Cost	Minimum Coverage per Claim	Minimum Coverage in the Aggregate
\$999,999 and under	\$250,000	\$500,000
\$1,000,000 to \$4,999,999	\$500,000	\$1,000,000
\$5,000,000 to \$19,999,999	\$1,000,000	\$2,000,000
\$20,000,000 and Above	\$2,000,000	\$2,000,000

ARTICLE 9. TERMINATION OR SUSPENSION OF AGREEMENT

9.1 DEFAULT

9.1.1 This Agreement may be terminated by either party upon seven (7) days written notice with copies filed with the State Buildings Program and the State Controller, should the other party fail substantially to perform in accordance with its terms through no fault of the other.

9.2 TERMINATION FOR CONVENIENCE OF STATE

9.2.1 The performance of the services under this Agreement may be terminated, in whole or from time to time in part, by the State whenever for any reason the Principal Representative shall determine that such termination is in the best interest of the State. Termination of services hereunder shall be affected by delivery to the Architect/Engineer of a Notice of Termination specifying the extent to which performance of services under this Agreement is terminated and the date upon which such termination becomes effective.

9.2.2 After receipt of the Notice of Termination, the Architect/Engineer shall exercise all reasonable diligence to accomplish the cancellation 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 services terminated by the Notice. With respect to such canceled commitments, the Architect/Engineer agrees to:

- .1 Settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with approval or ratification of the Principal Representative, to the extent the Principal Representative may require, which approval or ratification shall be final for all purposes of this clause, and,
- .2 Assign to the State, in like manner, at the time and to the extent directed by the Principal Representative, all of the rights, title, and interest of the Architect/Engineer under the orders and subcontracts so terminated, in which case the State 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.

9.2.3 The Architect/Engineer 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 Architect/Engineer within such one (1) month period or authorized extension thereof. Upon failure of the Architect/Engineer to submit its termination claim within the time allowed, the Principal Representative may determine, on the basis of information available to him, the amount, if any, due to the Architect/Engineer by reason of the termination and shall thereupon pay to the Architect/Engineer the amount so determined.

9.2.4 Subject to the provisions of paragraph 9.2.3 above, the Architect/Engineer and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to the Architect/Engineer by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Architect/Engineer and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel. Any such agreement shall be embodied in an amendment to this Agreement and the Architect/Engineer shall be paid the agreed amount.

9.2.5 The Principal Representative under mutually agreed upon terms and conditions will make partial payments to the Architect/Engineer against costs incurred by the Architect/Engineer in connection with the termination portion of this Agreement.

9.2.6 The Architect/Engineer agrees to transfer title and deliver to the State, 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 State, including:

- .1 Completed or partially completed plans, drawings, and information; and
- .2 Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of this Agreement may, with written approval of the Principal Representative, be sold or acquired by the Architect/Engineer 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 State to the Architect/Engineer under this Agreement or shall otherwise be credited to the price of services 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 Architect/Engineer 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 Architect/Engineer and in which the State has or may acquire an interest.

9.3 SUSPENSION

9.3.1 In the event of an occurrence of non-appropriation, including without limitation restriction, limitation, delay or retraction of appropriation, the Principal Representative may, upon the giving of seven (7) days written notice, suspend the performance of the Architect/Engineer after which the Architect/Engineer shall perform no further work and shall be due no further fees, reimbursable costs or other compensation until the Principal Representative gives notice that the

period of suspension has ended. Suspension of services may be in whole or in part, as specified by the Principal Representative.

9.3.2 If the Project is suspended in whole or in part for more than three (3) months for cause not attributable to the Architect/Engineer's services, the Architect/Engineer shall be compensated for all services performed prior to receipt of written notice from the Principal Representative of such suspension or abandonment, together with reimbursable expenses then due and all termination expenses as defined in Article 9.2. If the Project is resumed after being suspended for more than six (6) months, the Architect/Engineer's compensation shall be equitably adjusted.

ARTICLE 10. INTENT OF DOCUMENTS, PARTNERING AND FACILITATED NEGOTIATIONS

10.1 INTENT OF DOCUMENTS

10.1.1 In the event any disagreement exists as to the requirements of this Agreement and its exhibits, or if a conflict occurs between or within the requirements of this Agreement and its exhibits, the following order of precedence shall be followed to resolve the disagreement or conflict.

- .1 The Special Provisions, Article 11 of this Agreement (State Form SC-5.1);
- .2 Any Amendment of this Agreement;
- .3 All other terms of this Agreement (other than the Special Provisions); and
- .4 The Architect/Engineer's proposal letter.

