

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



**THE GENERAL CONDITIONS OF THE DESIGN/BUILD AGREEMENT  
(STATE FORM SC-8.1)**

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Note: The sections of the General Conditions indicated in *italics* (Articles 35 General and 35A, 35B, 37, 38, 46, 48B, 49 and 50) are regulatory and cannot be modified except through appropriate rule making procedures through the Division of Finance and Procurement, Department of Personnel & Administration.



## General Conditions of the Design/Build Agreement

### ARTICLE 1. DEFINITIONS

#### CONTRACT DOCUMENTS

The Contract Documents consist of the following some of which are procedural documents used in the administration and performance of the Agreement:

1. Design/Build Agreement; (SC-8.0) including:
  - 1.1 Design/Build Entity's Technical Proposal, All Appendices, Addenda and Clarifications
  - 1.2 Design/Build Entity's Cost Proposal, All Appendices, Addenda and Clarifications
  - 1.3 Design/Build Entity's Scope Narrative
  - 1.4 The Request for Proposals, All Appendices, Addenda and Clarifications;
2. Performance Bond (SC-6.22) and Labor and Material Payment Bond (SC-6.221);
3. These General Conditions of the Design/Build Agreement (SC- 8.1) and if applicable, Supplementary General Conditions;
4. Detailed Specification Requirements, including all addenda issued prior to the Notice to Proceed to Commence Design Phase (SBP-8.26);
5. Drawings, including all addenda issued prior to the Notice to Proceed to Commence Construction Phase (SBP-8.261);
6. Change Orders (SC-6.31) and Amendments (SC-6.0A and/or B), if any, when properly executed;
7. Notice of Award (SBP-6.15);
8. Builder's risk insurance certificates of insurance (ACORD 25-S);
9. Liability, workers' compensation and professional liability errors and omissions certificates of insurance;
10. Notice to Proceed to Commence Design Phase (SBP-8.26);
11. Notice to Proceed to Commence Construction Phase (SBP-8.261);
12. Notice of Approval of Occupancy/Use (SBP-01);
13. Notice of Partial Substantial Completion (SBP-071);
14. Notice of Substantial Completion (SBP-07);
15. Notice of Partial Final Acceptance (SBP-6.27);

16. Notice of Final Acceptance (SBP-6.271);
17. Notice of Partial Contractor's Settlement (SBP-7.3);
18. Notice of Contractor's Settlement (SBP-7.31);
19. Application and Certificate for Contractor's Payment (SBP-7.2); and
20. Other procedural and reporting documents or forms referred to in these General Conditions, the Supplementary General Conditions, the Specifications or required by the State Buildings Programs or the Principal Representative, including but not necessarily limited to Pre-Acceptance Check List (SBP-05) and the Building Inspection Record (SBP-BIR). A list of the current standard State Buildings Programs forms applicable to this Contract may be obtained from the Principal Representative on request.

#### **DEFINITIONS OF WORDS AND TERMS USED**

1. **AGREEMENT.** The term "Agreement" shall mean the written agreement entered into by the State of Colorado acting by and through the Principal Representative and the DESIGN/BUILD ENTITY for the performance of the Work and payment therefore, on State Form SC-8.0. The term Agreement when used without reference to State Form SC-8.0 may also refer to the entirety of the parties' agreement to perform the Work described in the Contract Documents or reasonably inferable there from. The term "Contract" shall be interchangeable with this latter meaning of the term Agreement
2. **ARCHITECT/ENGINEER.** The term "Architect/Engineer" shall mean professionals licensed or registered by the State of Colorado who have contracted with the Design/Build Entity, with prior approval by the State, to accomplish the architectural and engineering services necessary for the Project. Although the Contract Documents impose specific performance requirements to be discharged by the architect or design professional selected by the Design/Build Entity, and approved by the State, nothing in this contract is intended to create a contractual relationship between such professional and the State of Colorado.
3. **OCCUPANCY.** The term "Occupancy" means occupancy taken by the State as Owner after the Date of Substantial Completion at a time when a building or other discrete physical portion of the Project is used for the purpose intended. The Date of Occupancy shall be the date of such first use, but shall not be prior to the date of execution of the Notice of Approval of Occupancy/Use. Prior to the date of execution of a Notice of Approval of Occupancy/Use, the Principal Representative shall have no right to occupy and the Project may not be considered safe for occupancy for the intended use.
4. **CHANGE ORDER.** The term "Change Order" means a written order, signed by a Procurement Officer, directing the DESIGN/BUILD ENTITY to make changes in the Work, in accordance with Article 35A, The Value of Changed Work.
5. **COLORADO LABOR.** The term "Colorado labor" shall be defined, as provided in § 8-17-101, C.R.S., as any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, age, or religion except when sex or age is a bona fide occupational qualification, or shall have such other meaning as the term may otherwise be given in § 8-17-101, C.R.S., as amended.
6. **DESIGN/BUILD ENTITY.** The word "Design/Build Entity" shall mean the design/build entity entering into a contract to design and construct the Project with the State of Colorado acting by and through the Principal Representative. The Design/Build Entity may also be referred to as "Contractor" in this agreement or in related exhibits, attachments, contract modification or procedural documents.
7. **DESIGN/BUILD ENTITY'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.
8. **DAYS.** The term "days" whether singular or plural shall mean calendar days unless expressly stated otherwise. Where the term "business days" is used it shall mean business days of the State of Colorado.
9. **DRAWINGS.** The term "Drawings" shall mean all drawings approved by appropriate State officials which have been prepared by the Architect/Engineer and/or mechanical, electrical or plumbing engineers showing the work to be done, except that where a list of drawings is

