

STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
STATE BUILDINGS PROGRAM



DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)

STATE AGENCY:	<u>University of Colorado Colorado Springs</u>
DEPARTMENT ID:	<u>N/A</u>
CONTRACT ID #:	<u>N/A</u>
PROJECT #:	<u>Insert OSC Project Number</u>
PROJECT NAME:	<u>Insert Project Name as provided by the State Controller's Office</u>
VENDOR NAME:	<u>Insert Contractor's full Legal Name including "Inc.", "LLC" etc.</u>

Commented [SBP1]: Note to Drafters: Gray highlighted sections are fillable fields. To use those fields, use "protect document" to restrict editing to "filling in forms", then type in the appropriate field. If the document is unprotected, then typing in the field will delete that field and replace it with the text typed.

Commented [SBP2]: Note to Drafters: The project number must be the number provided by the State Controller's Office. Only if a project is internal to the agency or IHE may the project number be unique to the agency/IHE

Commented [SBP3]: Note to Drafters: The Project Name must be the name provided by the State Controller's Office. Only if a project is internal to the agency or IHE may the project name be unique to the agency/IHE

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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.

Project Number/Name: Insert OSC Project Number followed by Project Name
 Contract ID No.: Insert CMS Number & Encumbrance Number

<p align="center">CONTRACTOR*</p> <p align="center">INSERT-Legal Name of Contractor</p> <p>By: Name & Title of Person Signing for Contractor</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO</p> <p align="center">University of Colorado Colorado Springs Karl Spiecker, Interim VCAF, Principal Rep</p> <hr/> <p align="center">By: Karl Spiecker, Interim VCAF, Principal Rep</p> <p>Date: _____</p>
<p align="center">DEPARTMENT OF PERSONNEL & ADMINISTRATION</p> <p align="center">STATE BUILDINGS PROGRAM State Architect (or authorized delegate)</p> <hr/> <p align="center">By: Carolyn Fox, OSA Delegate</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW</p> <p>By: _____</p> <p align="center">Michael Pasque, UCCS Legal Delegate</p> <p>Date: _____</p>
<p>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>By: _____</p> <p align="center">Carolyn Rupp, UCCS Campus Controller</p> <p>Effective Date: _____</p>	

Commented [SBP4]: Note to Drafters: If this contract is for a University that is outside State Fiscal Rule, insert the name of your organization here

Commented [SBP5]: Note to Drafters: If this contract is for a university that is outside of State Fiscal Rule, insert the title of the individual who is allowed to financially obligate the university.

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

**DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)**

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 Design/Build Entity.

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 Design/Build Entity for any performance hereunder or be bound by any provision hereof prior to the Effective Date.

RECITALS:

WHEREAS, the Principal Representative intends to engage the services of the Design/Build Entity to design and construct the following: 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 In Fund Number Insert Fund Number Here, Account Number Insert Account Number here; and

WHEREAS, the State of Colorado has appropriated and the Principal Representative has been authorized to expend the total sum of Insert dollar value written in words Dollars (\$) for this Project including all professional services, construction management/general contractor services, construction/improvements, Project contingencies, reimbursables, furnishings, movable equipment, and miscellaneous expenses; and

WHEREAS, funds are available for only a portion of the services defined herein, as more fully described in the funding Condition Precedent clause in 6.5 hereof; and

WHEREAS, the Design/Build Entity Fee consists of the Design Build Entity's Architect/Engineer's Fee and the Design/Build Entity's Fee;

WHEREAS, the Principal Representative has established the **Fixed Limit of Design & Construction Cost** in the amount of Insert dollar value written in words Dollars (\$); and

Commented [SBP6]: Note to Drafters: If the Condition Precedent clause is to be used remove the parenthesis and remove the italics.

If not accepting the Condition Precedent strike out the language – DO NOT DELETE

Commented [SBP7]: The Fixed Limit of Construction should be the amount that the Architect/Engineer shall be confined to design within and the Construction Manager will manage.

WHEREAS, the Design/Build Entity shall establish a **Guaranteed Maximum Price (GMP)** that is within the Fixed Limit of Design & Construction Cost as established by the Principal Representative at the completion of the Design Development Phase; and

WHEREAS, in accordance with Article 6 Compensation the Design/Build Entity's Fee for the Project is Insert dollar value written in words Dollars (\$ _____); and

WHEREAS, the Design Build Entity's Architect/Engineer for the project is Insert Architect's full Legal Name including "Inc.", "LLC" etc.; and

WHEREAS, the Design/Build Entity acknowledges the statutory authority and responsibility of the Principal Representative within the State of Colorado;

WHEREAS, the Design/Build Entity was selected after a determination that its proposal was the most advantageous to the Principal Representative pursuant to a request for proposal issued and awarded on; and

WHEREAS, the Design/Build Entity and the Principal Representative have finalized the terms of this Agreement pursuant the Colorado Procurement Code or the applicable procurement code for institutions of higher education.

WITNESSETH, That the Principal Representative and the Design/Build Entity agree as follows:

1 ARTICLE 1 PERFORMANCE OF THE WORK

1.1 THE WORK

1.1.1 The Design/Build Entity will design and construct the Project within the Fixed Limit of Design & Construction Cost specified, and the Design/Build Entity will furnish all the services, labor and materials to perform all the Work, including design, for the complete and prompt execution of the Project in accordance with the Contract Documents.

1.1.2 In the performance of the Work under this Agreement, the Design/Build Entity acknowledges that time is critical for Project delivery and that portions of the Work could have their design completed as separate Construction Phase(s) and may be under construction before other portions of the Work are fully designed. It is further recognized that this accelerated approach to construction is defined as "Fast Track Construction" and is a concept that requires maximum cooperation between all parties.

1.1.3 The Principal Representative acknowledges that the Design/Build Entity shall provide Insert number of phases (____) Construction Phase (s) to accomplish the Work as may be mutually agreed upon. In the event the Principal Representative for any reason within the Principal Representative's control, requests more than Insert number of phases (____) Construction Phase(s) to be furnished by the Design/Build Entity, the Principal Representative shall make arrangement with Design/Build Entity for the additional Construction Phase(s) desired and shall directly compensate the Design/Build Entity for all justifiable fees and cost associated therewith.

1.1.4 The Design/Build Entity agrees to use best efforts, to cooperate fully with the Principal Representative in the design and construction aspects of the Work, and to keep within the

Principal Representative's monetary, schedule and quality limitations, as stipulated within this Agreement.

- 1.1.5 The organization of the Specifications into division, section, and article, and the arrangement of Drawings shall not control the Design/Build Entity in dividing the Work among any level of subcontractors or in establishing the extent of the Work to be performed by any trade.
 - 1.1.6 The Design/Build Entity understands the relationship of trust and confidence established between it and the Principal Representative and accepts those responsibilities as described in this Agreement. The Design/Build Entity covenants with the Principal Representative to furnish its best skill and judgment and to cooperate with the Design Build Entity's Architect/Engineer in furthering the interests of the Principal Representative. The Design/Build Entity agrees to furnish efficient business administration and superintendence and to use its best efforts to complete the Work in an expeditious and economical manner consistent with the interest of the Principal Representative.
 - 1.1.7 The Design/Build Entity shall confirm that the Design Build Entity's Architect/Engineer acknowledges that it is responsible for protecting the Principal Representative's interests throughout the evolution of design and construction. Therefore, the Design Build Entity's Architect/Engineer shall provide the full scope of professional level services related to design performance and construction administration services within the Project in the same manner as it would acting as a 3rd Party entity through a conventional Design/Bid/Build or CM/GC delivery method.
- 1.2 CONTRACT DOCUMENTS
- 1.2.1 The Contract Documents as described in Article 1 of the General Conditions of the Design/Build Guaranteed Maximum Price Agreement (SC-9.1) are essential parts of this Agreement and are fully incorporated herein.

2 ARTICLE 2 EXHIBITS TO THE AGREEMENT.

2.1 EXHIBITS

The following Exhibits are, or will be, attached to this Agreement and are or shall become when approved and accepted, part of the Contract Documents.

1. The General Conditions of the Design/Build GMP Contract (State Form SC-9.1)
2. **The Drawings** released for Construction (Exhibit I.1);
3. **The Specifications** released for Construction (Exhibit I.1);
4. **Exhibit A**, Design/Build GMP Designated Services and Method of Payment;
5. **Exhibit B**, Design/Build Entity Certification;
6. **Exhibit C**, Request for proposal (minus blank template forms) dated ;
7. **Exhibit D1**, Design/Build Entity's Fee Proposal dated ;
8. **Exhibit D2** Design/Build Entity's Certificates of Insurance;
9. **Exhibit D3** Design/Build Entity's Direct Labor Burden Calculation;
10. **Exhibit E**, State Sales and Use Tax Forms;

Amendment Exhibits based on Schematic Design Documents

11. **Exhibit F**, List of Pre-Qualified Subcontractors (when approved by the Principal Representative and prior to bidding);
12. **Exhibit G**, Schematic Design Estimate Summary and Updated Summaries (when approved by the Principal Representative);

Amendment (incorporating GMP) Exhibits based on Design Development Documents

13. **Exhibit H.1**, GMP Documents, Drawings and Specifications including Addenda and Modifications (when approved by the Principal Representative);
14. **Exhibit H.2**, Schedule of Bid Package Descriptions and Issuance Dates (as applicable);
15. **Exhibit H.3**, Schedule of Values (prepared at the time of the GMP Amendment);
16. **Exhibit H.4**, Allowance Schedule (prepared at the time of the GMP Amendment);
17. **Exhibit H.5**, Detailed Critical Path Method Construction Schedule (prepared at the time of the GMP Amendment)

Subsequent Amendments (incorporating Bid Packages) Exhibits

18. **Exhibit I.1**, Drawings, Specifications and Addenda (When approved by the Principal Representative);
19. **Exhibit I.2**, Schedule of Values (Consistent with GMP Schedule of Values);
20. **Exhibit I.3**, Labor Overhead (SBP-6.18) for each Subcontractor to be applied to all change orders and amendments);
21. **Exhibit I.4**, Allowance Schedule (consistent with GMP Allowance Schedule);
22. **Exhibit I.5**, Performance Bond (Form SC-6.22);
23. **Exhibit I.6**, Labor and Material Payment Bond (Form SC-6.221);
24. **Exhibit I.7**, Insurance Certificates;
25. **Exhibit I.8**, Detailed Critical Path Method Construction Schedules (when approved by the Principal Representative);
26. **Exhibit I.9**, Applicable Prevailing Wage Determinations (If applicable).
27. **Exhibit I.10**, Apprenticeship Utilization Certifications (SBP6.17) (If applicable).

