STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
STATE BUILDINGS PROGRAMS

University of Colorado Boulder

CONSULTANT AGREEMENT
(STATE FORM SC-5.3)

CONTRACT ID NUMBER:

AGENCY IDENTIFICATION NUMBER:

Project No.:

Project Name:

Project Manager:

Consultant:

Date:
CONSULTANT AGREEMENT
(STATE FORM SC-5.3)

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Exhibits:

A Consultant’s Proposal (including Consultant’s Services Schedule and Insurance Certificates)
B Wage Rates Schedule
C Certification and Affidavit Regarding Unauthorized Immigrants (required at contract signing prior to commencing work)
D Contract Management Information
STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
STATE BUILDINGS PROGRAMS

CONSULTANT AGREEMENT
(STATE FORM SC-5.3)

1. PARTIES. THIS AGREEMENT is entered into by and between the STATE OF COLORADO, acting by and through the Regents of the University of Colorado, a Body Corporate, hereinafter referred to as the Principal Representative, and (vendor name) having its offices at (vendor address), hereinafter referred to as the Consultant.

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

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated, and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment in Fund Number _____, SpeedType/Account Number __________, Agreement Encumbrance Number ______; and

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

WHEREAS, the Principal Representative intends to ________________________________
hereinafter called the Project; and

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

WHEREAS, this is a phase one waived contract, waiver number 174 Consultant Agreement for Capital Construction Form (SC-5.3).

NOW THEREFORE, it is hereby agreed that

ARTICLE 1. SCOPE OF WORK

The Consultant, in consideration of State's promises hereinafter made, promises to perform and accomplish all the work and services proposed, and in accordance with the terms and conditions set forth in the scope of work description and proposal dated __________, which documents are attached hereto and made a part hereof by reference as Exhibit A, (including the Consultant's Services Schedule). Consultant shall undertake and perform the necessary work and services (as detailed in the Consultant's Services Schedule outlining the required time to perform such work and services and including Principal Representative review times) as is customarily done in the professional practice of Consulting in the community for undertakings of similar character, scope and magnitude.
ARTICLE 2. COMPENSATION

In consideration for the performance of the said work and services including a lump sum price for Reimbursable Expenses if applicable, Principal Representative agrees to pay to Consultant fees and charges not to exceed ______________________ and no/100 Dollars ($___). Payments to the consultant on account of his fee shall be made monthly based upon consultant’s performance and progress, through a properly executed Application for Payment (State Form SC-7.1).

ARTICLE 3. REIMBURSABLE EXPENSE

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

ARTICLE 4. AGREEMENT EXPIRATION

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

ARTICLE 5. TERMINATION OF AGREEMENT

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

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

After receipt of the Notice of Termination, the Consultant shall exercise all reasonable diligence to accomplish the cancellation of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any services terminated by the Notice.

ARTICLE 6. CONSULTANT’S ACCOUNTING RECORDS

Records of the Consultant’s Direct Personnel, Consultant, and reimbursable Expense pertaining to this Agreement and records of accounts between the Principal Representative and Consultant shall be kept on a generally recognized accounting basis and shall be available to the Principal Representative at mutually convenient times and extending to three (3) years after final payment under this Agreement.
ARTICLE 7. INSURANCE

7.1 GENERAL
The Consultant shall procure and maintain all insurance requirements and limits as set forth below, at his or her own expense, for the length of time set forth in Contract requirements. The Consultant shall continue to provide evidence of such coverage to State of Colorado on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement. All below insurance policies shall include a provision preventing cancellation without thirty (30) days’ prior notice by certified mail. A completed Certificate of Insurance shall be filed with the Principal Representative and State Buildings Programs within ten (10) days after the date of the Notice of Award, said Certificate to specifically state the inclusion of the coverages and provisions set forth herein and shall state whether the coverage is “claims made” or “per occurrence”.

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

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

The following coverages shall be included in the CGL:

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

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

- Combined Bodily Injury and Property Damage Liability (Combined Single Limit): $1,000,000 each accident

Coverages:
Specific waiver of subrogation

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

The Consultant shall also require each Subcontractor to furnish Workers’ Compensation Insurance, including occupational disease provisions for all of the latter’s employees, and to the extent not furnished, the Consultant accepts full liability and responsibility for Subcontractor’s employees.
In cases where any class of employees engaged in hazardous work under this Contract at the site of the Project is not protected under the Workers’ Compensation statute, the Consultant shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

7.5 PROFESSIONAL ERRORS AND OMISSIONS LIABILITY

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

The Consultant promises and agrees to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts (indicated in the following table) as minimum coverage or such other minimum coverage as determined by the Principal Representative and approved by the State Buildings Programs. The policy, including claims made forms, shall remain in effect for the duration of this Agreement and for at least three years beyond the completion and acceptance of the Work. The Consultant shall be responsible for all claims, damages, losses or expenses, including attorney’s fees, arising out of or resulting from the performance of Professional Services contemplated in this Agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Consultant, any consultant or associate thereof, or anyone directly or indirectly employed by Architect/Engineer. The Consultant shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of Renewals of said policy as they occur.

