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# THE DESIGN/BUILD AGREEMENT

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## University of Colorado at Boulder

PROJECT NO.

PROJECT NAME

PROJECT MANAGERS:

DESIGN/BUILD CONTRACTOR:

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**The State of Colorado**

**DESIGN-BUILD AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ of the year 2010 between the State of Colorado, acting by and through the Regents of the University of Colorado, a body corporate, hereinafter called the "Principal Representative", **and** \_\_\_\_\_ having its offices at \_\_\_\_\_, engaged to serve as the Design/Build Entity, hereinafter referred to as the "Design/Build Entity".

WITNESSETH that whereas the Principal Representative intends to \_\_\_\_\_, at the University of Colorado at Boulder campus hereinafter called the "Project".

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 funding source Speed Type 17183794.

WHEREAS, the Principal Representative has been authorized to expend the total sum of \_\_\_\_\_ **and no/100 Dollars (\$ \_\_\_\_\_ .00)** for this project including all professional services, construction/improvements, demolition of the site; communications, reimbursables; and

WHEREAS, the Principal Representative has established the fixed limit of design and construction cost in the amount of \_\_\_\_\_ **Thousand, Hundred and no/100 Dollars (\$ \_\_\_\_\_)**; and

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

WHEREAS, the Design/Build Entity was selected after a determination that its proposal was the most advantageous to the Principal Representative pursuant to the \_\_\_\_\_ Contractor's proposal dated \_\_\_\_\_ (Exhibit "A").

WHEREAS, the Design/Build Entity and the Principal Representative have negotiated the terms of this Agreement pursuant to Section 24-103-203, C.R.S., as amended;

NOW THEREFORE, The Principal Representative and the Design/Build Entity for the consideration hereinafter set forth, agree as follows:

**ARTICLE 1**

**THE WORK**

1.1.1 The Design/Build Entity will design and construct the Project within the price specified, and the Design/Build Entity will furnish all the 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. In the event of conflict or inconsistency between the various terms, such conflict or inconsistencies shall be resolved by giving effect to the various documents in the following order of precedence: (1) the Contractor's Scope Narrative; (2) the Minimum Requirements/RFP; (3) the Design/Build Entity's Technical and Cost Proposals; (4) Contract Documents (including its attachments and exhibits when added, but not including specifications and drawings); (5) General Conditions of the Contract (Design/Build); (6) the Specifications; and (7) the Drawings.

1.1.2 In accordance with Article 2 of The General Conditions of the Contract, the Design/Build Entity agrees to complete the entire Project, including punch list by \_\_\_\_\_, ~~contingent upon receipt of a signed Agreement from the Principal Representative \_\_\_\_\_~~. The State will issue a Notice to Proceed with Design ~~within 24 hours of~~ after receipt of satisfactory evidence of insurance professional liability insurance, and labor and material payment and performance bonding. The Principal Representative will issue separate Authorizations to Proceed with Construction for each phased portion of the Work in accordance with

the design submittal and review procedures outlined in the Agreement. In accordance with Article 49 of The General Conditions of the Contract, the State shall be entitled to liquidated damages in the amount of **actual monetary losses** **Thousand no/100 Dollars (\$\_\_\_\_\_ .00)** per day for each day of delay past the required completion date \_\_\_\_\_. The parties agree that, notwithstanding the establishment of liquidated damages, the State reserves its right to claim damages for delays that are not purely attributable to extended or increased costs of supervision and contract management as a result of the delay. Without limiting the damages or remedies otherwise available, the Design/Build Entity agrees to pay as consequential damages the cost of housing tenants in alternate, comparable housing and storage of their possessions attributable to unexcused delays in completion of the Project.

1.1.3 The Design/Build Entity agrees to cooperate fully with the Principal Representative in the design and construction aspects of the Work to keep within the Principal Representative's monetary limitations, as stipulated above.

1.1.4 Execution of this Agreement by the Design/Build Entity is a representation that the Design/Build Entity has visited the site, become familiar with the local conditions under which the Work is to be performed (not including subsurface, latent or unknown physical conditions at the site, which are subject to the provisions of Article 17 of the General Conditions of the Contract), and has correlated personal observations with the requirements of the Contract Documents. The Principal representative shall provide to the Design/Build entity copies of all available soils reports, environmental audits, surveys and other site condition documents in the Principal Representative's possession immediately upon execution of this Agreement.

1.1.5 The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of any conflict between any of these documents, the greater service, better quality or greater quantity shall be included in the work prior to the development and acceptance of the Contractor's Scope Narrative.

1.1.6 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.

## **ARTICLE 2**

### **DEFINITIONS**

The following definitions supplement the definitions in the General Conditions of the Design/Build Contract.

2.1.1 The words "Agreement" or "Agreement" shall be considered to be this written Agreement entered into by the Principal Representative and the Design/Build Entity for the performance of the Work and payment therefor.

2.1.2 "Contractor's Scope Narrative" shall be defined as the bilateral agreement concerning final scope, which is developed cumulatively and simultaneously with each of the design phases and is agreed upon during review of the final scope as it pertains to each design submission. Silence in the scope narrative with respect to requirements or the proposed design shall not be deemed as a "conflict or inconsistency" per Section 1.1.1.

2.1.3 Wherever the term "Contractor" is used in the Contract Documents, it shall mean the Design/Build Entity signing this Agreement.

2.1.4 "General Contractor" shall mean the Construction company licensed or registered by the State of Colorado which has subcontracted with the Design/Build Entity, with prior approval by the State, to accomplish the construction, building and construction management services necessary for the project. Although the Contract Documents impose specific performance requirements to be discharged by the General Contractor selected by the Design/Build Entity, and approved by the State, nothing in this contract is intended to create a

contractual relationship between such contractor and the State of Colorado.

2.1.5 The Date of "Substantial Completion of the Work" or designated portion thereof is the date of beneficial occupancy or notice of acceptance for each building by the Principal Representative. "Final Completion" refers to completion of the punch list.

2.1.6 The "Contract Documents" consist of:

- .1 This Agreement, including exhibits;
- .2 The General Conditions of the Design/Build Contract;
- .3 Contractor's scope narrative;
- .4 The Design/Build Entity's Cost Proposal, any appendices, addenda, clarifications and allowances;
- .5 The Drawings released for Construction subsequent to execution of the Agreement;
- .6 The Specifications released for Construction subsequent to the execution of the Agreement;
- .7 Performance and Labor and Material Payment Bonds;
- .8 Certificates/Evidence of Insurance;
- .9 Notice of Acceptance/Beneficial Occupancy Form; and
- .10 Notice of the Design/Build Entity's Settlement.

2.1.7 Unless otherwise provided, the "Contract Time" is the period of time allotted in the Contract Documents for Completion of the Project.

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

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

2.1.10 "Principal Representative" or the "State includes an authorized agent identified in this Agreement or appointed in writing by the Principal Representative.

2.1.11 "MEP" refers to mechanical, electrical, plumbing ~~and landscape~~ firms.

2.1.12 The "Project" is synonymous with the "Work."

2.1.13 "State Buildings Programs" shall mean an entity of the Department of Personnel d.b.a. General Support Services of the Executive Branch of the State of Colorado Government or such division or designee as shall be established to perform statutory responsibilities current at any time during the performance of this Agreement.