Miscellaneous Exhibits

28. **Exhibit J1**, Notice to Proceed to Design Construction Phase (Form SC-8.26) (when issued);
29. **Exhibit J**, Notice to Proceed to Commence Construction Phase (Form SC-7.26) (when issued);
30. **Exhibit K**, Building Code Compliance Policy: Coordination of Approved Building Codes, Plan Reviews, and Building Inspections.
31. **Exhibit L**, All modification documents not named above. A modification to the agreement includes a written amendment or change order signed by both parties.
32. **Exhibit M**, University Insurance Requirements - A

3 ARTICLE 3 DESIGN/BUILD ENTITY'S SERVICES

The Design/Build Entity shall perform the following services under this Agreement in each of the phases described below:

PRE-CONSTRUCTION SERVICES

3.1 AVAILABLE FUNDS

3.1.1 The Design/Build Entity acknowledges that the Principal Representative is limited in the sum available to design and construct the Project. Should funding of a lesser amount be made available for the Project, it is the obligation of the Principal Representative to revise the Project Scope consistent with the ultimate appropriation.

3.2 CONSULTATION AND VALUE ENGINEERING

3.2.1 The Design/Build Entity shall provide consultation throughout the Design/Preconstruction and Construction Phases including but not limited to the furnishing of Value Engineering Services to identify cost effective changes in the State's specifications that will result in reducing the Contract Price without impairing essential functions or characteristics. The objective of Value Engineering is to achieve optimum value for each construction dollar spent and keep the time of completion and cost of the Work within the time and fiscal constraints set forth throughout the Contract Documents. In cooperation with the Principal Representative, the Design/Build Entity shall:

- a) Formulate and evaluate alternative designs, systems, materials, etc;
- b) Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives. Cost estimates shall take into consideration all cost impacts related to alternatives including but not limited to design and construction costs. The Design/Build Entity shall, at a minimum, review the cost estimate at the completion of the Schematic Design, and Design Development Phases and include an analysis and commentary as to any discrepancies observed in the report referenced in paragraph 3.2.1.4 below;
- c) Evaluate the alternatives on the basis of costs, time schedules, availability of labor and materials, construction feasibility, etc;
- d) Enable the Design/Build Entity's Architect/Engineer to prepare written reports at the end of the Schematic Design and Design Development Phases summarizing the Value Engineering activities accomplished and any recommendations developed within each phase;
- e) If Estimates of Design & Construction and/or bids received for the Work contained in any Bid Package cause the anticipated cost of the Work to exceed the then current Estimate of Design & Construction, the Fixed Limit of Design & Construction Cost, the Guaranteed Maximum Price or Schedule of Values, the Design/Build Entity shall, at no additional cost to the Principal Representative unless caused by an increase in the Design/Build Entity's Work requested by the Principal Representative, provide additional Value Engineering services in conjunction with any and all appropriate items in the Estimate of Design & Construction, the Fixed Limit of Design & Construction Cost, the Guaranteed Maximum Price, and/or the Schedule of Values for the Work; and
- f) Lead a formal Value Engineering workshop as requested by the Principal Representative, at the end of the Schematic Design, Design Development and Construction Documents Phases review and estimating tasks, bringing multidiscipline cost/construction experts to evaluate alternative designs, systems and materials.

3.2.2 The Principal Representative shall participate in the formulation and evaluation of alternatives in the Value Engineering activity, and shall approve Value Engineering alternatives accepted in each design phase.

3.3 DESIGN AND CONSTRUCTION COSTS

- 3.3.1 It is the desire of the Principal Representative to incorporate as many alternate bid items into the Project as reasonable, to maximize the scope for the Fixed Limit of Design & Construction Cost. All parties recognize that although the availability of costs to perform the Work depend, in part, upon favorable market conditions. With thorough and careful planning, cost estimating and cooperation, funds may become available for the alternates through the procurement process at less than the Design/Build Entity's estimated cost therefore. Together with savings through the unexpended portion of the bidding contingency, the Principal Representative may authorize alternates and/or additional scope, all within the Fixed Limit of Design & Construction Cost.
- 3.3.2 To accomplish the inclusion of alternates and/or increases, the project contingency shall be as follows and included in the GMP:
- a) The bidding contingency for all Bid Packages together with the construction of the Work shall be equal to at least two point five percent (2.5%) of the total Guaranteed Maximum Price, all within the Fixed Limit of Construction Cost.
The bidding contingency shall be allocated between the presently Insert number of packages (____) Bid Packages, equally proportionate to the value associated with each Bid Package. The Design Build Entity shall notify, in writing, the Principal Representative of the allocation of the bidding contingency for each Bid Package.
 - b) The construction contingency for the Work shall be equal to at least three percent (3%) of the total Guaranteed Maximum Price, all within the Fixed Limit of Construction Cost.
- 3.3.3 At the conclusion and award of the Bid Packages, all differences between the Design/Build Entity's estimated cost of the Work contained within the Bid Packages, exclusive of contingency, versus the actual cost thereof as determined by bidding and award (buyouts) shall be promptly calculated and totaled. If the total of all of the buyouts exceed the Design/Build Entity estimated cost therefore, the bidding contingency identified in paragraph 3.3.2.1 shall be applied by the Design/Build Entity, after prior written notice to the Principal Representative, to cover any overrun per Bid Package.
- 3.3.4 After all of the Bid Packages have been bought out, any and all savings achieved through the buyouts of the Bid Packages together with all unexpended sums remaining in the bidding contingencies shall forthwith accrue to the Principal Representative to be applied by the Principal Representative, in its sole and absolute discretion, to the inclusion of desired alternates into the Work or to otherwise increase the scope of Work to be performed by the Design/Build Entity, and/or to reduce the Guaranteed Maximum Price.
- 3.3.5 The construction contingency shall only be used to cover costs for labor, materials, equipment and similar costs for items or Work to be furnished during the construction phase of the Project. It is not the intent of this Agreement to use the construction contingency for costs incurred during the Pre-Construction phase or bidding phase or for costs to correct any errors, omissions, mistakes or rejected Work caused by subcontractors. The construction contingency may be used to cover the Design/Build Entity's costs (i) arising from estimating cost overruns in the costs of **Exhibit H.4** Allowance Schedule; (ii) unexpected additional trade coordination costs incurred for Work directly performed by the Design/Build Entity that could not have been reasonably contemplated; (iii) items required and reasonably inferable from the Contract Documents, or items included within the Contract Documents but missed within the subcontractor buy-out which the Design/Build Entity can show were not specifically called out within the estimate or bid documents of the Design/Build Entity or any subcontractor ; (iv) losses or damages to property related to the Work not covered by insurance provided by the Design/Build Entity, but not

including any insurance deductible(s); (v) arising from expediting or acceleration of the Project schedule where such cost is not a basis for an increase in the GMP under Article 6; (vi) Bid Package buyout overrun costs for additional Bid Packages that were not part of anticipated Construction Phases defined in 1.1.4, but only if bidding procedures contemplated hereunder were followed and the bidding contingency has been exhausted; or (vii) other costs incurred not reasonably to have been expected that are approved by the Principal Representative in the Principal Representative's sole discretion, so long as those costs are not recovered under any insurance policy provided pursuant to this Agreement and so long as the total costs under this Agreement do not exceed the Guaranteed Maximum Price. No expenditure from the construction contingency for any matters or Work activities shall be made without the prior written approval of the Principal Representative, which approval, with the exception of item (vii) above, shall not be unreasonably withheld. Expenditures from the construction contingency shall be made only by Change Order.

Construction contingency shall include all costs associated with a stated scope including, if applicable design fees, Direct Work, Insurance, Bonds, Fee, and General Conditions (if appropriate).

3.3.6 When preparing any estimates of Design & Construction and in development of the Schedule of Values, such documents shall include, without duplication:

- a) All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work;
- b) Any allowance designated by the Principal Representative;
- c) Any Principal Representative furnished equipment which has been designed, specified, selected or specifically provided for by the Design Build Entity's Architect/Engineer;
- d) The Design Build Entity's fee and the cost of work provided by the Design/Build Entity;
- e) All bonds, insurance premiums and applicable taxes;
- f) Contingencies for bidding, price escalation, and construction;
- g) Plumbing and electrical building permits from appropriate entities and any other building permits as directed by the Principal Representative; and
- h) Design fees and administrative expenses directly related to the Work. (Refer to the General Conditions of the Design/Build Guaranteed Maximum Price Agreement (SC-9.1) Article 12.2 B ?? schedules).

3.3.7 Estimates of Design & Construction shall include the compensation of the Design Build Entity's Architect/Engineer and, the Design Build Entity's Architect/Engineer mechanical, electrical, plumbing, structural, civil, and any other consultants and subconsultants required in the Request For Proposal or any other sums due the Design Build Entity's Architect/Engineer and its consultants, but shall not include the costs of land, right of way, financing or other costs, which are the responsibility of the Principal Representative. With prior approval of the Principal Representative, the Design/Build Entity shall contract with the Design Build Entity's Architect/Engineer to perform services in connection with the Project.