specifically enumerated in the Supplementary General Conditions or division 1 of the Specifications, the term shall mean the drawings so enumerated, including all addenda drawings.

10. EMERGENCY FIELD CHANGE ORDER. The term "Emergency Field Change Order" shall mean a written change order for extra work or a change in the work necessitated by an emergency as defined in Article 35C executed on State form SC 6.31 and identified as an Emergency Field Change Order. The use of such orders is limited to emergencies and to the amounts shown in Article 35C.
11. FINAL ACCEPTANCE. The terms "final acceptance" or "finally complete" mean the stage in the progress of the work, after substantial completion, when all remaining items of work have been completed, all requirements of the Contract Documents are satisfied and the Notice of Acceptance can be issued. Discrete physical portions of the Project may be separately and partially deemed finally complete at the discretion of the Principal Representative when that portion of the Project reaches such stage of completion and a partial Notice of Acceptance can be issued.
12. NOTICE. The term "Notice" shall mean any communication in writing from either contracting party to the other by such means of delivery that receipt cannot properly be denied. Notice shall be provided to the person identified to receive it in Article 54E, Notice Identification, or to such other person as either party identifies in writing to receive Notice. Notice by facsimile transmission where proper transmission is evidenced shall be adequate where facsimile numbers are included in Article 54E. Notwithstanding an email delivery or return receipt, email Notice shall not be adequate. Acknowledgment of receipt of a voice message shall not be deemed to waive the requirement that Notice, where required, shall be in writing.
13. OWNER. The term "Owner" shall mean the Principal Representative.
14. PRINCIPAL REPRESENTATIVE. The term "Principal Representative" shall be defined, as provided in § 24-30-1301(11), C.R.S., as the governing board of a state department, institution, or agency; or if there is no governing board, then the executive head of a state department, institution, or agency, as designated by the governor or the general assembly and as specifically identified in the Contract Documents, or shall have such other meaning as the term may otherwise be given in § 24-30-1301(11), C.R.S., as amended. The Principal Representative may delegate authority. The Design/Build Entity shall have the right to inquire regarding the delegated authority of any of the Principal Representative's representatives on the Project and shall be provided with a response in writing when requested.
15. PROCUREMENT OFFICER. The term "Procurement Officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. "Procurement Officer" includes an authorized representative of the Principal Representative acting within the limits of his or her authority.
16. PRODUCT DATA. The term "Product Data" shall mean all submittals in the form of printed manufacturer's literature, manufacturer's specifications, and catalog cuts.
17. REASONABLY INFERABLE: The phrase "reasonably inferable" means that if an item or system is either shown or specified, all material and equipment normally furnished with such items or systems and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted, and shall include only components which the Design/Build Entity could reasonably anticipate based on his or her skill and knowledge using an objective, industry standard, not a subjective standard. This term takes into consideration the normal understanding that not every detail is to be given on the Drawings and Specifications.
18. SAMPLES. The term "Samples" shall mean examples of materials or work provided to establish the standard by which the Work will be judged.
19. SC. The term "SC" means "State Contract" which is used in connection with labeling applicable State form documents (e.g. "SC 8.1" is the State form number for these General Conditions of the Contract).
20. SBP. The term "SBP" means "State Buildings", which is used in connection with labeling applicable State form documents (e.g., "SBP-01" is the form number for Notice of Approval of Occupancy/Use).