The Special Provisions of this Agreement, Article 11, shall in all cases, and without exception, take precedence, rule and control over all other provisions of this Agreement, any exhibits or amendments.

10.2 PARTNERING

10.2.1 In recognition of the fact that conflicts, disagreements and disputes often arise during the performance of contracts, the Architect/Engineer and the Principal Representative aspire to encourage a relationship of open communication and cooperation between the employees and personnel of both, in which the objectives of the Agreement may be better achieved and issues resolved in a more fully informed atmosphere.

10.2.2 The Architect/Engineer and the Principal Representative each agree to assign an individual who shall be fully authorized to negotiate and implement a voluntary partnering plan for the purpose of facilitating open communications between them. Within thirty days (30) of contract signing, the assigned individuals shall meet to discuss development of an informal agreement to accomplish these goals.

10.2.3 The assigned individuals shall endeavor to reach an informal agreement, but shall have no such obligation. Any plans these parties voluntarily agree to implement shall result in no change to the contract amount, and no costs associated with such plan or its development shall be recoverable under any contract clause. In addition, no plan developed to facilitate open communication and cooperation shall alter, amend or waive any of the rights or duties of either party under the Agreement unless and except by written Amendment to the Agreement, nor shall anything in this clause or any subsequently developed partnering plan be deemed to create fiduciary duties between the parties unless expressly agreed in a written Amendment to the Agreement.

10.3 FACILITATED NEGOTIATIONS

10.3.1 The Architect/Engineer and Principal Representative agree to designate one or more mutually acceptable persons willing and able to facilitate negotiations and communications for the resolution of conflicts, disagreements or disputes between them at the specific request of either party with regard to any Project decision of either of them. The designation of such person(s) shall not carry any obligation to use their services except that each party agrees that if the other party requests the intervention of such person(s) with respect to any such conflict, dispute or disagreement, the non-requesting party shall participate in good faith attempts to negotiate a resolution of the issue in dispute. If the parties cannot agree on a mutually acceptable person to serve in this capacity one shall be so appointed; provided, however, that either party may request the Office of the State Architect to appoint such a person, who, if appointed, shall be accepted for this purpose by both the Architect/Engineer and the Principal Representative.

10.3.2 The cost, if any, of the facilitative services of the person(s) so designated shall be shared if the parties so agree in any partnering plan; or in the absence of agreement the cost shall be borne by the party requesting the facilitation of negotiation.

10.3.3 Any dispute, claim, question or disagreement arising from or relating to the Agreement or an alleged breach of the Agreement may be subject to a request by either party for facilitated negotiation subject to the limitations hereafter listed, and the parties shall participate by consultation and negotiation with each other, as guided by the facilitator and with recognition of their mutual interests, in an attempt to reach an equitable solution satisfactory to both parties.

10.3.4 The obligation to participate in facilitated negotiations shall be as described above and each party's obligations shall be as follows:

- .1 a party shall not initiate communication with the facilitator regarding the issues in dispute; except that any request for facilitation shall be made in writing with copies sent, faxed or delivered to the other party;
- .2 a party shall prepare a brief written description of its position if so requested by the facilitator (who may elect to first discuss the parties' positions with each party separately in the interest of time and expense);
- .3 a party shall respond to any reasonable request for copies of documents requested by the facilitator, but such requests, if voluminous, may consist of an offer to allow the facilitator access to the parties' documents;
- .4 a party shall review any meeting agenda proposed by a facilitator and endeavor to be informed on the subjects to be discussed;
- .5 a party shall meet with the other party and the facilitator at a mutually acceptable place and time, or, if none can be agreed to, at the time and place designated by the facilitator for a period not to exceed four hours unless the parties agree to a longer period;
- .6 a party shall endeavor to assure that any facilitation meeting shall be attended by any other persons in their employ that the facilitator requests be present, if reasonably available;
- .7 each party shall participate in such facilitated face-to-face negotiations of the issues in dispute through persons fully authorized to resolve the issue in dispute;
- .8 each party shall be obligated to participate in negotiations requested by the other party and to perform the specific obligations described in paragraphs (1) through

(10) of this Article 10, Facilitated Negotiation, no more than three times during the course of the Project;

.9 neither party shall be under any obligation to resolve any issue by facilitated negotiation, but each agrees to participate in good faith and any resolution or agreement reached shall be execute through a Supplement or Amendment to the Agreement necessary to implement their agreement; and,

.10 any discussions and documents prepared exclusively for use in the negotiations shall be deemed to be matters pertaining to settlement negotiations and shall not be subsequently available in further proceedings except to the extent of any documented agreement.