3.3.8 The Design/Build Entity, in preparing its Estimates of Design & Construction cost and providing the Guaranteed Maximum Price, shall consult with the Design Build Entity's Architect/Engineer to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Work,

and to include in the Contract Documents alternate items, as approved by the Principal Representative in writing, for bid so as to permit the adjustment of the Estimate of Design & Construction.

- 3.3.9 The Design/Build Entity shall prepare an Estimate of Design & Construction as soon as major Project requirements have been identified and update it periodically. For the Schematic Design Phases, the Design/Build Entity shall prepare a quantity take-off cost estimate based on building systems, assemblies, components, etc., and update periodically. During the Design Development Phase, the Design/Build Entity shall prepare a final cost estimate in preparation for a Guaranteed Maximum Price and update periodically. All Estimates of Design & Construction shall include separate defined allowances for bidding and Construction price escalation. During the Construction Documents Phase, the Design/Build Entity shall continually monitor the cost estimates and develop a cost estimate to help assure that the cost of the Work remains within the applicable portion of the Project Budget, Fixed Limit of Design & Construction Cost and Guaranteed Maximum Price.
- 3.3.10 Estimates shall be prepared and shall be based on quantitative takeoffs whenever possible and shall be supported in sufficient depth and organization to be used in preparing budgets based on Construction Specifications Institute (CSI) Division, funding sources, sub-trades, combinations of sub-trades, building systems, Bid Packages or combinations thereof.–Lump sum estimates are not acceptable.
- 3.3.11 During the preparations of cost estimates, the Design/Build Entity shall notify the Principal Representative if it appears that the Estimate of Design & Construction will exceed the applicable portion of the Project Budget or Fixed Limit of Design & Construction Cost as may be applicable, satisfactorily demonstrate the accuracy of its estimate in such detail as shall be reasonably required by the Principal Representative, and make reasonable recommendations for corrective action consistent with the Project Budget or Fixed Limit of Design & Construction Cost, as may be applicable. The Design/Build Entity shall submit Estimates of Design & Construction cost to the Principal Representative for review and acceptance at each design milestone and other times as required by the Principal Representative to analyze various building systems and components.
- 3.3.12 The Principal Representative shall reasonably cooperate with the Design/Build Entity to keep the Work within the applicable portions of the Project Budget or Fixed Limit of Design & Construction Cost, as may be applicable, including but not limited to the giving of appropriate and reasonable consideration to all reasonable recommendations of the Design/Build Entity, approving redesign, only for Principal Representative directed scope changes, deductive alternatives or reductions in Work, requesting additional Value Engineering, making modifications to the Contract Documents or exercising such other rights or remedies as may be available elsewhere under this Agreement including termination for convenience. However, the Principal Representative shall be under no duty to reduce the Work to accommodate for any projected costs over or beyond the Guaranteed Maximum Price that is the responsibility of the Design/Build Entity or allow access to the construction contingency to cover costs to correct errors, omissions, mistakes, rejected Work or warranty Work.
- 3.4 OTHER PRE-CONSTRUCTION SERVICES
- 3.4.1 The Design/Build Entity shall perform those items designated as Required Services as set forth in the Design/Build Designated Services and Method of Payment schedule designated as **Exhibit A**. In addition, and not in limitation, the Design/Build Entity shall also perform the other Pre-Construction Services designated in this Article 3 together with such other services as are normally and customarily provided by a Design/Build Entity.

- 3.4.2 The Design/Build Entity shall make recommendations to the Principal Representative regarding the division of Work in the Drawings and Specifications to facilitate the bidding and awarding of subcontracts, allowing for phased construction and funding, if applicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, etc.
- 3.4.3 The Design/Build Entity shall review Drawings and to (1) eliminate areas of conflict, overlapping trade jurisdictions, and overlapping in the Work to be performed by the various subcontractors, (2) endeavor to confirm that all Work has been included, and (3) allow for phased construction as applicable.
- 3.4.4 The appropriate representatives of the Principal Representative shall review documents submitted by the Design/Build Entity and shall render decisions pertaining thereto without unreasonable delay.
- 3.4.5 The Design/Build Entity, including the Design Build Entity's Architect/Engineer, shall attend all regular meetings with the Principal Representative and such additional meetings as the Principal Representative may request. All regular meetings shall be scheduled with the Design/Build Entity and approval of the Principal Representative. All additional meetings shall be requested by the Principal Representative.
- 3.4.6 As part of the Schematic Design review and estimating tasks, the Design/Build Entity shall develop a preliminary detailed Critical Path Method (CPM) Project Schedule as described in Article 12 of the General Conditions of the Design/Build Guaranteed Maximum Price Agreement (SC-9.1), that is coordinated with the milestone dates specified in **Exhibit H.2**, the Date of Completion specified in paragraph 5.2.1, the scope of Work described within the Contract Documents, and the Work described within the Schematic Design Documents. The Design/Build Entity shall utilize the Project Management Software as described in paragraph 3.6.4 to develop and manage the schedule.
- 3.4.7 The Design/Build Entity shall investigate and recommend materials and equipment that could be purchased by the Principal Representative; consider long lead time procurement and mass purchasing power in making such recommendations; recommend a schedule for such purchases after coordination with the schedule for preparation of Contract Documents; and expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates.
- 3.4.8 The Design/Build Entity shall prepare necessary bidding information, bidding forms, and pre-qualification criteria for bidders; develop subcontractor interest in the Project; establish bidding schedules; advertise for bids; and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods. As soon as the Design/Build Entity becomes aware prior to any bid date that less than three (3) pre-qualified subcontractors plan to bid any portion of any Bid Package or that anticipated bids from previously approved or pre-qualified subcontractors listed on **Exhibit F**, are likely to exceed the then current Schedule of Values or Estimate of Design & Construction, the Design/Build Entity shall promptly so notify the Principal Representative and Principal Representative shall be entitled to treat the situation as an unforeseeable circumstance pursuant to paragraph 3.5.9.1.
- 3.4.9 The Design/Build Entity shall receive and open bids when advertised, prepare a bid analysis, conduct pre-award conferences, and notify the Principal Representative concerning which bids shall be accepted. The Principal Representative shall be notified in advance of the time and place of all bid openings and may elect to attend such openings with their representatives. Should the Design/Build Entity submit a proposal for subcontract Work (Work not included in the

Design/Build Entity's Construction Phase Fee and/or General Conditions) herein referred to as "Self Perform Work", the proposal conditions shall be the same as for all subcontractor proposals. These Design/Build Entity proposals for subcontract Work shall be submitted to the Principal Representative twenty-four (24) hours prior to receipt of other subcontractor proposals and all opened with the other proposals. A proposal to accept other than a low bid shall be justified in writing by the Design/Build Entity and subject to prior written approval by the Principal Representative.

- 3.4.10 The Design/Build Entity shall provide the requirements and assignment of responsibilities for safety precautions and programs as required for the execution of the Work, temporary project facilities and for equipment, materials and services for common use of subcontractors and verify that all are included in the Contract Documents.
- 3.4.11 The Design/Build Entity shall provide not later than the first of each month, unless requested otherwise by the Principal Representative, a monthly report utilizing the Project Management Software described in paragraph 3.6.4 documenting the current status of the project's schedule, costs, requests for information, submittals, manpower, safety, and other pertinent information. The report shall include a narrative discussion of the progress achieved, activities anticipated for the next month, and issues that are affecting the rate of progress. Progress photographs should be attached/included. This monthly report shall be provided in Design and Construction Phases of the project. The schedule status shall include the following minimum items:
- a) Cost report showing activity dollar value, dollar value of Work in place to-date and dollar value for current period.
 - b) Cost report showing activity dollar value, dollar value of Work in place to-date, and dollar value for current period summarizing to schedule of values.
 - c) Resource report showing man-day allocations by specific trade on each activity.
 - d) Variance report comparing current dates to target dates.
 - e) Cash flow report showing monthly projections of expenditures.

A narrative schedule report shall document:

- a) Description of the actual Work accomplished during the reporting period.
 - b) Description of any problem areas.
 - c) Description of current and anticipated delays with recommended corrective actions to mitigate such delays.
 - d) A list of proposed modifications, additions, deletions, and changes in logic to the approved schedule.
- 3.4.12 If the Design/Build Entity, any of its sub-consultants, or any of its subcontractors of any tier participating in the Design Reviews observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, ordinances, rules or regulations, in any respect the Design/Build Entity shall promptly notify the Principal Representative in writing, noting the applicable drawing or specification, and recommending an appropriate alternative for correcting the design.
- 3.5 DESIGN SERVICES
- 3.5.1 Full scope of Design services shall be performed by qualified architects/engineers and other professionals selected and paid by the Design/Build Entity. The professional obligations of such persons shall be undertaken and performed in the interest of the Design/Build Entity. Nothing

contained herein shall create any contractual relationship between subcontractors, architects/engineers and/or suppliers with the Principal Representative.