2.1.14 The term "subcontractor" shall mean a person, firm, or corporation supplying labor and materials, or only labor, for the Work, under separate agreement or agreements with the Design/Build Entity. Design professionals and consultants, including the Design/Build Entity's Architect and/or Engineer, are also considered "subcontractors" under this Agreement.

2.1.15 The term "supplier" shall mean any manufacturer, fabricator, distributor, material man or vendor of materials or equipment incorporated into the Project.

2.1.16 The "Work" or "Project" means the design, construction and services required by the Contract Documents, whether completed or partially completed and includes all other labor, materials, equipment and services provided or to be provided by the Design/Build Entity to fulfill the Design/Build Entity's obligations.

2.1.17 "Schedule of Values" shall be defined as the itemized listing of description of the Work by division and section of the Specifications. The format shall be that of the Contractors standard form. Included shall be the material costs, and the labor and other costs plus the sum of both.

## 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:

#### 3.1 CONTRACT PRICE

3.1.1 The Design/Build Entity will complete the work for a lump sum Contract Price of Three Hundred **Seventy-Three Thousand, Nine Hundred Sixty-Three Thousand and no/100 Dollars (\$373,963.00)** including expenses including but not limited to travel, fax, phone, mail, express mail, courier, transportation and reproduction.

3.1.2 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 PRECONSTRUCTION SERVICES - NOT USED

#### 3.3 COST ESTIMATING

3.3.1 Contingency Management: The parties have not included other than allowances specified, any Principal Representative's contingency in the Contract Price. The Design/Build Entity is responsible for performing in accordance with the Contract Documents, in exchange for the payment of the Contract Price by the State of Colorado. Any adjustments in the Contract Price will be governed by the General Conditions of the Design/Build Contract.

3.3.2 Construction Cost: Development of the Schedule of Values shall include, without duplication:

- .1 All labor, materials, equipment, tools, construction equipment and machinery, heat, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work;
- .2 Any allowance designated by the Principal Representative;
- .3 The compensation for services and the cost of work provided by the Design/Build Entity;
- .4 All bond premiums and costs of insurance;
- .5 Contingencies for bidding, price escalation, and construction; and
- .6 All design and drafting services.

3.3.3 The Construction Costs shall include the compensation of the Architect and/or Engineer and/or MEP, the /MEP's consultants or any other sums due the Architect and/or Engineer and/or MEP, but shall not include the costs of land, right of way, financing or other costs, which are the responsibility of the Principal

Representative.

### 3.4 DESIGN SERVICES

3.4.1 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. Construction services shall be performed by qualified construction contractors and suppliers, selected and paid by the Design/Build Entity and acting 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.

3.4.2 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 a portion of the Work, including all design elements of the Project.

3.4.3 The Design/Build Entity is not licensed as an architect or engineer in the State of Colorado and is not authorized by law to perform design services. Accordingly, the Design/Build Entity will not perform design services pursuant to this Agreement, but will furnish and warrant such services as otherwise herein provided. Prior to designating a professional to perform any of these services, the Design/Build Entity shall submit the name, together with a resume of training and experience in the work of like character and magnitude to the Project being contemplated, to the Principal Representative, and receive approval in writing therefrom.

3.4.4 No design consultant or subcontractor, 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 subcontractor.

3.4.5 The Design/Build Entity has submitted to the Principal Representative a preliminary design for the work and a proposal schedule for completion of the improvements for the Project. In preparation for the development of Construction Documents, the Design/Build Entity shall lead a final Design Development review which shall resolve outstanding issues with the preliminary design and shall fix all design elements of the project for final review by the Principal Representative.

3.4.6 The Design Development documents shall include but not limited to:

1. Any changes made to the Technical Proposal.
2. A Code Review Report of the structure as it relates to the Approved Codes as defined in *Exhibit B*.
3. Site development drawings, defining the proposed scope of development including earthwork, surface development, and utility infrastructure; Confirm accessibility and other design requirements indicated in the Request for Proposal.
4. Plans in one-line format of the proposed plumbing, mechanical, and electrical systems as necessary to define size, location, and quantity of equipment, materials, and constructions;
5. Floor plans including proposed movable equipment and furnishings and exterior elevations;
6. Proposed architectural finish schedule, HVAC, plumbing, and electrical fixture schedules;
7. Outline specifications including Division 1 and cut-sheets and/or samples of proposed materials, equipment, system components, per CSI format divisions;
8. Elevations, including detailed material notes, vertical dimensions as appropriate;
9. Building and well sections with information in sufficient detail to define the basic building

- structure and any additional scope;
- 10. An updated project schedule, including a timetable for submission of any other designs required due to change orders or Value Engineering;
- 11. An updated Scope Narrative.

3.4.7 The Design/Build Entity shall provide no fewer than eight (8) complete sets of Drawings, Specifications, and such other documents necessary to fully illustrate the Design Development documents to the Principal Representative for the Principal Representative's approval.

3.4.8 Upon the Principal Representative's review and approval of the Design Development submittal, the Design/Build Entity shall prepare, for the Principal Representative's final review and approval, a 100% complete Construction Documents submittal and all drawings and specifications necessary for completion of the project. This submittal shall also include the Design/Build Entity's final Scope Narrative for the project.

3.4.9 The Construction Documents (CD)s shall be developed and submitted in accordance with the information and detail required for the Work and shall illustrate the extent and scope of work. Upon review and approval of the CD submittal, the Principal Representative shall issue an Authorization to Commence with Construction for the Work.

3.4.10 These 100% and final Bid Package documents, when submitted for approval shall include a minimum of complete eight (8) sets of the following for the Principal Representative's review:

- .1 Complete architectural, structural, civil, plumbing, mechanical and electrical drawings and specifications (in CSI format);
- .2 The title sheet shall contain the *International Building Code* occupancy type, construction type, gross square footage, net square footage, gross building volume and code report. ~~The area and volume take-off;~~
- .3 An updated Code Review Report as it relates to the Approved Codes in *Exhibit B*.
- .4 *One complete set of 100% Construction Documents in electronic format (CAD) on disk in compliance with the University of Colorado at Boulder Facilities Management CAD Standards supplement to the UCB Standards.*

3.4.11 It shall be the responsibility of the Design/Build Entity to establish a design submittal and review schedule in conjunction with the Principal Representative and other authorities that is mutually acceptable.

3.4.12 The final Construction Documents shall be subject to the final approval by the Principal Representative. The Principal Representative's final review must be completed within fourteen (14) days, excepting holidays, commencing with the date of receipt of the complete documents by the Principal Representative.

3.4.13 The Design/Build Entity shall respond to all written review comments ~~in a written, tabular format.~~ by way of the Principal Representative's web based review system *or other review system proposed by the Principal Representative and mutually agreed upon.* Any reviews held in meeting format shall be documented by the Design/Build Entity and copies distributed as directed by the Principal Representative. The Design/Build Entity shall record minutes of all design meetings and distribute them to all participants of the meetings. The Design/Build Entity shall be responsible for resolving review comments and obtaining necessary approvals prior to proceeding with the work.

3.4.14 In addition to the copies required for the preceding Design Phases, the Design/Build Entity shall furnish sufficient sets to insure distribution among subcontractors and reviewing authorities other than the Principal Representative.

3.4.15 The Design/Build Entity is responsible for the cost of all expenses including but not limited to the reproduction requirements outlined in this section. The Principal Representative shall pay for any additional review sets required in addition to those sets specified.