10.3.5 In accordance with State Fiscal Rules and Article 52F, Choice of Law and Article 52G Binding Arbitration Prohibited, nothing in this Article 10 shall be deemed to call for arbitration or otherwise obligate the State to participate in any form of binding alternative dispute resolution.

10.3.6 A partnering plan developed as described in Article 10.2, Partnering, may modify or expand the requirements of this Article 10 but may not reduce the obligation to participate in facilitated negotiations when applicable. In the case of small design service projects where the fees are estimated to be valued under \$100,000, the requirements of this Article 10 may be deleted from this Agreement.

ARTICLE 11. SPECIAL PROVISIONS

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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.

11.7 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.

11.8 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.

11.9 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.

11.10 VENDOR OFFSET AND ERRONEOUS PAYMENTS, C.R.S. § 24-30-202(1) & 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.

11.11 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.

11.12 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.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.1 PROFESSIONAL ASSOCIATION PERMITTED

The Architect/Engineer may, with the prior written consent of the Principal Representative, join with him in the performance of this Agreement any other duly licensed Architect or Architects or registered Engineers with whom he may, in good faith, and enter into an association.

12.2 DISSOLUTION OF PROFESSIONAL ASSOCIATION

In the event there is dissolution of the association, other than by death of a member, the State of Colorado, acting by and through the Principal Representative, shall designate which former member shall continue with the work and may make all payments thereafter falling due in connection with the work directly to the person or persons so designated and without being required to look to the application of such payments as among the former members.

12.3 DEATH OR DISABILITY

In the event of the death of one member of an association, the surviving member or members of the association, as an association, shall succeed to the rights and obligations of the original association hereunder. In the event of the death or disability of a sole Architect/Engineer, which shall prevent his performance of this Agreement after the same shall have been commenced by him, such Architect/Engineer, in the event of his disability, or his executors or administrators, in the event of his death, shall be paid such sums as may be due the Architect/Engineer under this Agreement. In such event all drawings, specifications and models theretofore prepared by the Architect/Engineer shall be delivered to and become the property of the State of Colorado, with full authority to use, employ, or modify the same in the construction of the contemplated building, either at the same site or at some other site.

12.4 SUCCESSORS AND ASSIGNS

Except as otherwise provided for herein, Architect/Engineer's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts or sub-consultants approved by Architect/Engineer or the State are subject to all of the provisions hereof. Architect/Engineer shall be solely responsible for all aspects of subcontracting arrangements and performance.

12.5 WAGE RATES, in accordance with C.R.S. § 24-30-1404 (1)

As amended, the Architect/Engineer has executed a schedule, which is attached hereto and made a part hereof by reference as **Exhibit B**, Wage Rates Schedule, and in doing so is certifying that wage rates and other factual unit costs supporting the compensation paid by the State for these professional services are accurate, complete and current.

The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Principal Representative determines the contract price had been increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of this contract.

12.6 CONTINGENT FEE PROHIBITION, in accordance with C.R.S. § 24-30-1404 (4)

As amended, the Architect/Engineer warrants that he has not employed or retained any company or person other than a bona fide employee working solely for him, to solicit or secure this contract, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of this contract.

For breach or violation of this warranty, the Principal Representative shall have the right to terminate this contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, or consideration.

12.7 COPYRIGHT/PATENT VIOLATION LIABILITY

The Architect/Engineer shall pay all license fees for the use of any copyright and shall be responsible for and hold the State of Colorado harmless from and against all losses from copyright infringement contained in the Contract Documents or in the product resulting from the Architect/Engineer's instruments of service, in accordance with paragraph 12.18, Indemnification. The Architect/Engineer shall also be responsible for and hold the State of Colorado harmless from and against all losses from patent infringement based on specified processes contained in the Contract Documents, in accordance with paragraph section 12.18, Indemnification, unless the existence of patents on such processes are brought to the attention of the Principal Representative and the Architect/Engineer. On request of the Principal Representative the Architect/Engineer shall defend against any such suits or claims of copyright or patent infringement.

12.8 EXTENT OF AGREEMENT

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

Principal Representative and Architect/Engineer understand and agree the attachments and exhibits hereto are and shall be integral parts of this Agreement and the terms and provisions thereof are hereby incorporated, made a part of and shall supplement those recited herein. In the event of any conflict, or variance, the terms and provisions of this printed Agreement shall supersede, govern and control.

12.9 PUBLIC ART LAW, in recognition of the Public Art Law, C.R.S. § 24-48.5-312 as amended, if the State determines that this project is eligible for the acquisition of artworks in accordance with this law, the Architect/Engineer agrees to participate in the art selection process as an art jury member and to cooperate with and to advise the State in working with the commissioned artist(s) for this Capital Construction Project.