- 3.5.2 Design/Build Entity shall be responsible to the Principal Representative for acts and omissions of the Design/Build Entity's employees, subcontractors, agents and parties in privity of contract with the Design/Build Entity to perform any portion of the Work, including all design elements of the Project.
- 3.5.3 The Design/Build Entity may or may not be licensed as an architect or engineer in the State of Colorado and is not authorized by law to perform design services. Accordingly, if the Design/Build Entity is not a licensed architect or engineer, they will not perform design services pursuant to this Agreement, but will furnish and warrant such design services as otherwise herein provided as a consultant or subconsultant. Prior to designating a professional, individual or professional firm to perform any of these services, the Design/Build Entity shall submit the name of the firm if appropriate, together with the name and resume, including education, training and experience of the architect or engineer of record and relevant work of like character and magnitude for the Project being contemplated, to the Principal Representative, and receive approval in writing therefrom.
- 3.5.4 The Design Build Entity's Architect/Engineer shall begin design services upon receiving the Notice To Proceed to Commence Design Phase (SBP-8.26) and 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 O**, Building Code Compliance Policy: Coordination of Approved Building Codes, Plan Reviews and Building Inspections. Other more restrictive standards as specified by the Principal Representative are as indicated in **Exhibit O**. 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 **Exhibit O**.
- 3.5.5 No design consultant or subconsultant, not already approved by the Principal Representative, shall be engaged to 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 provide a waiver, in writing, in respect to the particular consultant or subconsultant.
- 3.5.6 The Design/Build Entity shall review with the Principal Representative alternative approaches to design and construction of the improvements. Any alternative approaches must be approved in writing by the Principal Representative prior to implementation by the Design/Build Entity.
- 3.5.7 The Design/Build Entity shall participate in Project design review sessions at the close of the Schematic Design Phase, Design Development Phase, and as Construction Documents are finalized for each Bid Package. The Project design review sessions shall be attended by the Design Build Entity's Architect/Engineer and representatives of the Principal Representative. The purposes of the Project design review sessions are to (1) assure consistency with the design intent; (2) confirm complete, coordinated, constructible and cost-effective designs for all disciplines (e.g. architectural, structural, mechanical); (3) assure that the design documents are code compliant; (4) endeavor to confirm that all Work has been included and described in sufficient detail to assure complete pricing of Work; and (5) allow for phased construction. The Design Build Entity's Architect/Engineer shall collect all design review comments from the various participants, provide reports to the Principal Representative, and confirm 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. A design phase is not considered complete until all comments

from the design review have been incorporated and the design consultants and subconsultants have fully coordinated their design documents. At the completion of each design phase, the Design/Build Entity must confirm that the current status of design remains within the applicable portion of the Project Budget, Fixed Limit of Design and Construction Cost, and Guaranteed Maximum Price.

- 3.5.8 SCHEMATIC DESIGN PHASE: The Design/Build Entity and its Design Build Entity's Architect/Engineer shall review the design program furnished by the Principal Representative, including the approved Facilities Program Plan, to ascertain the requirements of the Project and shall refine the design program in accordance with **Exhibit L**, reviewing and confirming the understandings of these requirements and other design parameters with the Principal Representative. Based on the mutually agreed upon design program and the Fixed Limit of Design & Construction Cost, the Design/Build Entity 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.
- 3.5.9 At intervals appropriate to the progress of the Schematic Design Phase, the Design/Build Entity 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 scheduled in a manner that allows the Principal Representative adequate time so as to cause no delay to the Project. The Design/Build Entity shall respond in writing to the Principal Representative's comments resulting from this reviewing process.
- 3.5.10 At the completion of the Schematic Design Phase, the Design/Build Entity shall:
- a) Provide (____) complete sets and (1 pdf) complete set of drawings, outline specifications and construction materials, and such other documents necessary for the Design/Build Entity to prepare an estimate of the cost of construction. Pdf files must be titled to exactly match paper set;
 - b) Prepare and submit to the Principal Representative a design & construction cost estimate which will serve as a Statement of Probable Cost.
 - c) Provide Electronic files in an electric media format that conform with the latest requirements of the Principal Representative's drawing standards.
- 3.5.11 The Design/Build Entity shall also prepare a written report, accompanied by drawings, setting forth the following as a minimum:
- a) Analysis of the structure as it relates to the approved codes as defined in **Exhibit O**, including responses to the State's Code Review Agent;
 - b) Recommend site locations and scope of site development;
 - c) Correlation of spaces with approved State standards;
 - d) Conceptual drawings of floor plans, elevations, section, and site plan;
 - e) Conceptual drawings and descriptions of project plumbing, mechanical and electrical systems as necessary;
 - f) Area computations, gross square footage and net square footage, and volume;
 - g) Outline of proposed construction materials;

- h) Review of time anticipated for the Construction Phase(s);
- i) Written description of the bid packaging strategy and related design schedule.

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

3.5.13 The Design/Build Entity shall also prepare a written report at the end of the Schematic Design Phase summarizing the Design/Build Entity's value engineering activities. If at the completion of the Schematic Design phase the Estimate of Design & Construction cost exceeds the applicable portion of the Project Budget, Fixed Limit of Design & Construction Cost or Guaranteed Maximum Price, the Design/Build Entity, including the Design Build Entity's Architect and Engineer shall work together to revise the design in a manner that brings the Project back within the applicable portion of the Project Budget, Fixed Limit of Design & Construction Cost or Guaranteed Maximum Price at no additional cost to the Principal Representative.

3.5.14 DESIGN DEVELOPMENT PHASE: 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 Design & Construction Cost, if any, the Design Build Entity 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.

3.5.15 At intervals appropriate to the progress of the Design Development Phase, the Design Build Entity 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 scheduled in a manner that allows the Principal Representative adequate time so as to cause no delay to the Project. The Design/Build Entity shall respond in writing to the Principal Representative's comments resulting from this reviewing process.

3.5.16 At the completion of the Design Development Phase, the Design Build Entity shall provide:

- a) (____) complete sets and (1 pdf) complete sets of drawings, outline specifications and construction materials, and such other documents necessary for the Design/Build Entity to prepare an estimate of the cost of design & construction cost. PDF files must be titled to exactly match paper set.
- b) Provide Electronic files in an electric media format that conform with the latest requirements of Principal Representative's drawing standards.

3.5.17 The Design/Build Entity 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 shall include as a minimum:

- a) Analysis of the structure as it relates to the approved codes defined in **Exhibit O**, including responses to the State's Code Review Agent;
- b) Site development drawings, defining the proposed scope of development including earthwork, surface development, and utility infrastructure;

- c) Plans in one-line format of the proposed structural, mechanical, electrical, and plumbing systems as necessary to define size, location and quality of equipment, materials, and constructions;
- d) Floor plans including proposed movable equipment and furnishings and exterior elevations;
- e) 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;
- f) Proposed architectural finish schedule, HVAC, plumbing and electrical fixture schedules;
- g) Outline specifications, using CSI format, identifying conditions of the contract, materials, and standards;
- h) Review of the time anticipated for the remainder of the Design/Preconstruction and Construction Phase(s).
- i) Provide Electronic files in an electric media format that conform to the latest requirements of the Principal Representative's drawing standards.

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

3.5.18 The Design/Build Entity 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 O**. If the Design Build Entity's Architect/Engineer shall deviate from such codes, regulations, law or ordinance, without written authorization to do so from the Principal Representative, then the Design/Build Entity shall, at its own expense, make such corrections in the Construction Documents as may be necessary for compliance.

3.5.19 If at the completion of the Design Development phase the Estimate of Design & Construction cost exceeds the applicable portion of the Project Budget, Fixed Limit of Design & Construction Cost or Guaranteed Maximum Price, the Design/Build Entity, including the Design Build Entity's Architect and Engineer shall work together to revise the design in a manner that brings the Project back within the applicable portion of the Project Budget, Fixed Limit of Design & Construction Cost or Guaranteed Maximum Price at no additional cost to the Principal Representative.

The final Design Development Documents, revised as required by the Design/Build Entity coupled with the approved Guaranteed Maximum Price established within the recited Fixed Limit of Design & Construction Cost, shall be subject to acceptance in writing by the Principal Representative and State Buildings Program.

3.5.20 At the conclusion of the Design Development Phase, the Design/Build Entity shall deliver to the Principal Representative, a Guaranteed Maximum Price proposal which shall agree to perform all of the Work even though all of the Construction Documents have not all been finalized and released for construction, and guarantee the maximum price to the Principal Representative for the entire cost of the Work, as adjusted by deductive alternates required to maintain the Guaranteed Maximum Price below the Fixed Limit of Design & Construction Cost which have been previously approved by the Principal Representative pursuant to paragraph 3.2. When the Guaranteed Maximum Price is agreed upon and accepted by the Principal Representative, it shall be made a part of the Contract Documents by Amendment, shall supersede updated summaries, and all documents relating to Schedules of Values and Estimates of Design & Construction; and shall be subject to modification for Changes in the Work as provided in Contract General

Conditions Article 35.

- 3.5.21 CONSTRUCTION DOCUMENTS PHASE: 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 Design/Build Guaranteed Maximum Price, if any, authorized by the Principal Representative, the Design Build Entity's 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.
- 3.5.22 At intervals appropriate to the progress of the Construction Document Phase, the Design/Build Entity shall provide copies of documents for the Principal Representative's review, monitoring and input to the in-progress Construction Document Phase and any completed components thereof. This process shall be scheduled in a manner that allows the Principal Representative adequate time so as to cause no delay to the Project. These intervals shall be no fewer than at 50% and 95% completion of the Construction Documents Phase. The Design/Build Entity shall respond in writing to the Principal Representative's review comments.
- 3.5.23 These Construction Documents, when each Bid Package is submitted for approval, shall include:
- a) (____) complete sets and (1 pdf) complete set of architectural, civil, site development, structural, mechanical, plumbing and electrical drawings as appropriate to assist in the definition of the submitted Bid Package. Pdf files must be titled to exactly match paper set. The final drawing set of Construction Documents must also be provided in AutoCAD;
 - b) Complete Bidding Documents including architectural, structural, mechanical, plumbing 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;
 - c) 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;
 - d) Each Bidding Package, as appropriate, shall contain a Code Compliance Plan as per **Exhibit O**, Code Compliance Plan Review Procedures and Building Inspections, that defines area separation, fire and smoke barriers, exits, exit passages, and exit enclosures.
 - e) Provide Electronic files in an electric media format that conform with the latest requirements of the Principal Representative's drawing standards.
- 3.5.24 The Design/Build Entity shall prepare a written report summarizing the Design/Build Entity's Value Engineering activities through the completion of this phase of the Work.
- 3.5.25 The final Construction Documents shall be subject to the final acceptance by the Principal Representative and State Buildings Program in writing.
- 3.5.26 Complete Construction Documents shall be required within a Bid Package prior to the Principal Representative releasing the Design/Build Entity for commencement of Construction.