3.4.16 The Design/Build Entity shall review the Drawings and Specifications as such are prepared, and shall recommend alternative solutions whenever design details affect construction feasibility, schedules or costs.

3.4.17 The Design/Build Entity shall divide the Work in the Drawings and Specifications to facilitate the bidding and awarding of sub-subcontracts, allowing for phased construction and funding, if practicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, etc.

3.4.18 Prior to submission for review and approval, the Design/Build Entity shall review Drawings and Specifications with the Architect and/or Engineer and MEP to (1) eliminate areas of conflict, overlapping trade jurisdictions and overlapping in the Work to be performed by the various sub-subcontractors, (2) endeavor to confirm that all Work has been included, and (3) allow for phased construction. It is the responsibility of the Design/Build entity to submit complete, coordinated drawings and specifications. All submittals made under the terms of this agreement must be complete per the requirements of Sections 3.4.9, 3.4.10, 3.4.11, 3.4.13., 3.4.14, and include all required materials at the time of submittal. Incomplete submittals will not be reviewed by the Principal Representative, and the fourteen (14) day review period shall not commence until complete submittals have been received under the terms of this Agreement. If the Principal Representative exceeds the fourteen (14) day review period for any complete submittal made under the terms of this Agreement, and such time extension is shown to cause a delay in the critical path, the Design/Build Entity shall have the right to add the corresponding calendar days of delay to the overall project construction schedule.

3.4.19 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.

3.4.20 The Design/Build Entity shall develop a Construction Schedule based upon the Architect's design efforts and design schedule, and which is coordinated and integrated therewith.

3.4.21 The Design/Build Entity and its Architect and/or Engineer and MEP shall attend all pre-construction meetings with the Principal Representative and such additional meetings as the Principal Representative may request. All pre-construction meetings shall be scheduled by the Design/Build Entity with the approval of the Principal Representative. All additional meetings shall be scheduled by the Principal Representative.

3.4.22 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. The Design/Build Entity shall verify that all such safety precautions and programs are included in the Contract Documents.

3.4.23 *The Design/Build Entity shall provide fifteen (15) sets of the Construction Documents to the Principal Representative after the 100% review comments have been incorporated. Two (2) of these sets shall bear the seal and signature of the appropriate responsible design consultants. The Design/Build Entity shall keep one of these signed sets for their records.*

### 3.5 NOT USED CONSTRUCTION PHASE

### 3.6 CONTROL OF THE WORK

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

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 as needed progress meetings at which the Principal Representative, General Contractor, Architect and/or Engineer, MEP, and Design/Build Entity can discuss jointly such matters as procedures, progress, schedule, costs, quality control and problems.

### 3.7 SUPERVISION AND CONSTRUCTION PROCEDURES

3.7.1 The Design/Build Entity shall propose and implement an approved procedure for processing and tracking requests for clarifications, submittals and shop drawing review for review and approval by the Principal Representative. The Design/Build Entity shall submit ~~four copies of~~ all submittals and shop drawings and ~~shall submit~~ samples of all exterior building materials and interior finishes *according to Specification Section 01300 requirements*. Transmittal of shop drawings, submittals, samples, or product data to the Principal Representative is solely for convenience of the Principal Representative and shall neither create nor imply a responsibility or duty of review by the Principal Representative. No approval of any drawings, specifications, samples, or product data by the Principal Representative shall relieve the Design/Build Entity of responsibility for any deviation from the requirements of the Contract Documents unless the Design/Build Entity has specifically informed the Principal Representative in writing at the time of submission that such deviation exists and has identified the deviation.

3.7.2 The Design/Build Entity shall assist in developing and implementing a system for the preparation, processing and tracking of Modifications, Amendments and Change Orders and recommend necessary or desirable changes to the Principal Representative.

3.7.3 The Design/Build Entity shall record and distribute minutes of all construction meetings.

### 3.8 SCHEDULE AND COORDINATION

3.8.1 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.

3.8.2 The Design/Build Entity, shall prepare and submit a construction schedule to the Principal Representative for the Work which shall provide for the expeditious and practicable execution of the Work. The schedule shall be consistent with previously issued schedules, not to exceed time limits current under the Contract Documents and shall be related to the entire Project to the extent required by the Contract Documents.

3.8.3 The schedule for the performance of the Work shall be, at the discretion of the Design/Build Entity, in their standard format, with reasonable detail including a time-scaled network, logic links, critical path.

3.8.4.1 The schedules shall be revised monthly with a copy thereof to be submitted with each Project Application for Payment.

3.8.5 The Design/Build Entity shall perform the Work within the identified times of the most recent schedule and consistent with the established Contract Time.

### 3.9 COST CONTROL – NOT USED

### 3.10 AMENDMENTS AND CHANGE ORDERS - NOT USED

### 3.11 NOT USED

### 3.12 NOT USED

### 3.13 NOT USED

3.14 DOCUMENTS AND SAMPLES AT THE SITE - NOT USED

3.14.1 The Design/Build Entity shall:

1. Maintain at the Project site on current basis, once record copy of all Submittals, Drawings, Specifications, Scope Narrative, Addenda, Amendments, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and samples. The record copies shall be documented within fourteen (14) days from the date performed in the field and available to the MEP, Architect and/or Engineer and Principal Representative;
2. Maintain at the Project site on a current basis a log to record receipt of all items set forth in paragraph 3.14.1.1 so as to record and permit the determination of the most current copies; and
3. Advise the Principal Representative on a current basis of all changes in the Work made during construction;
4. Mutually acceptable provisions for submittal of samples for exterior building materials, interior finishes, masonry mock-up, color boards, project close-out procedures, including but not limited to equipment start-up and testing, As-Built, and O&M manuals, and maintenance training, will be incorporated into Division 1 of the Specifications.

3.15 START-UP

3.15.1 The Design/Build Entity, with the Principle Representative's maintenance and/or contracted testing personnel, shall direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors of all tiers.

3.16 AS-BUILT DRAWINGS

3.16.1 *At the conclusion of the Construction Phase, the Principal Representative shall receive As-Built Drawings and Specifications 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 Addenda, Change Order/Amendment or Supplemental Instructions shall be incorporated by the Design/Build Entity into a Record Drawings document provided to the Principal Representative in the form of electronic CAD files and one (1) hard copy bound set, consistent with the latest UCB CAD Standards. The As-Built Drawings shall be reviewed by the Design/Build Entity's Architect/Engineers and Principal Representative prior to incorporating into the Record Drawings.*

**ARTICLE 4 – NOT USED**

DRAWINGS AND SPECIFICATIONS

**ARTICLE 5**

THE PRINCIPAL REPRESENTATIVE'S RESPONSIBILITIES

5.1.1 The Principal Representative has furnished the site of the Project, a general topographic survey, boundary survey and utility locations. Any additional surveys necessary for design or construction will be the responsibility of the Design/Build Entity.

5.1.2 The Principal Representative has provided copies of reports of limited geo-technical explorations and tests of subsurface conditions. The Principal Representative does not represent that these reports show completely and accurately the existing conditions and the Principal Representative does not guarantee any interpretation of the reports. The Design/Build Entity expressly assumes all responsibility for deductions and conclusions which may be made as to the nature of the materials to be excavated, and the difficulties of making and maintaining the required excavations, and of doing other work affected by the presence of water or the geology of the site of the Work. The geo-technical information discussed above is for reference only and is not part of the Contract Documents. Nothing within this paragraph shall diminish the rights of the Design/Build Entity relative to recovery for unforeseen and/or unknown conditions per General Conditions Article 17.