21. SHOP DRAWINGS. The term "Shop Drawings" shall mean any and all detailed drawings prepared and submitted by Design/Build Entity, Subcontractor at any tier, vendors or manufacturers providing the products and equipment specified on the Drawings or called for in the Specifications.
22. SPECIFICATIONS. The term "Specifications" shall mean the requirements of the CSI divisions of the project manual prepared by the Architect/Engineer describing the work to be accomplished.
23. STATE BUILDINGS PROGRAMS. Shall refer to the Office of the State Architect within the Department of Personnel & Administration of Colorado State government responsible for project administration, review, approval and coordination of plans, construction procurement policy, contractual procedures, and code compliance and inspection of all buildings, public works and improvements erected for state purposes; except public roads and highways and projects under the supervision of the division of wildlife and the division of parks and outdoor recreation as provided in § 24-30-1301, *et seq*, C.R.S. The term State Buildings Programs shall also mean that individual within a State Department agency or institution, including institutions of higher education, who has signed an agreement accepting delegation to perform all or part of the responsibilities and functions of State Buildings Programs.
24. SUBCONTRACTOR. The term "Subcontractor" shall mean a person, firm or corporation supplying labor and materials, or only labor, for work at the site of the Project for, and under separate contract or agreement with the Design/Build Entity. Design professionals and consultants, including the Design/Build Entity's Architect/Engineer, are also considered "subcontractors" under this Agreement.
25. SUBMITTALS. The term "submittals" means drawings, lists, tables, documents and samples prepared by the Design/Build Entity to facilitate the progress of the work as required by these General Conditions or the Drawings and Specifications. They consist of Shop Drawings, Product Data, Samples, and various administrative support documents including but not limited to lists of subcontractors, construction progress schedules, schedules of values, applications for payment, inspection and test results, requests for information, various document logs, and as-built drawings. Submittals are required by the Contract Documents, but except to the extent expressly specified otherwise are not themselves a part of the Contract Documents.
26. SUBSTANTIAL COMPLETION. The terms "substantial completion" or "substantially complete" mean the stage in the progress of the work when the construction is sufficiently complete, in accordance with the Contract Documents as modified by any Change Orders, so that the Work, or at the discretion of the Principal Representative, any designated portion thereof, is available for its intended use by the Principal Representative and a Notice of Substantial Completion can be issued. Portions of the Project may, at the discretion of the Principal Representative, be designated as substantially complete.
27. SURETY. The term "Surety" shall mean the company providing the labor and material payment and performance bonds for the Design/Build Entity as obligor.
28. WORK. The term "Work" shall mean all or part of the labor, materials, equipment, and other services required by the Contract Documents or otherwise required to be provided by the Design/Build Entity to meet the Design/Build Entity's obligations under the Contract.

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

**A. EXECUTION**

The Design/Build Entity, within ten (10) days from the date of Notice of Award, will be required to:

1. Execute the Design/Build Agreement, State Form SC-8.0;
2. Furnish fully executed Performance and Labor and Material Payment Bonds on State Forms SBP-6.22 and SBP-6.221;
3. Furnish certificates of insurance evidencing all required insurance on standard Acord forms designed for such purpose; and
4. Furnish Professional Liability Errors and Omissions Insurance.

**B. CORRELATION**

By execution of the Design/Build Agreement the Design/Build Entity represents that the Design/Build Entity has visited the site, has become familiar with local conditions and local requirements under which the Work is to be performed, including the building code programs of the State Buildings Program as implemented by the Principal Representative, and has correlated personal observations with the requirements of the Contract Documents.

**C. INTENT OF DOCUMENTS**

The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all. The intention of the documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work. Words describing materials or work which have a well-known technical or trade meaning shall be held to refer to such recognized standards.

Where a conflict occurs between or within standards, Specifications or Drawings, which is not resolved by reference to the precedence between the Contract Documents, the more stringent or higher quality requirements shall apply so long as such more stringent or higher quality requirements are reasonably inferable. The Principal Representative, or Architect/Engineer with consent of the Principal Representative, shall decide which requirements will provide the best installation.

With the exception noted in the following paragraph, the precedence of the Contract Documents is in the following sequence:

1. The Design/Build Entity's Scope Narrative;
2. The Minimum Requirements of the Request for Proposals;
3. The Design/Build Entity's Technical and Cost proposals;
4. The Agreement (SC-8.0);
5. The Supplementary General Conditions, if any;
6. These General Conditions (SC-8.1); and
7. Drawings and Specifications, all as modified by any addenda.

Change Orders and Amendments, if any, to the Contract Documents take precedence over the original Contract Documents.

Notwithstanding the foregoing order of precedence, the Special Provisions of Article 52 of these General Conditions shall take precedence, rule and control over all other provisions of the Contract Documents.