CONSTRUCTION PHASE SERVICES

3.6 CONTROL OF THE WORK

- 3.6.1 The Design/Build Entity shall supervise and direct the Work of its subcontractors and shall coordinate the Work with the activities and responsibilities of the Principal Representative to complete the Project in accordance with the Principal Representative's objectives of cost, time and quality and subject to the terms and conditions of the General Conditions of the Design/Build Guaranteed Maximum Price Agreement (SC-9.1).

- 3.6.2 The Design/Build Entity shall establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team.
- 3.6.3 The Design/Build Entity shall schedule and conduct weekly progress meetings at which the Principal Representative, Design/Build Entity including the Design Build Entity's Architect/Engineer, Design Build Entity's Architect/Engineer's Consultants, can discuss jointly such matters as procedures, progress, schedule, costs, quality control and problems. The Design/Build Entity shall record and distribute minutes of all construction meetings within 48 hours of the meeting.
- 3.6.4 A contract-control/project-management software (hereafter "Project Management Software") approved by the Principal Representative, shall be used as a primary tool for project control, communication and documentation control by all the project participants, to include the Principal Representative, the Design/Build Entity and the Design Build Entity's Architect/Engineer. The Design/Build Entity shall utilize the Project Management Software to implement a cost forecasting, monitoring, control and reporting system for the Project. The Project Management Software shall be maintained throughout the project, both during the pre-construction and construction phases. Cost analyses shall be based upon data analyses as developed/described within Section 3.3 and shall include analyses of all trades and Project components making a significant contribution for total Project costs. The Project Management Software shall provide for development of a Project cost model, monitoring the design process and periodic reviews of the cost estimates/forecasts to identify variances from the cost model. Additionally, the Project Management Software shall identify variances between actual and budgeted costs and the Fixed Limit of Design & Construction Cost and the Contract Sum.

The Design/Build Entity shall use the Project Management Software for the major contract administration processes to include, but not limited to:

- a) Submittals:
- 1 Design/Build Entity shall create a Submittal log and Submittal schedule.
 - 2 Submittals shall be directly submitted to the Design Build Entity's Architect/Engineer and Principal Representative and directly returned from the Design Build Entity's Architect/Engineer.
- b) Requests for Information:
- 1 Design/Build Entity shall submit requests for information using the Project Management Software.
 - 2 Design Build Entity's Architect/Engineer shall answer requests for information via the Project Management Software. Requests for Information responses that have cost impact will have corresponding Change Order Bulletin (Form SC-6.311) issued by the Architect/Engineer.
- c) Change Management: Entire change management process including Notices, and Change Orders shall be managed using the Project Management Software and utilizing Contract Amendment (Form SC-6.0), Change Order (Form SC-6.31), Change Order Bulletin (Form SC-6.311), Change Order Proposal (Form SC-6.312) and Change Order Log.
- d) Pay Applications: Design/Build Entity shall be responsible for creating and distributing pay application in the Project Management Software using an earned-value calculation through the CPM Schedule & utilizing Application and Certificate for Contractor's Payment (SBP-7.2).
- e) Meeting Minutes: Design/Build Entity shall be responsible for creating and distributing construction-meeting minutes in the Project Management Software.

- f) Reports: Design/Build Entity shall be responsible to prepare and distribute reports in the Project Management Software.
- g) Insurance Certificate: Design/Build Entity shall be responsible for storing all the insurance related information of subcontractors in the Project Management Software.
- h) Punchlist: Design/Build Entity shall be responsible to update the Substantial Completion Punchlist status using the Project Management Software.
- i) Construction Schedule: Critical Path Method as described in Article 12 of the General Conditions of the Design/Build Guaranteed Maximum Price Agreement (SC-9.1).
- j) All project correspondence with Principal Representative shall be in the Project Management Software.

3.6.5 The Design/Build Entity shall propose and implement an approved procedure for coordinating and tracking all required Code Compliance Building Inspections as indicated on the Building Inspection Record (BIR) as provided by the State Buildings Program approved Code Review Agent at the appropriate Construction Phase(s) as described in the attached **Exhibit O**.

3.7 SCHEDULE AND COORDINATION

3.7.1 The Design/Build Entity shall begin the construction Work upon receiving the Notice to Proceed to Commence Construction Phase (SBP-7.26), in accordance with Article 5.1. The Design/Build Entity shall schedule and coordinate the Work of all of its subcontractors on the Project including their use of the site. The Design/Build Entity shall keep the subcontractors informed of the Project construction schedule to enable the subcontractors to plan and perform the Work properly. The Design/Build Entity shall carry the Work forward expeditiously with adequate forces and shall achieve Completion of the Work prior to the Contract Completion Date specified in Article 5.2, as adjusted by Change Orders and Amendments.

3.7.2 Schedule Management

- a) Schedule Modifications: If, as a result of the monthly schedule update the Project Schedule no longer represents the actual / logical progression of the Work or the Design/Build Entity's plan for prosecution and progress of the Work, the Principal Representative shall require the Design/Build Entity to submit a revision to the Project Schedule. Such revisions to the Schedule shall not alter any of the Project Milestone dates.
- b) Schedule Impacts, Schedule Delays, Time Extensions: During the course of the Project, it may be appropriate to revise the Schedule to incorporate impacts or delay issues into the Project Schedule. If the Design/Build Entity determines it has encountered schedule impacts that may warrant a time extension, the Design/Build Entity shall present an Impacted Schedule in accordance with the Contract General Conditions, to the Principal Representative supporting its claim.
- c) Recovery Schedule: In the event progress falls behind schedule dates, the Design/Build Entity shall prepare a recovery schedule indicating its revised plan to assure the timely completion of the Work. The recovery schedule shall be subject to the Principal Representative's approval.

3.8 AMENDMENTS AND CHANGE ORDERS

3.8.1 The Design/Build Entity shall assist in developing and implementing a system for the preparation, processing and tracking of Amendments and Change Orders using the Project Management Software as described in paragraph 3.6.4 and recommend necessary or desirable changes to the

Principal Representative. Fully executed and approved Change Orders shall constitute obligations of the Principal Representative to pay as part of the Contract Sum the amounts identified by such modifications so long as such amounts do not exceed the Guaranteed Maximum Price, however, only those portions of the Contract Sum that are incorporated by Amendment shall be immediately payable. Change Orders, other than Change Orders allocating contingency amounts already incorporated by an Amendment which modify the Guaranteed Maximum Price, shall be payable only after having been incorporated into the Contract by Amendment. The Design/Build Entity shall provide the Principal Representative with Amendments from time to time aggregating and incorporating Change Orders that do not allocate contingency amounts already incorporated by an Amendment in order to expedite payment of approved Change Order work when performed and payable.

3.9 PRINCIPAL REPRESENTATIVE CONSULTANTS

3.9.1 If required, the Design/Build Entity shall assist the Principal Representative in selecting and retaining the professional services including but not limited to a surveyor, geotechnical, testing and inspection and other special consultants, and coordinate these services, without assuming any responsibility or liability of or for these consultants.

3.10 START UP

3.10.1 The Design/Build Entity, with the Principal Representative's maintenance staff and/or consultant, shall direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start up and testing/commissioning as required in the Scope Narrative with the subcontractors of all tiers.

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

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

4 ARTICLE 4 OWNERSHIP OF DOCUMENT

4.1 INSTRUMENTS OF SERVICE

4.1.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Design Build Entity's Architect/Engineer and the Design Build Entity's Architect/Engineer's consultants are Instruments of Service for use solely with respect to this Project. The Design Build Entity's Architect/Engineer and the Design Build Entity's 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.

- 4.1.2 Upon execution of this Agreement and the contract between the Design/Build Entity, the Design Build Entity's Architect/Engineer shall grant to the State a perpetual nonexclusive license to reproduce and use, and permit others to reproduce and use for the State, the Design Build Entity's Architect/Engineer's Instruments of Service solely for the purposes of constructing, using and maintaining the Project for future alterations or additions to the Project. The Design Build Entity's Architect/Engineer shall obtain similar nonexclusive licenses from the Design Build Entity's Architect/Engineer's consultants consistent with this Agreement. If and upon the date the Design Build Entity's Architect/Engineer is adjudged in default, 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 and additions to the Instruments of Service solely for the purposes of completing, using and maintaining the Project for future alterations or additions to the Project.
- 4.1.3 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 Design Build Entity's Architect/Engineer and the Design Build Entity's Architect/Engineers consultants; provided, however, that if the State's unilateral use occurs for completing, using or maintaining the Project as a result of the Design Build Entity's Architect/Engineer's default, nothing in this Article shall be deemed to relieve the Design Build Entity's Architect/Engineer of liability for its own acts or omissions or default.

4.2 AS-BUILT DRAWINGS/RECORD DRAWINGS

- 4.2.1 The Design Build Entity's Architect/Engineer and its consultants shall, upon completion of the Construction Phase, receive redline As-Built Drawings from the Design/Build Entity. 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 Design Build Entity's Architect/Engineer's Supplementary Instructions shall be incorporated by the Design Build Entity's Architect/Engineer and its consultants into a Record Drawings document provided to the Principal Representative in the form of an electro-media format (one (1) set in AutoCAD and one (1) set in Pdf format) and one (1) hard bound paper copy as agreed between the parties. The Design/Build Entity shall also provide the Principal Representative with the original As-Built Drawings. Final payment to the Design/Build Entity shall be withheld until all Record Drawings have been submitted and approved by the Principal Representative.