<table>
<thead>
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<th>For a Fixed Limit of Construction Cost</th>
<th>Minimum Coverage per Claim</th>
<th>Minimum Coverage in the Aggregate</th>
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<tbody>
<tr>
<td>$999,999 and under</td>
<td>$250,000</td>
<td>$500,000</td>
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<tr>
<td>$1,000,000 to $4,999,999</td>
<td>$500,000</td>
<td>$1,000,000</td>
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<tr>
<td>$5,000,000 to $19,999,999</td>
<td>$1,000,000</td>
<td>$2,000,000</td>
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<tr>
<td>$20,000,000 and Above</td>
<td>$2,000,000</td>
<td>$2,000,000</td>
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The Consultant 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 Consultant its agents, representatives, employees or sub-consultants under this contract. The insurance requirements herein for this Contract in no way limit the indemnity covenants contained in the Contract.

The Principal Representative in no way warrants that the limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Contract by the Consultant, its agents, representatives, employees, or subConsultants. The Consultant shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Consultant 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** - Consultant shall provide coverage with limits of liability not less than those stated below.
1. **Commercial General Liability** – Occurrence Form – ISO CG 0001 or equivalent.

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

   - General Aggregate $ 2,000,000
   - Products/Completed Operations Aggregate $ 2,000,000
   - Each Occurrence Limit $ 1,000,000
   - Personal/Advertising Injury $ 1,000,000

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

2. **Automobile Liability**

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

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

3. **Workers Compensation and Employers’ Liability**

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

   Coverage A (Workers’ Compensation) Statutory
   Coverage B (Employers Liability)

   - Each accident $ 100,000
   - Disease each employee $ 100,000
   - Disease policy limit $ 500,000

   This requirement shall not apply when a Consultant or subConsultant is exempt under Colorado Workers’ Compensation Act, AND when such Consultant or subConsultant executes the appropriate sole proprietor waiver form.

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

   (If this contract is for one of the following professional pre-design services such as; geotechnical investigation and reporting, environmental assessment or land surveying or for construction administrative services such as material testing, then the following Professional Errors and Omissions Liability Insurance coverage applies)

   - The Consultant shall maintain Errors and Omissions Liability covering negligent acts, errors and/or omissions, including design errors of the Consultant 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, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.
- Policy shall contain a waiver of subrogation against The Regents of the University of Colorado, a Body Corporate.

| Wrongful Act | $2,000,000 |
| General Aggregate | $2,000,000 |

**ADDITIONAL INSURANCE REQUIREMENTS**

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

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

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

Mutual Cooperation
The Principal Representative and Consultant 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.

ARTICLE 8. SPECIAL PROVISIONS

8.1 CONTROLLER'S APPROVAL. CRS §24-30-202 (1). This contract shall not be deemed
valid until it has been approved by the Colorado State Controller or designee.

8.2 FUND AVAILABILITY. CRS §24-30-202(5.5). Financial obligations of the State payable
after the current fiscal year are contingent upon funds for that purpose being appropriated,
budgeted, and otherwise made available.

8.3 GOVERNMENTAL IMMUNITY. No term or condition of this contract shall be construed
or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits,
protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101
et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable
now or hereafter amended.

8.4 INDEPENDENT CONTRACTOR. 4 CCR 801-2. Consultant shall perform its duties
hereunder as an independent contractor and not as an employee. Neither Consultant nor any
agent or employee of Consultant shall be deemed to be an agent or employee of the State.
Consultant and its employees and agents are not entitled to unemployment insurance or
workers compensation benefits through the State and the State shall not pay for or otherwise
provide such coverage for Consultant or any of its agents or employees. Unemployment
insurance benefits will be available to Consultant and its employees and agents only if such
coverage is made available by Consultant or a third party. Consultant shall pay when due all
applicable employment taxes and income taxes and local head taxes incurred pursuant to this
contract. Consultant shall not have authorization, express or implied, to bind the State to any
agreement, liability or understanding, except as expressly set forth herein. Consultant shall (a)
provide and keep in force workers' compensation and unemployment compensation insurance
in the amounts required by law, (b) provide proof thereof when requested by the State, and (c)
be solely responsible for its acts and those of its employees and agents.

8.5 COMPLIANCE WITH LAW. Consultant shall strictly comply with all applicable federal
and State laws, rules, and regulations in effect or hereafter established, including, without
limitation, laws applicable to discrimination and unfair employment practices.