5.1.3 The Principal Representative shall secure and pay for necessary approvals, such as code review, permanent easements, tap fees, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

5.1.4 The Design/Build Entity recognizes that the Principal Representative is a governmental body with certain procedural requirements to be satisfied. The Design/Build Entity has and will make reasonable allowance in its performance of the Work for such time as may be required for approvals and decisions by the Principal Representative, in addition to the times specifically provided in paragraph 5.1.5.

5.1.5 In the review process of the final Schematic Design, Design Development Documents and Construction Documents for each Bid Package, the Design/Build Entity expressly agrees to the following review times by the Principal Representative:

- .1 A period of fourteen (14) days, not including holidays, for the review of the Schematic Design, Design Development Documents, Construction Documents, other submittals and bid packages.

5.1.6 *The Principal Representative shall have available the University of Colorado at Boulder (UCB) Building and Construction Standards (collectively referred to as "UCB Standards"). The UCB Standards and any applicable standards adopted by the Governor are the design standards to which the Design/Build Entity are expected to adhere as a minimum. The Architect/Engineer shall develop specifications and design strategies accordingly.*

*The Design/Build Entity shall be responsible for obtaining copies of the UCB Standards from the Office of Facilities Management website at: <http://www.colorado.edu/facilitiesmanagement/pdc/construction/standards/index.html> The UCB Standards include design criteria, guidelines and acceptable products. The Design/Build Entity agrees to utilize the UCB Standards.*

## **ARTICLE 6**

### **TIME OF COMMENCEMENT**

6.1.1 The Contract Time shall commence on the date of this Agreement but no Work shall be performed prior to the delivery of all bonds and insurance certificates required to be furnished by the Design/Build Entity.

## **ARTICLE 7**

### **INSURANCE**

The provisions of this Article 7 supersede the insurance provisions in the General Conditions of the Contract, Articles 29-31.

#### ~~7.1 DESIGN/BUILD ENTITY'S LIABILITY INSURANCE~~

~~7.1.1 The Design/Build Entity shall purchase and maintain in a company or companies licensed to do~~

business in the State of Colorado, such insurance as will protect it from the claims set forth below which may arise out of or result from the Design/Build Entity's operations under the Contract Documents whether such operations be by itself or by any subcontractor of any tier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

- ~~.1 — Claims under worker's compensation, disability benefit and other similar employee benefits acts which are applicable to the Work to be performed;~~
- ~~.2 — Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Build Entity's;~~
- ~~.3 — Claims for damages because of bodily injury, sickness or disease or death of any person other than the Design/Build Entity's employees;~~
- ~~.4 — Claims for damages insured by usual, customary personal injury liability coverage which are sustained (1) by any person, as a result of an action directly or indirectly related to the employment of such person by the Design/Build Entity, or (2) by another person;~~
- ~~.5 — Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;~~
- ~~.6 — Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.~~

~~7.1.2 — The Design/Build Entity's Commercial General Liability Insurance shall include premises operations, agreements, all including broad form property damage coverage.~~

~~7.1.3 — The Design/Build Entity's Commercial General and Automobile Liability Insurance, as required by paragraphs 7.1.1 and 7.1.2, shall be written for not less than limits of liability as follows:~~

- ~~.1 — Commercial General Liability and Automobile Liability:
  - ~~a. — Bodily Injury/Property Damage  
\$1,000,000 Each Occurrence  
\$2,000,000 Annual Aggregate (Products & Completed Operations)  
\$1,000,000 CSL Automobile~~~~

- ~~.2 — General liability coverage shall be written on an occurrence basis.~~

~~7.1.4 — Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or Umbrella Liability Policy. All such policies shall include the Principal Representative as an additional insured.~~

~~7.1.5 — The Design/Build Entity shall promptly advise the Principal Representative in the event the annual aggregate requirements are reduced for any reason, forthwith obtain additional coverage at its expense to restore the annual aggregate coverage to the amount(s) required in paragraph 7.1.3, and furnish to the Principal Representative a new certificate of insurance showing such coverages to be in force.~~

~~7.1.6 — The foregoing policies shall contain a provision that coverages afforded under the policies will not be altered, canceled, terminated or not renewed until at least forty five (45) days' prior written notice by certified mail has been given to the Principal Representative. Completed certificates of insurance in a form acceptable to the Principal Representative, showing such coverages to be in force shall be filed with the Principal Representative prior to commencement of any service by the Design/Build Entity or Contractor. Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and date of termination of any coverage required to be maintained after final payment.~~

## ~~7.2 WORKERS' COMPENSATION INSURANCE~~

~~7.2.1 The Design/Build Entity shall procure and maintain Workers' Compensation Insurance at its own expense during the life of this Agreement, including occupational disease provisions for all of its employees. This insurance, if issued by a private carrier, shall contain the same thirty (30) days' Notice of Cancellation as required in Article 7.1 for the Comprehensive Liability Insurance.~~

~~7.2.2 Such insurance shall be evidenced by the issuance of either a Certificate by the State Compensation Insurance Fund or, if a private carrier is used, the completion of a Certificate of Insurance in a form acceptable to the Principal Representative prior to the commencement of any services by the Design/Build Entity. Such Certificate shall be filed with the Principal Representative within ten (10) days after the date of the Notice to Proceed.~~

~~7.2.3 The Design/Build Entity shall also require each subcontractor of any tier to furnish evidence of Workers' Compensation Insurance, including occupational disease provisions, for all of the latter's employees, otherwise it shall accept full liability and responsibility for coverage of subcontractors' employees.~~

~~7.2.4 If any class of employees has been engaged in hazardous work under the Contract Documents at the site of the Project and is not protected under the Workers' Compensation statute, the Design/Build Entity shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.~~

## ~~7.3 PRINCIPAL REPRESENTATIVE'S LIABILITY INSURANCE~~

~~7.3.1 The Principal Representative shall be responsible for purchasing and maintaining its own liability insurance, and at the Principal Representative's option, may purchase and maintain insurance for protection against claims which may arise from operations under the Contract Documents.~~

## ~~7.4 INSURANCE TO PROTECT PROJECT~~

~~7.4.1 The Design/Build Entity shall purchase and maintain property insurance upon the Project in an all-risk form acceptable to the Principal Representative for the full cost of replacement as of the time of any loss. This insurance shall include the subcontractors of all tiers, shall name the Principal Representative as an additional insured, and shall insure against the perils of fire and extended coverage, and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, transit, explosion, collapse, false work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, underground coverage, flood, earthquake, testing, and damage resulting from defective workmanship or materials. The Design/Build Entity will increase limits of coverage, when necessary, to reflect estimated replacement cost. Such policy may have a deductible clause but not to exceed One Thousand Dollars (\$1,000.00). The Design/Build Entity will be responsible for any coinsurance penalties and the Principal Representative shall be responsible for any loss within the deductibles, and the Design/Build Entity shall not be deemed to have incurred any obligation to reimburse any other person, entity or firm for the amount of such deductible. Notwithstanding anything above, the Design/Build Entity shall not be responsible for the negligent acts or omissions of the Principal Representative. The Principal Representative shall not be responsible for loss or damage to the Design/Build Entity's and the subcontractors' equipment.~~