5 ARTICLE 5 TIME OF COMMENCEMENT AND COMPLETION

5.1 COMMENCEMENT

- 5.1.1 The Contract Time shall commence on the Effective Date of this Agreement but no Work shall be performed prior to the Principal Representative issuing a Notice To Proceed to Commence Design Phase (SBP-7.26) contingent upon the delivery of all bonds, and insurance certificates as required to be furnished by the Design/Build Entity as described on the Notice of Award.
- 5.1.2 The Construction Phase shall commence on the date the first Bid Package is added to this Agreement by Amendment unless there is an Early Release Bid Package as approved by the Owner in accordance with Article 1.1.3 of this Agreement.
- 5.1.3 The commencement of the Construction Phase is expressly conditioned upon and shall not commence until:

- a) The Guaranteed Maximum Price and Schedule of Values shall have been timely submitted (or such timeliness shall have been waived in writing by the Principal Representative and the director of State Buildings Program) and shall have been approved and accepted by the Principal Representative;
- b) The date for Completion of the Work has been approved and accepted by the Principal Representative;
- c) All required Performance and Labor and Material Payment Bonds and insurance certificates have been approved and accepted by State Buildings Program; and
- d) **Exhibit I.9**, Notice To Proceed to Commence Construction Phase (SBP-7.26) has been issued by the Principal Representative and made a part of the Contract Documents.

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

5.2 COMPLETION

- 5.2.1 The Design/Build Entity agrees to Substantially Complete the Project within _____ calendar days from the date of the Notice to Proceed to Commence Design Phase (SBP-8.26), in addition, the Design/Build Entity agrees to finally complete the Project from Substantial Completion to Final Acceptance within _____ calendar days for a total time of completion of the entire Project of _____ calendar days

The Design/Build Entity shall perform the Work with due diligence to completion.

6 ARTICLE 6 COMPENSATION

6.1 DESIGN BUILD ENTITY'S FEE

- 6.1.1 Subject to the provisions of this Agreement and of the General Conditions of the Design/Build Guaranteed Maximum Price Agreement (SC-9.1), and in consideration of the performance of this Agreement, the Principal Representative shall pay the Design/Build Entity in current funds as compensation for its services as listed below:

Commented [SBP8]: Note to Drafter: Below is a MS Excel spreadsheet. Double click to activate and complete

Design Build Entity's Architect/Engineer Basic Services Fee		
.1	Pre-Design Phase (If Applicable)	\$
.2	Schematic Design Phase	\$
.3	Design Development Phase	\$
.4	Construction Document Phase	\$
.5	Construction Administration Phase (If Applicable)	\$
.6	Post Construction Phase (If Applicable)	\$
.7	Reimbursable Expenses (NTE)	\$
.8	Total Design Build Entity's Architect/Engineering Fee	\$ \$ -
CM/GC FEE		
.9	Pre-Construction Phase Fee	\$
.10	Construction Phase Fee	\$
.11	General Conditions Direct Personal Expenses of On-Site D/B Staff (NTE)	\$
.12	Other Reimbursable General Conditions (NTE per paragraph 6.1.3)	\$
.13	Total CM/GC Fee	\$ \$ -
Design Build Entity Fee (.8 + .13)		\$ \$ -

6.1.2 The Design/Build Entity's Fee shall include all job indirect costs, and General Conditions costs as defined in **Exhibit A**, Design/Build Entity Designated Services and Method of Payment, home office overhead, and profit, included but not limited to the following:

- a) Salaries or other compensation of the Design/Build Entity's employees at the principal office and branch offices;
- b) General operating expenses of the Design/Build Entity's principal and branch offices other than the field office;
- c) Any part of the Design/Build Entity's capital expenses, including interest on the Design/Build Entity's capital employed for the Project;
- d) Overhead or general expenses of any kind;
- e) Salaries of the Design/Build Entity's employees engaged on the road in expediting the production or transportation of materials and equipment;
- f) Cost of all employee benefits and taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Design/Build Entity and included in the fee under paragraphs 6.1.2.a through 6.1.2.e;
- g) All transportation, traveling, moving, and hotel expenses of the Design/Build Entity or its officers or employees incurred in discharge of duties connected with the Work;
- h) Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work;
- i) Cost of the premium for all insurance which the Design/Build Entity is required to procure by this Agreement or is deemed necessary by the Design/Build Entity;

- j) Minor expenses such as facsimile messages, telegrams, long distance telephone call telephone service at the site, express mail, and similar petty cash items in connection with the Work;
- k) All other items set forth in **Exhibit A**, Design/Build Entity Designated Services and Method of Payment that are specifically designated as Pre-Construction Services Fee, Construction Services Fee or General Conditions. All Items listed in the columns designated Direct Cost of Work shall be included in the separate Bid Packages.
- l) Except as expressly provided to the contrary elsewhere in this Agreement, approved costs in excess of the Guaranteed Maximum Price.

6.1.3 General conditions items, as set forth in paragraph 6.1.2, shall generally include the cost of Construction Phase on-site construction management staff and those temporary facilities, services and equipment to support the Work of construction subcontractors. General conditions items are more fully identified in **Exhibit A**, Designated Services and Methods of Payment, and shall be reimbursed at cost, without mark-up, based upon pre-approved not-to-exceed budgets. General conditions (exclusive of the Design/Build Entity's staff) provided directly by the Design/Build Entity must be at market competitive rates. Each monthly request for progress payment shall be justified with reasonable support for expenses to include:

- a) Invoice or receipt for any vendors or suppliers for material, rented equipment, etc.
- b) Labor/timesheet reports (by task number) for direct labor, provide bare labor rate & itemized breakdown of labor burden prior to initial billing.
- c) Owned equipment shall be compensated per pre-negotiated rates established in accordance with the Colorado Procurement Code C.R.S. § 24-106-108 – Cost Principle. In no case shall cumulative/total cost of owned equipment exceed the value of the equipment minus salvage value. The Principal Representative shall approve all rental rates and salvage values in writing prior to initial billing.
- d) Labor, material and equipment cost may be audited by the Principal Representative.

6.2 ADJUSTMENTS IN FEE

6.2.1 Adjustments in the Construction Phase Fee shall be made as follows: If, after the total Guaranteed Maximum Price is accepted, in writing, by the Principal Representative, the Principal Representative directs additions to or other changes made in the Work, the Design/Build Entity's fee shall be adjusted as follows:

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

- 6.2.2 The Design/Build Entity shall also be paid an additional fee at the rate as set forth in paragraph 6.2.1.b if the Design/Build Entity is placed in charge of the reconstruction of any insured loss.
- 6.2.3 If there is a material reduction in the scope of Work greater than fifteen percent (15%) of the Fixed Limit of Design & Construction Cost, the Design/Build Entity's Fees shall be reduced proportionally after the fifteen percent (15%).
- 6.3 PAYMENT OF FEE
- 6.3.1 Preconstruction Services Fee: For the performance of the Design/Build Entity's Architect/Engineer Basic Services and CM/GC's Preconstruction Services ending with the execution of the first amendment establishing and accepting the Guaranteed Maximum Price of the Work, the fee therefore as set forth in paragraphs 6.1.1 shall be paid monthly as described in the General Conditions with the total payment not to exceed the fee for such services as set forth in paragraph 6.1.1.
- 6.3.2 Construction Services Fee: For the Performance of the Design/Build Entity's Architect/Engineer Basic Services and CM/GC's Construction Services after the execution of the first amendment establishing and accepting the Guaranteed Maximum Price of the Work with the addition of the second Amendment incorporating the first Bid Package and subsequent Amendments incorporating subsequent Bid Packages, the fee therefore as set forth in paragraphs 6.1.1 shall be paid monthly as described in the General Conditions with the total payment not to exceed the fee for such services as set forth in paragraph 6.1.1. and the portion of the fee to be paid shall be equivalent to the ratio of the dollar value of each Bid Package to the Guaranteed Maximum Price including the premiums for the Performance and Labor and Materials Payment Bonds with coverage up to the value of the Contract Sum.
- 6.4 GUARANTEED MAXIMUM PRICE
- 6.4.1 At the conclusion of the Design Development Phase, the Design/Build Entity shall deliver to the Principal Representative, a Guaranteed Maximum Price proposal which shall agree to perform all of the Work even though all of the Construction Documents have not all been finalized and released for construction, and guarantee the maximum price to the Principal Representative for the entire cost of the Work, as adjusted by deductive alternates required to maintain the Guaranteed Maximum Price below the Fixed Limit of Design & Construction Cost which have been previously approved by the Principal Representative pursuant to paragraph 3.1.1.
- 6.4.2 The Guaranteed Maximum Price shall include all of the Design/Build Entity's obligations to be performed pursuant to the terms of the Contract Documents and may include, but not be limited to, the total of the following:
- a) The total of all prices already received for all items bid before the establishment of the Guaranteed Maximum Price;
 - b) The Design/Build Entity's estimate of the cost of all other Work to be performed but not yet bid, excluding the approved deductive alternates unless said Work can be incorporated into the Contract Documents by application of the contingency per the provisions of paragraphs 3.3.1 through 3.3.5, with the consent of the Design/Build Entity which consent shall not be unreasonably withheld;
 - c) The installation cost of items to be procured by the Principal Representative and assigned to the Design/Build Entity for installation, as defined in the Contract Documents;
 - d) The estimated maximum cost of all Work to be performed by the Design/Build Entity;
 - e) Design/Build Entity's Fee as provided under this Agreement;

- f) The cost of all Performance and Labor and Material Payment Bonds furnished by the Design/Build Entity pursuant to the Contract General Conditions, Article 16;
- g) The premiums for insurance to protect the Project pursuant to the Contract General Conditions, Article 25; and
- h) Authorized adjustments as set forth elsewhere in this Agreement, to include but may not be limited to: taxes; fees for licenses, and royalties; special conditions, commissioning, start-up services, and warranty support; and contingencies.

6.4.3 The Guaranteed Maximum Price proposal as set forth in paragraph 6.3.1 shall:

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

6.4.4 If, through no fault on the part of the Design/Build Entity, and after receiving reasonable cooperation by the Principal Representative, the Design/Build Entity submits a Guaranteed Maximum Price proposal contrary to the provisions of paragraph 6.3.2 and 6.3.3, the proposal may be rejected by the Principal Representative; the Principal Representative shall be under no obligation to award subsequent Bid Packages; the Principal Representative may declare the Design/Build Entity to be in default; and payment may be withheld from the Design/Build Entity, excepting the Design/Build Entity's reasonable costs incurred, up and until a Guaranteed Maximum Price is furnished in accordance with the foregoing.