12.10 DESIGNATED REPRESENTATIVES, The Principal Representative and the Architect/Engineer authorize the following individuals to act on their behalf as Designated Representatives and points of contact as described in paragraphs 1.2.4 and 3.1.3.

For the Principal Representative:

Kent Marsh, P.E.
Campus Services Building
1420 Austin Bluffs Pkwy.
Colorado Springs, CO 80918

For the Architect/Engineer:

XX

12.11 CONSTRUCTION OF LANGUAGE

The language used in this Agreement shall be construed as a whole according to its plain meaning, and not strictly for or against any party. Such construction shall, however, construe language to interpret the intent of the parties giving due consideration to the order of precedence noted in Article 1.6, Intent of Documents.

12.12 SEVERABILITY

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

12.13 SECTION HEADINGS

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

12.14 NO THIRD PARTY BENEFICIARIES

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

12.15 WAIVER

Waiver of any breach under a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

12.16 INDEMNIFICATION

To the extent authorized by law, the Architect/Engineer 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, or breach of contract by, the Architect/Engineer, its employees, agents, sub-consultants 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 Architect/Engineers or assignees, or other parties not under the control of or responsible to the Architect/Engineer.

12.17 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.

12.18 BINDING EFFECT

Except as otherwise provided in 11.4, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

12.19 COUNTERPARTS

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

12.20 MODIFICATION

By the Parties, except as specifically provided in this Agreement, modifications hereof shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with the Office of the State Architect.

By Operation of Law, This Agreement is subject to such modifications as may be required by changes in federal or Colorado state law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

12.21 SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Architect/Engineer fails to perform or comply as required.

12.22 TAXES

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under C.R.S. § 39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions may require payment of sales or use taxes even though the product or service is provided to the State. Architect/Engineer shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Architect/Engineer for such taxes.

12.23 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 Architect/Engineer hereby swear and affirm that they are authorized to act on Architect/Engineer’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.**

Project Name/Number: _____
Contract ID No.: N/A

THE ARCHITECT/ENGINEER

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

Legal Name of Contracting Entity

By: _____
Kent Marsh, P.E., Principal Representative

Date: _____

*Signature

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

By _____
Name (print) Title

By: _____
Carolyn Fox, RA, Delegee

Date: _____

Date: _____

APPROVED
DEPARTMENT OF LAW
ATTORNEY GENERAL (or authorized Delegate)

By: _____
Jennifer George or Tia Luber, Legal Counsel

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. Architect/Engineer is not authorized to begin performance until such time. If Architect/Engineer begins performing prior thereto, the State of Colorado is not obligated to pay Architect/Engineer 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: _____
Carolyn Rupp, Delegee

Date: _____

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

**ARCHITECT/ENGINEER AGREEMENT
CONSTRUCTION MANAGER/ GENERAL CONTRACTOR
(STATE FORM SC-5.2)**

EXHIBIT A

ARCHITECT/ENGINEER PROPOSAL
(including Design Services Schedule and Certificates of Insurance, attached)

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

**ARCHITECT/ENGINEER AGREEMENT
CONSTRUCTION MANAGER/GENERAL CONTRACTOR
(STATE FORM SC-5.2)**

EXHIBIT B

WAGE RATES SCHEDULE
(attached)

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

**ARCHITECT/ENGINEER AGREEMENT
CONSTRUCTION MANAGER/GENERAL CONTRACTOR
(STATE FORM SC-5.2)**

EXHIBIT C

APPROVED STATE BUILDING CODES

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

**ARCHITECT/ENGINEER AGREEMENT
CONSTRUCTION MANAGER/GENERAL CONTRACTOR
(STATE FORM SC-5.2)**

EXHIBIT D

CODE COMPLIANCE PLAN REVIEW PROCEDURES

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

**ARCHITECT/ENGINEER AGREEMENT
CONSTRUCTION MANAGER/ GENERAL CONTRACTOR
(STATE FORM SC-5.2)**

EXHIBIT E

DESIGN REQUIREMENTS/FACILITIES PROGRAM PLAN/SUSTAINABILITY GOALS
(attached, as applicable)

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

**ARCHITECT/ENGINEER AGREEMENT
CONSTRUCTION MANAGER/ GENERAL CONTRACTOR
(STATE FORM SC-5.2)**

EXHIBIT F

CERTIFICATION AND AFFIDAVIT REGARDING UNAUTHORIZED IMMIGRANTS (State Form UI - 1), (required at contract signing prior to commencing work)

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

**ARCHITECT/ENGINEER AGREEMENT
CONSTRUCTION MANAGER/ GENERAL CONTRACTOR
(STATE FORM SC-5.2)**

EXHIBIT G

University Insurance Requirements – B

INSURANCE REQUIREMENTS (B)

This insert applies to the following State Contracts:

**Architect/Engineer Agreement (SC-5.0),
Design/Bid/Build Terms & Conditions (SC-5.1-TC), or
Architect/Engineer Construction Manager/General Contractor CM/GC (SC-5.2), or
Consultant Agreement (SC-5.3).**

For purposes of this supplement “Contractor” as used herein shall mean, as appropriate to the State Contract form being used, Architect/Engineer, or Consultant.