~~7.4.2 If the Principal Representative finds it necessary to occupy or use a portion or portions of the Work prior to completion of the Work, such occupancy shall not commence prior to the time mutually agreed to by the Principal Representative and the Design/Build Entity and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy. Consent of the Design/Build Entity and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.~~

~~7.4.3 — The Design/Build Entity shall furnish a completed certificate of insurance in a form acceptable to the Principal Representative, showing such coverages to be in force and shall file the same with the Principal Representative before an exposure to loss may occur. Promptly upon the request of the Principal Representative, the Design/Build Entity shall also furnish the Principal Representative with a copy of the property insurance policy. Certificates and copies of any subsequent endorsements will be furnished to the Principal Representative. The Principal Representative will be given forty five (45) days notice of cancellation, non-renewal or any endorsements restricting or reducing coverage.~~

~~7.4.4 — Property Insurance Loss Adjustment: The insurance company providing the builders risk insurance on behalf of the Design/Build Entity shall have the power to adjust and settle any loss. Any loss shall be payable to the Principal Representative. Unless it is agreed otherwise, all monies received shall be applied to rebuilding or repairing the destroyed or damaged Work.~~

~~7.4.5 — The insurance shall remain in effect until the Date of Notice specified on the Notice of Acceptance, State Form SC-6.27, whether or not the Project or some part thereof is occupied in any manner prior to final acceptance of the Project.~~

~~7.4.6 — Waiver of Subrogation: The Principal Representative and Design/Build Entity waive all rights against each other and any of their subcontractors of all tiers, and their agents and employees, each of the other, except that Design/Build Entity shall not waive its rights against its subcontractors and suppliers for damage resulting from defective workmanship or materials; for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Article 7.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Principal Representative. The Principal Representative or Design/Build Entity, as appropriate, shall require of the subcontractors of all tiers, and the agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

~~7.4.7 — The Principal Representative and Design/Build Entity waive all rights against each other and any of their subcontractors of all tiers, and their agents and employees, each of the other, for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Principal Representative or Design/Build Entity, as appropriate, shall require subcontractors of all tiers, and agents and employees of any of them, by appropriate agreements, written where legally required for validity, to agree to similar waivers, each in favor of other parties enumerated herein.~~

~~7.4.8 — If the policies of insurance referred to in this Article 7.4 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.~~

#### ~~7.5 — BOILER AND MACHINERY INSURANCE~~

~~7.5.1 — The Principal Representative shall purchase and maintain such boiler and machinery insurance as may be required or necessary. This insurance shall include and protect the interests of the Principal Representative, the Design/Build Entity and subcontractors of all tiers in the Work and the Principal Representative, Design\Build Entity shall be named as insured.~~

#### ~~7.6 — LOSS OF USE INSURANCE~~

~~7.6.1 — The Principal Representative, at the Principal Representative's option, may purchase and maintain insurance for protection against loss of use of the Principal Representative's property due to fire or other hazards, however caused. The Principal Representative waives all rights of action against the Design/Build Entity for loss of use of the Principal Representative's property, including consequential losses due to fire or other hazards however caused, to the extent covered by insurance under this paragraph 7.6.1, or would have been covered had the Principal Representative purchased and maintained such insurance.~~

## ~~7.7 — PROFESSIONAL LIABILITY INSURANCE~~

~~7.7.1 — The Design/Build Entity shall require any Architect and/or Engineer and/or MEP or other such consultant providing professional services to the Design/Build Entity to maintain in full force and effect an Errors and Omissions or Professional Liability Insurance Policy in the amount of \$1,000,000.00 minimum coverage or other such minimum coverage as determined by the Principal Representative and approved by the State Buildings Program. Such policy shall remain in effect for the duration of this Agreement and for at least three years beyond the completion and acceptance of the facility. The policy shall cover all claims, damages, losses or expenses, including attorney fees, arising out of, or resulting from, the performance of professional services under this Agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the insured, any consultant or associate thereof, or anyone directly or indirectly employed by the insured. The Design/Build Entity shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of renewals of the said policy as such renewals occur.~~

## ARTICLE 7

### INSURANCE

*The Design/Build Entity shall obtain and maintain, at its own expense and for the duration of the contract, the minimum insurance coverages set forth below. By requiring such minimum insurance, the University shall not be deemed or construed to have assessed the risk that may be applicable to the Design/Build Entity under this contract. The Design/Build Entity shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Design/Build Entity 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

1. **Commercial General Liability – ISO CG 00001 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)*
- *Broad Form Property Damage*
- *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), if possible.*
- *Additional Insured—Owners, Lessees or Contractors Endorsement, ISO CG 2037 (7/2004 Edition or equivalent), if possible.*

2. **Automobile Liability including all:**

- *Owned Vehicles*
- *Non-Owned Vehicles*

- *Hired Vehicles*
3. **Excess/Umbrella Liability (Applies to projects totaling \$10,000,000 or more)**
    - *Excess of Commercial General Liability, Automobile Liability, and Employers' Liability.*
    - *Coverages should be as broad as primary.*
    - *Risk Management reserves the right to require higher limits.*
  4. **Workers Compensation**
    - *Statutory Benefits (Coverage A)*
    - *Employers Liability (Coverage B)*
  5. **Professional Liability Insurance**  
*The Design/Build Entity shall maintain Errors and Omissions Liability covering wrongful acts, errors and/or omissions, including design errors of the Design/Build Entity 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:*
    - a. *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 wrongful acts."*
    - b. ***Coverage shall apply for three (3) years after project is complete.***
  6. **Builder's Risk Completed Value (Applies to buildings additions and new buildings)**
    - *See Builders Risk section in this document.*
  7. **Installation Floater**
    - *Special cause of loss*
    - *Theft*
    - *Faulty workmanship*
    - *Vandalism*
    - *Labor costs to repair damaged work*
  8. **Contractors Pollution Liability**  
*This section applies only to the following types of proposals:*
    - ***ASBESTOS/LEAD ABATEMENT Contracting Services***

*The University requires this coverage whenever work at issue under this contract involves potential pollution risk to the environment or losses caused by pollution conditions (including asbestos) that may arise from the operations of the Design/Build Entity described in the Design/Build Entity's scope of services. Policy shall cover the Design/Build Entity's completed operations. Such coverage shall include:*

- *Bodily Injury, sickness, or disease, sustained by any person, including death.*
- *Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed.*
- *Defense, including costs, charges and expenses incurred in the investigation, adjustment or*

defense of claims for such compensatory damages.

- Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
- Coverage shall apply to sudden pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Design/Build Entity 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 (or specify desired number) years beginning from the time that work under this contract is completed.
- On the Automobile Liability Coverage endorsements CA9948 and MCS-90 are required if the Design/Build Entity is transporting any type of hazardous materials.
- **The Regents of the University of Colorado, a body corporate as “Additional Insureds”** for work that is being performed by the Contractor and as respects the Contractors Pollution Liability.