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

6.4.6 When the Guaranteed Maximum Price is agreed upon and accepted by the Principal Representative, it shall be made a part of the Contract Documents by Amendment, shall supersede updated summaries, and all documents relating to Schedules of Values and Estimates of Design & Construction; and shall be subject to modification for Changes in the Work as provided

in the General Conditions Article 35. If the Design/Build Entity, in good faith, furnishes the Principal Representative with a Guaranteed Maximum Price proposal which meets the criteria of paragraphs 6.4.1, 6.4.2, and 6.4.3 and the parties fail to mutually agree to that number as set forth above, the parties expressly agree that default termination of the Design/Build Entity shall not be a remedy therefore under this Agreement, and, the Principal Representative shall be entitled to proceed with the Project and Work as set forth elsewhere in this Agreement.

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

6.5 CONTRACT SUM

6.5.1 Subject to the provisions of Article 3, Article 6 and Contract General Conditions Article 50, the Contract Sum shall equal the total of:

- a) The Design & Construction Costs as set forth in 3.4.6 and 3.4.7.
- b) Authorized adjustments as set forth elsewhere in this Agreement;

and shall be the total amount payable by the Principal Representative to the Design/Build Entity for the performance of all Work under the Contract Documents.

6.6 ~~CONDITION PRECEDENT~~

6.6.1 ~~FUTURE APPROPRIATIONS~~

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

6.6.2 ~~OBLIGATIONS~~

~~(At the time of the execution of this Agreement, there are sufficient funds budgeted and appropriated to compensate the Construction Manager only for performance of the Work through and including Insert the phases funded. Therefore, it shall be a Condition Precedent to the Construction Manager's performance of the remaining Work specified in (parts of Article 3) and the State's liability to pay for such performance, sufficient funding must be made available to the Principal Representative for the Project prior to _____ and, as a further Condition Precedent, a written Amendment to this Agreement is entered into in accordance with the State of Colorado Fiscal Rules, stating that additional funds are lawfully available for the Project. If either Condition Precedent is not satisfied by _____, the Construction Manager's obligation to perform Work for (scope of work) and the State obligation to pay for such Work is discharged without liability to each other. If funding is eventually made available after _____, the Construction Manager has no right to perform the Work under (parts of Article 3) of this Agreement and the State has no right to require the Construction Manager to perform said Work.)~~

Commented [SBP9]: Insert the parts of Article 3 that describes the services not fully funded

Commented [SBP10]: Note to Drafter: Insert the latest date that the funds will be released and the construction manager is willing to hold their fee.

Commented [SBP11]: Insert the last date the construction manager is willing to hold their fee

Commented [SBP12]: Note to Drafter: Below is a MS Excel spreadsheet. Double click to activate and complete

Commented [SBP13]: Insert the last date the construction manager is willing to hold their fee.

Commented [SBP14]: Insert the parts of Article 3 that describes the services not fully funded

7 ARTICLE 7 OPTIONAL PROVISIONS AND ELECTIONS

The provisions of this Article alter the preceding Articles or enlarge upon them as indicated (The General Conditions of the Design/Build Guaranteed Maximum Price (GMP) Agreement SC-9.1):
The Principal Representative and or the State Buildings Program shall mark boxes and initial where applicable.

7.1 MODIFICATION OF ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION

If the box below is marked, certification of apprenticeship utilization is required for all mechanical, sheet metal, fire suppression, sprinkler fitting, electrical and plumbing work on the project.

_____ Principal Representative initial

Commented [SBP15]: Note to Drafter: Apprenticeship utilization is required if Construction value is \$1 million or more and not federally funded

7.2 MODIFICATION OF ARTICLE 45. GUARANTEE INSPECTIONS AFTER COMPLETION

If the box below is marked the six month guarantee inspection is not required.

_____ Principal Representative initial

7.3 MODIFICATION 1 OF ARTICLE 27. LABOR AND WAGES

If the box is marked the Federal Davis-Bacon Act shall be applicable to the Project. The minimum wage rates to be paid on the Project shall be furnished by the Principal Representative and included in the Contract Documents.

_____ Principal Representative initial

Commented [SBP16]: Note to Drafter: Federal Davis-Bacon Act might be applicable if federally funded. Confirm with the funding documentation.

7.4 MODIFICATION 2 OF ARTICLE 27. LABOR AND WAGES

If the box is marked, the State prevailing wage statute shall be applicable to the Project. The minimum wage rates to be paid on the Project shall be furnished by the Principal Representative and included in the Contract Documents.

_____ Principal Representative initial

Commented [SBP17]: Note to Drafter: State prevailing wage may be required if the construction fee is \$500k or more and not Federally funded

7.5 MODIFICATION OF ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS

If the box is marked, and initialed by the State as noted, the requirement to participate in facilitated negotiations shall be deleted from this Contract. Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, shall be deleted in its entirety and all references to the right to the same where ever they appear in the contract shall be similarly deleted. The box may be marked only for projects with an estimated value of less than \$500,000.

_____ Principal Representative initial

Commented [SBP18]: Note to Drafter: This modification is optional for small projects only.

7.6 MODIFICATION OF ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

If an amount is indicated immediately below, liquidated damages shall be applicable to this Project as, and to, the extent shown below. Where an amount is indicated below, liquidated damages shall be assessed in accordance with and pursuant to the terms of Article 46, Time of Completion and Liquidated Damages, in the amounts and as here indicated. The election of liquidated damages shall limit and control the party's right to damages only to the extent noted.

7.6.1 For the inability to use the Project, for each day after the number of calendar days specified in the Construction Manager's proposal for the Project and the Agreement for achievement of

Commented [SBP19]: Note to Drafter: Liquidated damages is optional and should be a quantifiable loss to the agency and institution.

Substantial Completion, until the day that the Project has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Construction Manager agrees that an amount equal to _____ Dollars (\$_____); shall be assessed against Construction Manager from amounts due and payable to the Construction Manager under the Contract, or the Construction Manager and the Construction Manager's Surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.

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

8 ARTICLE 8 NOTICE IDENTIFICATION

All Notices pertaining to General Conditions or otherwise required to be given shall be transmitted in writing, to the individuals at the addresses listed below, and shall be deemed duly given when received by the parties at their addresses below or any subsequent persons or addresses provided to the other party in writing.

Notice to Principal Representative:
Karl Spiecker, Interim VCAF, Principal Rep
University of Colorado Colorado Springs
1420 Austin Bluffs Pkwy
Colorado Springs, CO 80918
kspiecker@uccs.edu

With copies to State Buildings Program (or Delegate):
Carolyn Fox, OSA Delegate
University of Colorado Colorado Springs
1420 Austin Bluffs Pkwy
Colorado Springs, CO 80918
Cfox3@uccs.edu

Notice to Contractor:
Insert Name of Individual acting on the contractor behalf
Insert Street Address
City, State Zip Code
Insert email address

With copies to: File

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

**DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)**

EXHIBIT A DESIGN-BUILD ENTITY DESIGNATED SERVICES AND METHOD OF PAYMENT

**DESIGNATED SERVICES AND METHOD OF PAYMENT
(Attached)**

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

DESIGN / BUILD SERVICES	REQUIRED OF DESIGN/BUILD ENTITY					REQUIRED OF OWNER
	PRE-CONST SVCS FEE	CONST SVCS FEE	GEN CONDS.	DIRECT COST OF WORK	REQUIRED OF D/B ARCH	
COST STUDY DOCUMENTS					X	
SYSTEMS STUDY DOCUMENTS					X	
BID PACKAGE SETS (SEE PARAGRAPH 3.5.9)	X					
BIDDING INSTRUCTIONS	X					
CONSTRUCTION DOCUMENTS ORIGINAL POSTAGE AND EXPRESS COSTS (CM/GC ISSUES PLANS)			X		X	
AS-BUILT SUB-DOCUMENTS				X		
AS-BUILT DOCUMENTS			X			
ACCOUNTING FORMS		X				
FIELD REPORTING FORMS			X			
SUBCONTRACT AGREEMENT FORMS	X					
SCHEDULE REPORT FORMS			X			
ESTIMATING FORMS	X					
COST REPORTING FORMS	X					
VALUE ANALYSIS STUDIES PRINTING	X					
DATA PROCESSING (MAIN OFFICE)		X				
REFERENCE MATERIALS			X			
SHOP DRAWING PRINTING				X		
ON-SITE FAX AND COPIER			X			
DATA PROCESSING (ON-SITE)			X			
MAINTENANCE MANUALS (FROM SUBS) AND OPERATIONS MANUALS (FROM SUBS)				X		

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

EXHIBIT A

Designated Services and Method of Payment

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

Responsibility:

x = Total

1 = Primary

2 = Secondary

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

**DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)**

EXHIBIT B DESIGN BUILD ENTITY'S CERTIFICATION

DESIGN BUILD ENTITY'S CERTIFICATION

I hereby certify:

- a. That I am the _____ and duly authorized representative of the firm of:

_____;
and

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

DESIGN BUILD ENTITY

Signature

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

**DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)**

EXHIBIT C DESIGN/BUILD ENTITY 'S REQUEST FOR PROPOSAL

**REQUEST FOR PROPOSAL and ADDENDA
(Attached)**

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

**DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)**

EXHIBIT D DESIGN BUILD ENTITY'S FEE PROPOSAL

DESIGN/BUILD ENTITY'S FEE PROPOSAL

- D1 Design/Build Entity's Fee Proposal
- D2 Design/Build Entity's Certificates of Insurance
- D3 Design/Build Entity's Direct Labor Burden Calculation

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

DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)

EXHIBIT E STATE SALES AND USE TAX FORMS

STATE SALES AND USE TAX FORMS
(Attached)

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

DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)

EXHIBIT F LIST OF PRE-QUALIFIED SUBCONTRACTORS

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

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

**DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)**

EXHIBIT G SCHEMATIC DESIGN ESTIMATE SUMMARY AND UPDATED SUMMARIES

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

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

DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)

