

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



CONSULTANT AGREEMENT
(STATE FORM SC-5.3)

STATE AGENCY: University of Colorado Colorado Springs

DEPARTMENT ID: N/A

CONTRACT ID #: N/A

PROJECT #: Insert OSC Project Number

PROJECT NAME: Insert Project Name as provided by the State Controller's Office

VENDOR NAME: Insert Contractor's full Legal Name including "Inc.", "LLC" etc.

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

*Persons signing for Consultant hereby swear and affirm that they are authorized to act on Consultant'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 Number/Name: Insert OSC Project Number followed by Project Name
 CMS Contract ID No.: Insert CMS Number & Encumbrance Number

<p align="center">CONSULTANT* INSERT-Legal Name of Consultant</p> <hr style="width: 80%; margin: 10px auto;"/> <p align="center">By: Name & Title of Person Signing for Consultant</p> <p align="center">Date: _____</p>	<p align="center">STATE OF COLORADO University of Colorado Colorado Springs Carlos Garcia, Interim VCAF, Principal Rep</p> <hr style="width: 80%; margin: 10px auto;"/> <p align="center">By: Carlos Garcia, Interim VCAF, Principal Rep Date: _____</p>
<p align="center">DEPARTMENT OF PERSONNEL & ADMINISTRATION STATE BUILDINGS PROGRAM State Architect (or authorized delegate)</p> <hr style="width: 80%; margin: 10px auto;"/> <p align="center">By: Carolyn Fox, OSA Delegate</p> <p align="center">Date: _____</p>	
<p align="center">In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller (or an authorized delegate) or the Title of IHE CFO per the Fiscal Rules of the individual Institution of Higher Education</p> <p align="center">STATE CONTROLLER</p> <p align="center">By: _____ Carolyn Rupp, UCCS Campus Controller</p> <p align="center">Effective Date: _____</p>	

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

**CONSULTANT AGREEMENT
(STATE FORM SC-5.3)**

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

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 Insert Contractor's full Legal Name including "Inc.", "LLC" etc. having its offices at Street address, City, State and Zip Code hereinafter referred to as the Consultant.

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 bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Consultant for any Work performed or expense incurred before the Effective Date.

RECITALS:

WHEREAS, the Principal Representative intends to procure Insert Project Name as provided by the State Controller's Office 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 Insert Fund Number Here, Account Number Insert Account Number here; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, the Consultant was selected and determined to be the most qualified, and fees negotiated in accordance with the provisions of Section C.R.S. § 24-30-1401, as amended.

NOW THEREFORE, it is hereby agreed that

1 ARTICLE 1 SCOPE OF WORK

The Consultant, in consideration of State's promises hereinafter made, promises to perform and accomplish all the work and services proposed, and in accordance with the terms and conditions set forth in the scope of work description and proposal dated _____, which documents are attached hereto and made a part hereof by reference as **Exhibit A**, (including the Consultant's Services Schedule). Consultant shall undertake and perform the necessary work and services (as detailed in the Consultant's Services Schedule outlining the required time to perform such work and services and including Principal Representative review times) as is customarily done in the professional practice of Consulting in the community for undertakings of similar character, scope and magnitude.

2 ARTICLE 2 COMPENSATION

In consideration for the performance of the said work and services including a not-to-exceed price for Reimbursable Expenses if applicable, Principal Representative agrees to pay to Consultant fees and charges not to exceed Insert dollar value written in words Dollars (\$_____) as noted in Exhibit A. Payments to the Consultant shall be made monthly based upon Consultant'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 ARTICLE 3 REIMBURSABLE EXPENSE

Reimbursable expenses are in addition to the compensation for said work and services and include actual expenditures made by the consultant and its employees and consultants in the interest of the Project. Pay requests for reimbursable expense shall be submitted with receipts, statements, or other acceptable supporting data. The consultant understands and agrees that a certain dollar amount as enumerated in EXHIBIT A, Consultant's Proposal has been established as a maximum amount to be paid for all reimbursable expenses. 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.

4 ARTICLE 4 AGREEMENT EXPIRATION

Unless sooner terminated, this Agreement shall remain in effect until the work and services are completed and accepted by the Principal Representative.