**LIMITS REQUIRED**

The Design/Build Entity shall carry the following limits of liability as required below:

**Commercial General Liability**

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence Limit	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Payments (Any One Person)	\$ 5,000

**Excess/Umbrella Liability (as required-See Coverages #3)**

General Aggregate Limit	\$5,000,000
Products/Completed Operations Aggregate	\$5,000,000

**Automobile Liability**

Bodily Injury/Property Damage (Each Accident)	\$1,000,000
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**Workers’ Compensation**

Coverage A (Workers’ Compensation)	Statutory
Coverage B (Employers Liability)	\$ 100,000 Each Accident
	\$ 100,000 Disease Each. Employee
	\$ 500,000 Disease-Policy Limit

**Professional Liability**

Each Occurrence/Incident Claim Show limit as follows:

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

**Contractors Pollution Liability (as required-See Coverages #8)**

<i>Per Loss</i>	<i>\$1,000,000</i>
<i>Aggregate</i>	<i>\$1,000,000</i>

**Builder’s Risk (as required-See Coverages #6)**

- *This coverage is required for new buildings or additions to existing buildings.*
- *See the Builders Risk section (below) for required terms and conditions.*

**Installation Floater**

*This coverage is to cover materials and equipment to be installed in existing structures.*

- *Shall be written for 100% of the completed value (replacement cost basis)*
- *Deductible maximum is \$10,000.00*
- *Waiver of Subrogation applies on Builders Risk*

**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. *The Design/Build Entity shall provide the University of Colorado a Certificate of Insurance Form evidencing all required coverages, prior to commencing work or entering University premises.*
3. *The Design/Build Entity shall name “The State of Colorado and The Regents of the University of Colorado, a body corporate” as an Additional Insured as respects General Liability.*
4. *Upon request by the University, Design/Build Entity must provide a copy of the actual insurance policy effecting coverage(s) required by the contract.*
5. *The University requires that all policies of insurance be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the University.*
6. *A Separation of Insureds Clause must be included in general liability policies.*
7. *The Design/Build Entity shall advise the University in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At their own expense, the Design/Build Entity will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the University a new certificate of insurance showing such coverage is in force.*
8. *Design/Build Entity’s insurance carrier should possess a minimum A.M. Best’s Insurance Guide rating of A- VI.*
9. *Commercial General Liability Completed Operations policies must be kept in effect for up to three (3) years after completion of the project.*
10. *Design/Build Entity’s Pollution Liability policies must be kept in effect for up to three (3) years after completion of the project.*
11. *Provide a minimum of thirty (30) days advance written notice to the University for cancellation, non-renewal, or material changes to policies required under the contract.*

12. Certificate Holder: University of Colorado, University Risk Management, 4001 Discovery Drive, Suite 230, Campus Box 587, Boulder, CO 80303

*Failure of the Design/Build Entity 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 University. The University 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 University 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, 24-10-101 et seq., as from time to time amended, or otherwise available to the University or its officers, employees, agents, and volunteers.*

**Mutual Cooperation**

*The University and Design/Build Entity 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.*

**Builder's Risk Insurance**  
**(As required-See Coverages #6)**

*Unless otherwise provided, the Design/Build Entity 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. Such Builder's Risk Insurance shall be maintained, unless otherwise provided in the contract documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Notice of Acceptance. The Builder's Risk insurance shall include interests of the University of Colorado, the General Contractor, subcontractors and sub-tier contractors in the project.*

*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 and earthquake, and all below and above ground structures, water and sewer mains. Other coverages may be required if provided in contract documents. Coverages shall be written for 100% of the completed value (replacement cost basis) of the work being performed. At the option of the University of Colorado, the University of Colorado may include Soft Costs (including Loss of Use)/Delay in Opening Endorsement under the builder's risk policy. The University of Colorado agrees to provide the necessary exposure base information for quotation by the Builder's Risk carrier. The University of Colorado agrees to pay the premium associated with the Soft Costs coverage, the University of Colorado decides to purchase this coverage.*

*The Builder's Risk shall also include the follow amendments/provisions:*

- *Waiver of Subrogation against all parties named as insured, but only to the extent the loss is covered.*

- *Beneficial Occupancy Clause. The policy shall specifically permit partial or beneficial occupancy at or before substantial completion or final acceptance of the entire work. 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 University of Colorado and Design/Build Entity shall take reasonable steps to obtain consent of the insurance company or companies and agree to take no action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse or reduction of insurance.*
- *Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) required by the Contract Documents or by law, which shall specifically cover insured equipment during installation and testing (including hot testing).*
- *Deletion of Coinsurance Provisions*
- *Replacement Costs 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*
- *Deletion of any exclusions pertaining to Law, Ordinance or Regulation*
- *This policy does not apply to the cost of making good errors, omission or deficiencies in design, plans or specifications, unless direct physical loss or damage by a perils insured ensues and then this policy will cover for such ensuing loss or damage only. Modification of the electrical apparatus breakdown exclusions and the mechanical breakdown exclusion so that it does not apply to subsequent loss or damage*
- *Modify exclusion pertaining to damage to interior of building caused by an perils insured against are covered*
- *Resultant Damage Extension including amendment of exclusion pertaining to design error*
- *In the event the foundation is found to have been improperly poured, the Design / Build Entity will accept this financially uninsured risk as a cost of doing business. Other coverages may be required if provided in Contract Documents*
- *The deductible shall not exceed \$10,000 and shall be the responsibility of the Design/Build Entity except for losses that involve all Acts of God such as flood, earthquake, windstorm, tsunami, volcano, etc.*
- *The Policy shall be amended to show thirty (30) days notice of cancellation. Such notice shall be given to the University of Colorado and Design/Build Entity.*
- *Losses in excess of \$10,000 insured shall be adjusted in conjunction with the University of Colorado. Any insurance payments/proceeds shall be made payable to the University of Colorado subject to requirements of any applicable mortgagee clause. The Design/Build Entity shall pay subcontractors their just shares of insurance proceeds received by the Design/Build Entity, and by appropriate agreements, written where legally required for validity, shall require subcontractors to make payments to their sub-subcontractors in similar manner.*

*If requested, the Design/Build Entity shall file with the University of Colorado a copy of the policy that includes the insurance coverages required in this section. The policy shall contain all*

*generally applicable conditions, definitions, exclusions and endorsements related to the Project.*

*If the Design/Build Entity 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 Design/Build Entity shall so inform the University of Colorado as stated in writing prior to commencement of the work. The University of Colorado may then affect insurance that will protect the interests of the University of Colorado, the General Design/Build Entity, 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 University of Colorado. The cost shall be charged to the Design/Build Entity. Coverage shall be written for 100% of the completed value of the work being performed, with a deductible not to exceed \$10,000 per occurrence for most projects.*

*All deductibles will be assumed by the Design/Build Entity. 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 University of Colorado is damaged by the failure or neglect of the Design/Build Entity to purchase or maintain insurance as described above, without so notifying the University of Colorado, then the Design/Build Entity shall bear all reasonable costs properly attributable thereto.*

*Design/Build Entity's engaged in modifications of existing structures are required to secure a Beneficial Occupancy Endorsement that enables the University of Colorado to occupy the facility during construction.*

## **ARTICLE 8**

### **INDEMNIFICATION**

8.1.1 To the fullest extent permitted by law, the Design/Build Entity shall indemnify and hold harmless the Principal Representative, its agents and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) is caused by any breach of this contract or willful negligent act or omission of the Design/Build Entity, any subcontractor of any tier, anyone directly or indirectly employed by any of them or anyone of whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph 8.1.1.