EXHIBIT J NOTICE TO PROCEED

EXHIBIT J1: NOTICE TO PROCEED TO COMMENCE DESIGN
(Attach when executed)

EXHIBIT J2: NOTICE TO PROCEED TO COMMENCE CONSTRUCTION
(Attach when executed)

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

**DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)**

EXHIBIT K BUILDING CODE COMPLIANCE POLICY

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**

**CONTRACTOR'S DESIGN/BID/BUILD AGREEMENT
(STATE FORM SC-6.21)**

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

Commented [20]: Note to drafter: Delete this page if not applicable

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

**DESIGN/BUILD GUARANTEED MAXIMUM PRICE (GMP) AGREEMENT
(STATE FORM SC-9.0)**

EXHIBIT M

UNIVERSITY INSURANCE REQUIREMENTS – A

INSURANCE REQUIREMENTS (A)

This insert applies to the following State Contracts:

**General Conditions of the Construction Contract Design/Bid/Build (SC-6.23), or
Contractors Agreement Design/Bid/Build (SC-6.21), or
Standing Order Contractor, or
Construction Manager/General Contractor CM/GC (SC-6.4), or
Design/Build Entity (SC-8.0).
Design/Build Guaranteed Max SC 9.0**

For purposes of this supplement "Contractor" as used herein shall mean, as appropriate to the State Contract form being used, Contractor, Standing Order Contractor, Construction Manager/General Contractor, or Design/Build Entity.

The Contractor shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under 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 subcontractors 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 – ISO CG 0001 or equivalent. Coverage to include:**

- Premises and Operations
- Explosions, Collapse and Underground Hazards
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs assumed under contract)
- Independent Contractors
- Designated Construction Projects(s) General Aggregate Limit, ISO CG 2503 (1997 Edition)
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition or equivalent)
- Additional Insured—Owners, Lessees or Contractors Endorsement (Completed Operations), ISO CG 2037 (7/2004 Edition or equivalent)
- The policy shall be endorsed to include the following additional insured language on the Additional Insured Endorsements specified above: "The Regents of the University of Colorado, a Body Corporate, named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations".**
- Commercial General Liability Completed Operations policies must be kept in effect for up to three (3) years after completion of the project. For buildings with a construction cost greater than \$99 million, the Commercial General Liability Completed Operations policies must be kept in effect for up to eight (8) years after the completion of the project.
- An umbrella and/or excess liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.**

Liability Limits	General Aggregate	Products/Completed Operation Aggregate	Each Occurrence	Personal/Advertising Injury
Primary General Liability	\$2,000,000	\$2,000,000	\$1,000,000	\$1,000,000
Umbrella or Excess Liability*	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000

*Umbrella or Excess Liability does not apply to projects totaling \$500, 000 or under.

The following exclusionary endorsements are prohibited in the CGL policy:

1. Damage to work performed by subcontractor/vendor (CG 22-94 or similar);
2. Contractual liability coverage exclusion modifying or deleting the definition of an "insured contract";
3. If applicable to the work to be performed: Residential or multi-family;
4. If applicable to the work to be performed: Exterior insulation finish systems;
5. If applicable to the work to be performed: Subsidence or earth movement.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this contract

Minimum Limits:

Bodily Injury/Property Damage (Each Accident) \$ 1,000,000

3. Workers Compensation

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

- a. Policy shall contain a waiver of subrogation in favor of the Principal Representative.
- b. 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 appropriate sole proprietor waiver form.

Minimum Limits:

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

4. Contractors Pollution Liability

•If Contractor is providing directly or indirectly working with pollution/environmental hazards, Contractor must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage.

•Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). Policy shall cover the Contractor's completed operations.

•If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed.

•The policy shall be endorsed to include the following as Additional Insureds: The Regents of the University of Colorado, a Body Corporate, named as an additional insured with respect to liability and defense of suits SC-9.0

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arising out of the activities performed by, or on behalf of the Construction Manager, including completed operations.

•Endorsements CA9948 and MCS-90 are required on the Automobile Liability Coverage if the Contractor is transporting any type of hazardous materials.

•Contractors Pollution Liability policies must be kept in effect for up to three (3) years after completion of the project.

Minimum Limits:

Per Loss	\$	1,000,000
Aggregate	\$	1,000,000

5. **Professional Liability (Errors and Omissions)**

*(This Professional Liability requirement applies **only** to Design/Build Entity, SC-8.0.)*

- 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

6. **Builder's Risk/ Installation Floater**

Unless otherwise provided or instructed by the Principal Representative, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, Builder's Risk Insurance in the amount of the initial contract amount as well as subsequent modifications for the entire project at the site on a replacement cost basis without optional deductibles. This coverage is required for new buildings or additions to existing buildings and for materials and equipment to be installed in existing structures.

- Covered Cause of Loss: Special Form
- Include Theft and Vandalism
- Labor costs to repair damaged work
- Shall be written for 100% of the completed value (replacement cost basis)
- Deductible maximum is \$50,000.00
- Waiver of Subrogation is to apply
- The Regents of the University of Colorado, a body corporate, shall be added as **Additional Named Insured on Builders Risk.**

1. Policy must provide coverage from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
2. The Policy shall be maintained, unless otherwise provided in the contract documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made

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or until no person or entity other than the Principal Representative has insurable interest in the property to be covered, whichever is later.

3. The Builder's Risk insurance shall include interests of the Principal Representative, and if applicable, affiliated or associated entities, the General Contractor, subcontractors and sub-tier contractors in the project.
4. Builders' Risk Coverage shall be on a **Special** Covered Cause of Loss Form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition, increased cost of construction, architect's fees and expenses, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, piling including the ground on which the structure rests and excavation, backfilling, filling, and grading. Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) shall be included as required by the Contract Documents or by law, which shall specifically cover insured equipment during installation and testing (including hot testing, where applicable). Other coverages may be required if provided in contract documents.
5. The Builders' Risk shall be written for 100% of the completed value (replacement cost basis) of the work being performed. The Builders' Risk shall include the following provisions:
 - a. Replacement Cost Basis - including modification of the valuation clause to cover all costs needed to repair the structure or work (including overhead and profits) and will pay based on the values figured at the time of rebuilding or repairing, not at the time of loss
 - b. Modify or delete exclusion pertaining to damage to interior of building caused by an perils insured against are covered; also provide coverage for water damage

Note, if the addition, or renovation is to an existing building, The Principal Representative requires that the Contractor provide as an option to include the existing building into the Builders' Risk Policy. The Principal Representative shall provide the replacement cost value of the existing building

6. At the option of the Principal Representative, the Principal Representative may include Soft Costs (including Loss of Use)/Delay in Opening Endorsement under the builder's risk policy. The Principal Representative agrees to provide the necessary exposure base information for quotation by the Builder's Risk carrier. The Principal Representative agrees to pay the premium associated with the Soft Costs coverage, the Principal Representative decides to purchase this coverage.
7. The Builders' Risk Policy shall specifically permit occupancy of the building during construction. Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance have consented to such partial occupancy or use. The Principal Representative and Contractor shall take reasonable steps to obtain consent of the insurance company or companies and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builders' Risk Policy. The Builders' Risk Policy shall remain in force until acceptance of the project by the Principal Representative.
8. The deductible shall not exceed \$50,000 and shall be the responsibility of the Contractor except for losses such as flood (not water damage), earthquake, windstorm, tsunami, volcano, etc. Losses in excess of \$50,000 insured shall be adjusted in conjunction with the Principal Representative. Any insurance payments/proceeds shall be made payable to the Principal Representative subject to requirements of any applicable mortgagee clause. The Contractor shall pay subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require subcontractors to make payments to their sub-subcontractors in similar manner.

The Principal Representative shall have the authority to adjust and settle any losses in excess of \$50,000 with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Principal Representative exercise of this power. It is expressly agreed that nothing in this section shall be subject to arbitration and any references to arbitration are expressly deleted.

9. The Contractor is responsible for providing 45 days' notice of cancellation to the Principal Representative. The policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to the Project.

If the Contractor does not intend to purchase such Builder's Risk Insurance required by the Contract and with all of the coverages in the amount described above, the Contractor shall so inform the Principal Representative as stated in writing prior to commencement of the work. The Principal Representative may then affect insurance that will protect the interests of the Principal Representative, the General Contractor, Subcontractors and sub-tier contractors in the project. Coverages applying shall be the same as stated above including other coverages that may be required by the Principal Representative. The cost shall be charged to the Contractor. Coverage shall be written for 100% of the completed value of the work being performed, with a deductible not to exceed \$50,000 per occurrence for most projects.

All deductibles will be assumed by the Contractor. Waiver of Subrogation is to apply against all parties named as insureds, but only to the extent the loss is covered, and Beneficial Occupancy Endorsements are to apply. If the Principal Representative is damaged by the failure or neglect of the Contractor to purchase or maintain insurance as described above, without so notifying the Principal Representative, then the Contractor shall bear all reasonable costs properly attributable thereto.

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.
2. Contractor's insurance carrier should possess a minimum A.M. Best's Insurance Guide rating of A- VI.
3. On insurance policies where the Principal Representative are named as additional insureds, the Principal Representative shall be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
4. Contractor shall furnish the Principal Representative with certificates of insurance (ACORD form or equivalent approved by the Principal Representative) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the Principal Representative before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
5. Upon request by the Principal Representative, Contractor must provide a copy of the actual insurance policy effecting coverage(s) required by the contract.
6. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available resources.
7. 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.
8. Provide a minimum of thirty (30) days advance written notice to the Principal Representative for cancellation, non-renewal, or material changes to policies required under the Contract (45 days for builders' risk coverage..
9. Certificate Holder: The Regents of the University of Colorado, University Risk Management, 1800 Grant Street, Suite 700, Denver, CO 80203.

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.

Subcontractors

Contractor's certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

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.

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