5 ARTICLE 5 TERMINATION OF AGREEMENT

5.1 DEFAULT

Should the other party fail substantially to perform in accordance with its terms through no fault of the other, this Agreement may be terminated by either party upon thirty (30) days written notice with copies filed with the State Controller.

5.2 TERMINATION FOR CONVENIENCE OF STATE

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 Consultant 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.

After receipt of the Notice of Termination, the Consultant 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.

6 ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

Records of the Consultant's Direct Personnel, Consultant, and reimbursable Expense pertaining to this Agreement and records of accounts between the Principal Representative and Consultant shall be kept on a generally recognized accounting basis and shall be available to the Principal Representative at mutually convenient times and extending to three (3) years after final payment under this Agreement.

~~7 ARTICLE 7 INSURANCE~~

~~7.1 GENERAL~~

~~The Consultant 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 Consultant 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".~~

~~7.2 COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)~~

~~This insurance must protect the Consultant 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 Consultant or by any Subcontractor under them or anyone directly or indirectly employed by the Consultant 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:~~

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

~~7.3 AUTOMOBILE LIABILITY INSURANCE~~

~~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~~

~~7.4 WORKERS COMPENSATION INSURANCE~~

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

~~7.5 PROFESSIONAL ERRORS AND OMISSIONS LIABILITY~~

~~(If this 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 Consultant 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 years beyond the completion and acceptance of the Work. The Consultant 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 Consultant, any consultant or associate thereof, or anyone directly or indirectly employed by Architect/ Engineer. The Consultant shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of Renewals of 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

8 ARTICLE 8 COLORADO SPECIAL PROVISIONS

8.1 STATUTORY 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.

8.2 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.

8.3 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, §24-10-101, et seq., C.R.S.; 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.

8.4 INDEPENDENT CONTRACTOR

Consultant shall perform its duties hereunder as an independent Consultant and not as an employee. Neither Consultant nor any agent or employee of Consultant 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. **Consultant 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 Consultant or any of its agents or employees. Consultant shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Consultant shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

8.5 COMPLIANCE WITH LAW

Consultant 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.

8.6 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.

8.7 PROHIBITED TERMS

Any term included in this Contract that requires the State to indemnify or hold Consultant harmless; requires the State to agree to binding arbitration; limits Consultant's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any

way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109, C.R.S.

8.8 SOFTWARE PIRACY PROHIBITION. 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. Consultant hereby certifies and warrants that, during the term of this Contract and any extensions, Consultant has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Consultant 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.

8.9 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. Consultant has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Consultant services and Consultant shall not employ any person having such known interests.

8.10 VENDOR OFFSET AND ERRONEOUS PAYMENTS

C.R.S. § 24-30-202(1) & C.R.S. § 24-30-202.4

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

9 ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 PROFESSIONAL ASSOCIATION PERMITTED

The Consultant may, with the prior written consent of the Principal Representative, join with them in the performance of this Agreement any other duly licensed Consultant or Consultants as defined by §§24-30-1402, et seq., C.R.S. with whom they may, in good faith, enter into an association.

9.2 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.

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

As amended, the Consultant has executed a schedule, which is attached hereto and made a part hereof by reference as **Exhibit B**, Wage Rates Schedule, and by 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.

9.4 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 Consultant 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.

9.5 ASSIGNMENT

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

9.6 SUBCONTRACTS

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

9.7 BINDING EFFECT

Except as otherwise provided in §9.5, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

9.8 AUTHORITY

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

9.9 CAPTIONS AND REFERENCES

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

9.10 COUNTERPARTS

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

9.11 ENTIRE UNDERSTANDING

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

9.12 INTENT OF THE DOCUMENTS

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:

- a) The Supplementary General Conditions, if any;
- b) The Colorado Special Provisions, Article 8 of this Agreement;
- c) Any Amendment of this Agreement;
- d) All other terms of this Agreement (other than the Special Provisions); and
- e) The Consultant's proposal letter.

Unless Federal Provisions are Applicable, the Colorado Special Provisions of this Agreement, Article 8, shall in all cases, and without exception, take precedence, rule and control over all other provisions of this Agreement, any exhibits or amendments.