8.1.2 In any and all claims against the Principal Representative, its agents or employees, by any employee of the Design/Build Entity, any subcontractor of any tier, anyone directly or indirectly employed by any of the, or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 8 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design/Build Entity or any subcontractor of any tier under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 9**

### **QUALITY ASSURANCE AND OTHER TESTING**

9.1.1 The Principal Representative may retain an independent Testing Agent to perform quality assurance testing services for the Project. The Testing Agent's services, duties, and responsibilities include tests and/or

inspections performed as described in the various Divisions of the Project Manual and shall include but not be limited to asphaltic concrete, cast in-place concrete, mortar and grout, structural steel welds and bolt connections, steam pipe welding and geotechnical investigation such as soils and compaction.

The Design/Build Entity is responsible to perform quality assurance as specified in the Contract Documents or applicable codes where not clearly the responsibility of the Principal Representative and to:

- .1 Provide sufficient notification in advance of operations to permit laboratory personnel assignment and scheduling;
- .2 Coordinate with laboratory personnel and provide access to the Work and manufacturer's operations;
- .3 Furnish casual labor to facilitate sample handling and testing at the Project site;
- .4 Provide facilities for laboratories exclusive use to store and cure samples; and
- .5 Supply preliminary representative samples of projects and materials, if required.

9.1.2 The Design/Build Entity shall monitor for contract compliance the following:

- .1 Shop drawings;
- .2 Bearing surfaces of excavations, before concrete is poured;
- .3 Reinforcing steel, after installation, before concrete is poured;
- .4 Structural concrete, including slabs and foundations;
- .5 Laboratory, testing and inspection reports on all materials and installations;
- .6 Structural Steel during and after erection and prior to its being covered or enclosed;
- .7 Mechanical work following its installation and prior to its being covered or enclosed;
- .8 Electrical work following its installation and prior to its being enclosed.

9.1.3 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Design/Build Entity shall give the Principal Representative timely notice of its readiness so the Principal Representative and the Architect and/or the Engineer may observe such inspection, testing or approval. The Principal Representative shall bear all costs of inspections, tests or approvals.

9.1.4 If the Principal Representative determines that any Work requires special inspection, testing or approval which section 9.1.1 does not include, the Design/Build Entity will, upon written authorization from the Principal Representative order such special inspection, testing or approval, and the Design/Build Entity shall give notice as provided in paragraph 9.1.1.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Design/Build Entity shall bear all direct costs thereof, including compensation for the Architect's and/or Engineer's additional services made necessary by such failure; otherwise the Principal Representative shall bear such costs, and an appropriate Modification, Amendment or Change Order shall be issued.

9.1.5 Required certificates of inspection, testing, or approval shall be secured by the Design/Build Entity and the Design/Build Entity shall promptly deliver them to the Principal Representative.

## **ARTICLE 10**

## CLAIMS FOR ADDITIONAL COSTS AND DAMAGES

### 10.1 CLAIMS FOR ADDITIONAL COST

10.1.1 If, for any reason, the Design/Build Entity claims that it is entitled to an increase in the Contract Price and/or extension of agreed completion date, the Design/Build Entity shall give the Principal Representative its written Notice of Claim thereof within fifteen (15) days or such other time period as may be specifically set forth elsewhere in this Agreement, whichever is the lesser, after the occurrence of the event giving rise to such Claim and in all cases before proceeding to execute the Work, except in an emergency endangering life or property. No such Claim shall be valid unless so made. Any approved change in the Contract Price resulting from such Claim shall be authorized by Modification, Amendment or Change Order.

### 10.2 INJURY TO PERSON OR DAMAGE TO PROPERTY

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

### 10.3 COST RECORDS

10.3.1 In all Claims for changes to the Contract Price, the Design/Build Entity and/or the Contractor shall keep a correct accounting of the extra costs, in such reasonable form as the Principal Representative may require, and shall present such accounting, supported by receipts. The Principal Representative shall be entitled to reject any Claim for extra costs if such documentation is not provided.

### 10.4 RIGHTS AND REMEDIES

10.4.1 The Design/Build Entity's attention is directed to the Model Procurement Code, Sections 24-101-101 et seq. C.R.S., as amended, and specifically Article 109 and the Rules enacted thereunder, pertaining to remedies, all of which shall apply to this Agreement.

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

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

### 10.5 WRITTEN NOTICE

10.5.1 Any notice to be given to the State shall be given or sent to:

ATTENTION:

University of Colorado at Boulder  
Facilities Management  
Research Laboratory No. 2, 1540 30<sup>th</sup> St. 3<sup>rd</sup> Floor Reception Desk  
Campus Box 453 UCB  
Boulder, Colorado 80309-0453

Any notice to be given to the Design/Build Entity shall be given or sent to:

\_\_\_\_\_  
\_\_\_\_\_

## **ARTICLE 11**

### **MISCELLANEOUS PROVISIONS**

#### **11.1 GOVERNING LAWS**

11.1.1 The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated therein by reference, which provides for arbitration by an extrajudicial body or person, or which is otherwise in conflict with said laws, rules and regulations, shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense or otherwise.

#### **11.2 EXTENT OF AGREEMENT**

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

11.2.2 The parties acknowledge that the Design/Build Entity may have performed Pre-construction Services prior to the execution of this Agreement, however, all of the rights and liabilities of the parties for the performance of such services are expressly merged and included within and shall be governed by the terms of this Agreement, all compensation due to the Design/Build Entity for such services are expressly included in the Fee for Pre-construction Services set forth herein and the Principal Representative shall have no obligations or liability to the Design/Build Entity for such services separate and apart from the terms of this Agreement.

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

#### **11.3 INDEPENDENT CONTRACTOR**

11.3.1 The Design/Build Entity shall perform its duties hereunder as independent contractor and not as an employee. Neither the Design/Build Entity nor any agent or employee of the Design/Build Entity shall be or shall be deemed to be an agent or employee of the State. Design/Build Entity shall pay when due all required employment taxes and income tax withholding, shall provide and keep in force worker's compensation insurance (and show proof of such insurance) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Design/Build Entity, its employees and agents.

#### **11.4 BENEFITS AND ASSIGNMENT**

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

## 11.5 VENDOR OFFSET INTERCEPT SYSTEM

11.5.1 Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearage; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the student loan division of the department of higher education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

## 11.6 VALIDITY OF THE AGREEMENT

11.6.1 This Agreement shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado, or such assistant as it may designate.

## 11.7 ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES

11.7.1 The Design/Build Entity certifies that the Design/Build Entity shall comply with the provisions of CRS 8-17.5-101 et seq. The Design/Build Entity shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Design/Build Entity that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The Design/Build Entity represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise will comply with the requirements of CRS 8-17.5-102(2)(b). The Design/Build Entity shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the Design/Build Entity fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate this contract for breach and the Design/Build Entity shall be liable for actual and consequential damages to the State.

A Contractor that operates as a sole proprietor hereby swears or affirms under penalty of perjury that the Contractor (i) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq, and (iii) shall produce one of the forms of identification required by CRS 24-76.5-103 prior to the effective date of this Contract. Except where exempted by federal law and except as provided in CRS 24-76.5-103(3), a Contractor that receives federal or state funds under this contract must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to CRS 24-76.5-103(4) if such individual applies for public benefits provided under this contract.