8.6 CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto,
shall be applied in the interpretation, execution, and enforcement of this contract. Any provision
included or incorporated herein by reference which conflicts with said laws, rules, and
regulations shall be null and void. Any provision incorporated herein by reference which
purports to negate this or any other Special Provision in whole or in part shall not be valid or
enforceable or available in any action at law, whether by way of complaint, defense, or
otherwise. Any provision rendered null and void by the operation of this provision shall not
invalidate the remainder of this contract, to the extent capable of execution.
8.7 BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

8.8 SOFTWARE PIRACY PROHIBITION. Governor’s Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Consultant hereby certifies and warrants that, during the term of this contract and any extensions, Consultant has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Consultant is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

8.9 EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §24-18201 and §24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Consultant has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Consultant’s services and Consultant shall not employ any person having such known interests.

8.10 VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

8.11 PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Consultant certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a sub-consultant that fails to certify to Consultant that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the sub-consultant and the contracting State agency within three days if Consultant has actual knowledge that a sub-consultant is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a sub-consultant does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Consultant participates in the Department program, Consultant shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Consultant has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Consultant fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Consultant shall be liable for damages.
8.12 PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Consultant, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

ARTICLE 9. MISCELLANEOUS PROVISIONS

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

9.2 WAGE RATES, in accordance with CRS 24-30-1404 (1)
As amended, the Consultant has executed a schedule, which is attached hereto and made a part hereof by reference as Exhibit B, Wage Rates Schedule, and by doing so is certifying that wage rates and other factual unit costs supporting the compensation paid by the State for these professional services are accurate, complete and current.

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

9.3 CONTINGENT FEE PROHIBITION, in accordance with CRS 24-30-1404 (4)
As amended, the Consultant warrants that he has not employed or retained any company or person other than a bona fide employee working solely for him, to solicit or secure this contract, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of this contract.

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

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

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

9.5 CONSTRUCTION OF LANGUAGE
The language used in this Agreement shall be construed as a whole according to its plain meaning, and not strictly for or against any party.
9.6 SEVERABILITY
Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

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

9.8 VENUE
All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

9.9 NO THIRD PARTY BENEFICIARIES
Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

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

9.11 INDEMNIFICATION
To the extent authorized by law, the Consultant shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and attorney's fees, to the extent such claims are caused by any negligent act or omission of, or breach of contract by, the Consultant, its employees, agents, sub-consultants or assignees pursuant to the terms of this Contract, but not to the extent such claims are caused by any act or omission of, or breach of contract by, the State, its employees, agents, other Consultants or assignees, or other parties not under the control of or responsible to the Consultant.

9.12 STATEWIDE CONTRACT MANAGEMENT SYSTEM
If the maximum amount payable to Consultant under this Contract is $100,000 or greater, either on the Effective Date or at anytime thereafter, this section shall apply.

Consultant agrees to be governed, and to abide, by the provisions of CRS 24-102-205, 24-102-206, 24-103-601, 24-103.5-101, 24-105-101, and 24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Consultant’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including C.R.S 24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Consultant’s performance shall be part of the normal contract administration process and Consultant’s performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Consultant’s obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Consultant’s obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a
final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Consultant shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Consultant demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Principal Representative, and showing of good cause, may debar Consultant and prohibit Consultant from bidding on future contracts. Consultant may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS 24-105-102(6)), or (b) under CRS 24-105-102(6), exercising the debarment protest and appeal rights provided in CRS 24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Consultant, by the Executive Director, upon a showing of good cause.

9.13 BINDING EFFECT
Except as otherwise provided in 9.1, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective heirs, legal representatives, successors, and assigns.

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

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

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

9.16 SURVIVAL OF CERTAIN CONTRACT TERMS
Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Consultant fails to perform or comply as required.

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

9.18 CORA DISCLOSURE
To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.
SIGNATURE APPROVALS:

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

Project Name/Number: __________________________________________________________

Contract ID No.: ____________________________________________________________

THE CONSULTANT

STATE OF COLORADO, acting by and through:
The Regents of the University of Colorado, A Body Corporate

__________________________________________________________

Legal Name of Contracting Entity

Ronald L. Ried, Director
Facilities Management Business Services

By: ________________________________________________________________________

Date: ________________________________________________________________________

*Signature

By ____________________________
Name (print) ________________ Title

Date: ________________________________________________________________________

APPROVED

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

Paul M. Leef, AIA, LEED ™ AP
Campus Architect &
Director, Planning, Design & Construction

By: ________________________________________________________________________

Date: ________________________________________________________________________

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER:

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

APPROVED:

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

By: ____________________________

Steve McNally
Associate Vice Chancellor & Controller

Date: ________________________________________________________________________

Approved by PM

Approved by PM Supervisor
CONSULTANT AGREEMENT  
(STATE FORM SC-5.3)

EXHIBIT A – Enter project Number & Name

CONSULTANT PROPOSAL  
(including Consultant Services Schedule and Insurance Certificate, attached)
CONSULTANT AGREEMENT
(STATE FORM SC-5.3)

EXHIBIT B - Enter project Number & Name

WAGE RATES
(attached)
CONSULTANT AGREEMENT
(STATE FORM SC-5.3)

EXHIBIT C - Enter project Number & Name

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