9.13 DIGITAL SIGNATURES

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

9.14 MODIFICATION

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

9.15 STATUTES, REGULATIONS, FISCAL RULES AND OTHER AUTHORITY

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

9.16 EXTERNAL TERMS AND CONDITIONS

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

9.17 SEVERABILITY

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

9.18 SURVIVAL AND CERTAIN CONTRACT TERMS

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

9.19 TAXES

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

9.20 THIRD PARTY BENEFICIARIES

Except for the Parties' respective successors and assigns described in § 9.5, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

9.21 WAIVER

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

9.22 CORA DISCLOSURE

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

9.23 STANDARD AND MANNER OF PERFORMANCE

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

9.24 LICENSES, PERMITS, AND OTHER AUTHORIZATIONS

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

9.25 INDEMNIFICATION

9.25.1 General Indemnification

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

9.25.2 Confidential Information Indemnification

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

9.25.3 Intellectual Property Indemnification

Consultant shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Consultant under this Contract (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Consultant's obligations hereunder shall not extend to the combination of any IP Deliverables provided by Consultant with any other product, system, or method, unless the other product, system, or method is (a) provided by Consultant or Consultant's subsidiaries or affiliates; (b) specified by Consultant to work with the IP Deliverables; (c) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (d) is reasonably expected to be used in combination with the IP Deliverables.

9.25.4 Accessibility Indemnification

Consultant shall indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Consultant's failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

9.26 ACCESSIBILITY

9.26.1 Consultant shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office Of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Consultant shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the

most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

- 9.26.2 The State may require Consultant's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

10 ARTICLE 13 CONFIDENTIAL INFORMATION-STATE RECORDS

10.1 CONFIDENTIALITY

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

10.2 OTHER ENTITY ACCESS AND NONDISCLOSURE AGREEMENTS

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

10.3 USE, SECURITY, AND RETENTION

Contractor shall use, hold, and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of

this Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

10.4 INCIDENT NOTICE AND REMEDIATION

If Contractor becomes aware of any Incident, Contractor shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

10.5 DATA PROTECTION AND HANDLING

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

10.6 SAFEGUARDING PERSONAL IDENTIFIABLE INFORMATION (PII)

If Contractor or any of its Subcontractors will or may receive Personal Identifiable Information (PII) under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, a certification as provided by the Office of the State Controller on an annual basis Contractor's duty and obligation to certify shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

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

**CONSULTANT AGREEMENT
(STATE FORM SC-5.3)**

EXHIBIT A: CONSULTANT PROPOSAL

**CONSULTANT PROPOSAL
(Including Insurance Certificate)**

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

**CONSULTANT AGREEMENT
(STATE FORM SC-5.3)**

EXHIBIT B: WAGE RATES SCHEDULE

WAGE RATES SCHEDULE

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

**CONSULTANT AGREEMENT
(STATE FORM SC-5.3)**

EXHIBIT C: BUILDING CODE COMPLIANCE POLICY

**BUILDING CODE COMPLIANCE POLICY: COORDINATION OF APPROVED BUILDING CODES, PLAN REVIEWS
AND BUILDING INSPECTIONS (as applicable)**

Refer to the Office of the State Architect State Buildings Building Codes Webpage *Code Compliance Policy* dated _____ and Exhibit A of the *Code Compliance Policy* dated _____ including the Amendment to Chapter 1 of the International Building Code.

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

**CONSULTANT AGREEMENT
(STATE FORM SC-5.3)**

SUPPLEMENTARY GENERAL CONDITIONS: FEDERAL PROVISIONS

Supplementary General Conditions Federal Provisions

SLFRF Federal Funds: Contractor Terms and Conditions Certification

SLFRF Federal Funds: Contractor Terms and Conditions

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

**CONSULTANT AGREEMENT
(STATE FORM SC-5.3)**

EXHIBIT D: UNIVERSITY INSURANCE REQUIREMENTS - B

INSURANCE REQUIREMENTS (B) for UCCS

This insert applies to the following State Contracts:
**Architect/Engineer Agreement, 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

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**

Estimated Project Construction Cost	Consultant Requirement
Less than \$1,000,000	\$500,000 Each Occurrence \$1,000,000 Aggregate
\$1,000,000 to \$19,999,999	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
Over \$20,000,000	\$2,000,000 Each Claim \$2,000,000 Annual Aggregate

- 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.

The below amounts apply 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.)

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 7-12-22