In Witness Whereof, the parties hereto have executed this Agreement in original and one counterpart at Boulder, Colorado the \_\_\_\_\_ day of \_\_\_\_\_.

THE CONTRACTOR

By: \_\_\_\_\_  
Legal Name of Contracting Entity

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Print Name & Title of Authorized Officer

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

CORPORATIONS:  
(A corporate attestation is required)

Attest (Seal) By \_\_\_\_\_  
(Corporate Secretary or Equivalent or Town/City/County Clerk) (Place corporate seal here, if available)

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

**CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.**

ATTORNEY GENERAL, STATE OF COLORADO  
Or Authorized Delegate

By: \_\_\_\_\_ / \_\_\_\_\_  
/ Date

STATE OF COLORADO, acting by and through:  
The Regents of the University of Colorado  
A Body Corporate, for and on behalf of the  
University of Colorado at Boulder

By: \_\_\_\_\_ / \_\_\_\_\_  
Ronald L. Ried, Director / Date  
Facilities Management Business Services

Approval State Buildings & Real Estate Programs  
Authorized Delegate

By: \_\_\_\_\_ / \_\_\_\_\_  
Paul M. Leef, AIA LEED™ AP / Date  
Campus Architect & Director  
Planning, Design & Construction

STATE CONTROLLER  
Or Authorized Delegate

By: \_\_\_\_\_ / \_\_\_\_\_  
Steve McNally / Date  
Associate Vice Chancellor & Controller

**DESIGN / BUILD AGREEMENT**

**EXHIBIT A – FEE PROPOSAL**

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**DESIGN / BUILD AGREEMENT**

**EXHIBIT B – Approved Codes & Code Review System/Format**

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**DESIGN / BUILD AGREEMENT**

**Folsom Stadium - Removable Fencing and Monuments**

**EXHIBIT C – CERTIFICATION AND AFFIDAVIT REGARDING UNAUTHORIZED IMMIGRANTS**

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STATE OF COLORADO  
**OFFICE OF THE STATE ARCHITECT**  
 STATE BUILDINGS PROGRAMS  
**CERTIFICATION AND AFFIDAVIT REGARDING UNAUTHORIZED IMMIGRANTS**

Institution/Agency: University of Colorado at Boulder  
 Project No./Name: \_\_\_\_\_

**A. CERTIFICATION STATEMENT [HB 06-1343]**

The Vendor, whose name and signature appear below, certifies and agrees as follows:

1. The Vendor shall comply with the provisions of CRS 8-17.5-101 et seq. The Vendor shall not knowingly employ or contract with an unauthorized immigrant to perform work for the State or enter into a contract with a subcontractor that knowingly employs or contracts with an unauthorized immigrant alien.
2. The Vendor represents, warrants, and agrees that it (i) has verified that it does not employ any unauthorized immigrants, through participation in the E-Verify Program, formerly referred to as the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b).
3. The Vendor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the Vendor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate work for breach and the Vendor shall be liable for actual and consequential damages to the State.
4. **AFFIDAVIT [HB 06S-1023]**
5. If the Vendor is a sole proprietor, the undersigned hereby swears or affirms under penalty of perjury under the laws of the State of Colorado that (check one):
  - I am a United States citizen, or
  - I am a Permanent Resident of the United States, or
  - I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I am a sole proprietor entering into a contract to perform work for the State of Colorado. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to starting work for the State. I further acknowledge that I will comply with the requirements of CRS 24-76.5-101 et seq. and will produce the required form of identification prior to starting work. I acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under CRS 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

CERTIFIED and AGREED to this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

VENDOR:

\_\_\_\_\_  
 Vendor Full Legal Name

BY: \_\_\_\_\_  
 Signature of Authorized Representative Title

**DESIGN / BUILD AGREEMENT**

**EXHIBIT D – Minority and Women Business Enterprises Contract Compliance Report**

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

**MINORITY/WOMEN BUSINESS ENTERPRISE PARTICIPATION REPORT**

Institution/Agency: University of Colorado at Boulder  
 Project No./Name: \_\_\_\_\_

TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT, EACH CONTRACTOR (INCLUDING ARCHITECT/ENGINEER/CONSULTANT) IS REQUESTED TO COMPLY WITH THESE REQUIREMENTS.

I. The undersigned contractor hereby certifies that the (company) (joint venture) (is) (is not)\* a minority enterprise as defined in this report. The undersigned contractor hereby certifies the (company) (joint venture) (is) (is not)\* a woman-owned business enterprise as defined. (\*Strike out where inapplicable.)

If Corporation:

If Sole Proprietorship/Partnership:

\_\_\_\_\_  
 Corporation Name

\_\_\_\_\_  
 Architect/Engineer/Consultant or Contractor

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

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

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

ATTEST:

By: \_\_\_\_\_  
 Secretary Date

II. It is the general policy of the State of Colorado to be as inclusive as possible to all member communities when spending taxpayer dollars.

III. REQUIREMENTS

- A. Minority Business Enterprise (MBE) means, for the purpose of this report, a business enterprise at least 51 percent that is owned and controlled by minority group members, or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned and controlled by minority group members. Eligible persons are expected to be engaged full time in the day-to-day operation and management of the business. Minority group members are ethnic minorities including African American, Hispanic American, Native American or Asian/Pacific American.
- B. Women Business Enterprise (WBE) means, for the purpose of this report, a business enterprise of at least 51 percent of which is owned and controlled by a woman or women, or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned and controlled by women. Women are expected to be engaged full time in the day-to-day operation and management of the business.
- C. The State of Colorado does not have a certification process nor does it require MBE's and WBE's to be certified EXCEPT for certain contracts for highway and bridge construction administered by the Colorado Department of Transportation.
- D. The percentages of minority and women-owned business participation will be determined by dollar value of the work subcontracted to or joint ventured with minority and women-owned firms, as compared to the total dollar value of the bid amount for all work bid under this contract.

- E. Prior to the award of this contract, the contractor will be required to provide to the Principal Representative a list of M/WBE enterprises, stipulating the dollar amount of each subcontract or supplier of materials on page 2 of this Minority and Women Business Enterprises Participation Report.
- F. The contractor will retain records and documents showing the level of participation for two years following completion of this contract. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by an authorized representative of the Principal Representative, or its designated representatives, and will be submitted to such representatives upon written request.

MBE: Yes  No  WBE: Yes  No

Total Contract Amount: \$

Name and Address of M/WBE Subcontractors and/or Suppliers and/or Self-Performed Work by M/WBE Primes*	MBE Contract Amounts	WBE Contract Amounts	Type of Work

\*Indicate ethnicity based on Paragraph III. A. above.

Total MBE Contracts: \$ \_\_\_\_\_  
 Total WBE Contracts: \$ \_\_\_\_\_  
 Total MBE %: \_\_\_\_\_  
 Total WBE %: \_\_\_\_\_

**DESIGN / BUILD AGREEMENT**

**EXHIBIT E – Performance and Labor and Material Payments Bond**

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**DESIGN / BUILD AGREEMENT**

**EXHIBIT F – Certificate of Insurance**

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**DESIGN / BUILD AGREEMENT**

**EXHIBIT G – GENERAL CONDITIONS OF THE CONTRACT**

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