The Contractor shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under which the Contract are satisfied, the insurance coverages set forth below.

By requiring such insurance, the Principal Representative shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor its agents, representatives, employees or sub-consultants under this contract. The insurance requirements herein for this Contract in no way limit the indemnity covenants contained in the Contract.

The Principal Representative in no way warrants that the limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

COVERAGES AND LIMITS OF INSURANCE - Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability** – Occurrence Form – ISO CG 0001 or equivalent.

Coverage to include:

- Premises and Operations
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs)
- Broad Form Property Damage

General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 2,000,000

Each Occurrence Limit	\$ 1,000,000
Personal/Advertising Injury	\$ 1,000,000

- a. The policy shall be endorsed to include the following additional insured language: **The Regents of the University of Colorado, a Body Corporate are named as Additional Insured** (ISO Form CG 2010, or equivalent). Further, all policies of insurance shall include a Separation of Insureds Clause (Cross Liability).

2. **Automobile Liability**

Bodily Injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this contract.

Bodily Injury/Property Damage (Each Accident)	\$ 1,000,000
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3. **Workers Compensation and Employers' Liability**

- Statutory Benefits (Coverage A)
- Employers Liability (Coverage B)

Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	
Each accident	\$ 100,000
Disease each employee	\$ 100,000
Disease policy limit	\$ 500,000

This requirement shall not apply when a contractor or subcontractor is exempt under Colorado Workers' Compensation Act, **AND** when such contractor or subcontractor executes the Sole Proprietor Waiver Letter.

4. **Professional Liability (Errors and Omissions) for Contractor**

(Applies to SC-5.3 if contract is for one of the following professional pre-design services such as; geotechnical investigation and reporting, environmental assessment or land surveying or for construction administrative services such as material testing, than the following Professional Errors and Omissions Liability Insurance coverage applies.)

- The Contractor shall maintain Errors and Omissions Liability covering negligent acts, errors and/or omissions, including design errors of the Contractor for damage sustained by reason of or in the course of operations under this Contract. The policy/coverages shall be amended to include the following:

Amendment of any Contractual Liability Exclusion to state: "This exclusion does not apply to any liability of others which you assume under a written contract provided such liability is caused by your negligent acts."

- In the event that any professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.
- Policy shall contain a waiver of subrogation against The Regents of the University of Colorado, a Body Corporate.

Wrongful Act \$2,000,000

General Aggregate \$2,000,000

ADDITIONAL INSURANCE REQUIREMENTS

1. All Insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis. Professional Liability is acceptable on a claims-made basis.
2. On insurance policies where the Principal Representative is named as an additional insured, the Principal Representative shall be an additional insured to the full limits of liability purchased by the Consultant even if those limits of liability are in excess of those required by this Contract.
3. The Contractor shall provide the Principal Representative a Certificate of Insurance Form evidencing all required coverages, prior to commencing work or entering Principal Representative Premises. Upon request by the Principal Representative, Contractor must provide a copy of the actual insurance policy effecting coverage(s) required by the contract.
4. The Consultant's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
5. **The Contractor shall advise the Principal Representative in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit.** At their own expense, the Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the Principal Representative a new certificate of insurance showing such coverage is in force.
6. Contractor's insurance carrier should possess a minimum A.M. Best's Insurance Guide rating of A- VI.
7. Provide a minimum of 30 days advance written notice to the Principal Representative for cancellation, non-renewal, or material changes to policies required under the contract.

Failure of the Contractor to fully comply with these requirements during the term of the Contract may be considered a material breach of contract and may be cause for immediate termination of the Contract at the option of the Principal Representative. The Principal Representative reserves the right to negotiate additional specific insurance requirements at the time of the contract award.

Non-Waiver

The parties hereto understand and agree that The Principal Representative is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, *et seq.*, as from time to time amended, or otherwise available to the Principal Representative or its officers, employees, agents, and volunteers.

Mutual Cooperation

The Principal Representative and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

Revised 7-21-11