Unless the context otherwise requires, form numbers in this document are for convenience only. In the event of any conflict between the form required by name or context and the form required by number, the form required by name or context shall control. The Design/Build Entity may obtain State forms from the Principal Representative upon request.

Nothing contained in the Design/Build Contract Documents shall create a professional obligation or contractual relationship between the Principal Representative and any third party, including the Architect/Engineer.

**D. PARTNERING, COMMUNICATIONS AND COOPERATION**

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

The Design/Build Entity and the Principal Representative each agree to assign an individual who shall be fully authorized to negotiate and implement a voluntary partnering plan for the purpose of facilitating

open communications between them. Within thirty days (30) of the Notice to Proceed, the assigned individuals shall meet to discuss development of an informal agreement to accomplish these goals.

The assigned individuals shall endeavor to reach an informal agreement, but shall have no such obligation. Any plans these parties voluntarily agree to implement shall result in no change to the contract amount, and no costs associated with such plan or its development shall be recoverable under any contract clause. In addition, no plan developed to facilitate open communication and cooperation shall alter, amend or waive any of the rights or duties of either party under the Contract unless and except by written Amendment to the Contract, nor shall anything in this clause or any subsequently developed partnering plan be deemed to create fiduciary duties between the parties unless expressly agreed in a written Amendment to the Contract. It is also recognized that projects with relatively low contract values may not justify the expense or special efforts required. In the case of small projects with an initial Contract value under \$500,000, the requirements of the preceding paragraph shall not apply.

**ARTICLE 3. COPIES FURNISHED**

Refer to Article 2 of the Agreement (SC-8.0).

**ARTICLE 4. OWNERSHIP OF DRAWINGS**

Refer to Article 3 of the Agreement (SC-8.0).

**ARTICLE 5. ARCHITECT/ENGINEER'S STATUS**

In case of termination of employment or the death of the Architect/Engineer, the Design/Build Entity will appoint a capable and reputable Architect/Engineer against whom the Principal Representative makes no reasonable objection, whose status under the Contract shall be the same as that of the former Architect/Engineer.

**ARTICLE 6. ARCHITECT/ENGINEER DECISIONS AND JUDGMENTS,  
ACCESS TO WORK AND INSPECTION**

**A. DECISIONS**

The Architect/Engineer shall, within a reasonable time, make decisions on all matters relating to the interpretation of the Contract Documents as it relates to compliance with the Drawings and Specifications.

Such decisions by the Architect/Engineer shall be promptly forwarded to the Design/Build Entity and Principal Representative. The Principal Representative may consent with such decision by the Architect/Engineer or amend/revise such decision at the discretion of the Principal Representative.

**B. JUDGMENTS**

The Architect/Engineer is, in the first instance, the judge of the performance required by the Contract Documents as it relates to compliance with the Drawings and Specifications and quality of workmanship and materials.

**C. ACCESS TO WORK**

The Architect/Engineer, the Principal Representative and representatives of State Buildings Programs shall at all times have access to the work. The Design/Build Entity shall provide proper facilities for such access and for their observations or inspection of the work.

**D. INSPECTION**

The Architect/Engineer has agreed to make, or that structural, mechanical, electrical engineers or other consultants will make, periodic visits to the site to generally observe the progress and quality of the Work to determine in general if the Work is proceeding in accordance with the Contract Documents as it relates to compliance with the Drawings and Specifications. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.

Without in any way meaning to be exclusive or to limit the responsibilities of the Architect/Engineer or the Design/Build Entity, the Architect/Engineer has agreed to observe, among other aspects of the Work, the following for compliance with the Contract Documents as it relates to compliance with the Drawings and Specifications:

1. Bearing surfaces of excavations before concrete is placed based upon the findings and recommendations of the Principal Representative's soils engineering consultant;
2. Reinforcing steel after installation and before concrete is poured;
3. Structural concrete;
4. Laboratory reports on all concrete testing based upon the findings and recommendations of the Principal Representative's testing consultant;
5. Structural steel during and after erection and prior to its being covered or enclosed;
6. Steel welding; Principal Representative will furnish steel welding inspection consultant/agency if required or necessary for the Project;
7. Mechanical and plumbing work following its installation and prior to its being covered or enclosed;
8. Electrical work following its installation and prior to its being covered or enclosed;
9. Compaction testing reports based upon the findings and recommendations of the Principal Representative's testing consultant; and
10. Any special or quality control testing required in the Contract Documents provided by the Principal Representative's testing consultant.

If the Specifications, the Architect/Engineer's instructions, laws, ordinances of any public authority require any work to be specifically tested or approved, the Design/Build Entity shall give the Principal Representative and Architect/Engineer timely notice of its readiness for observation by the Principal Representative and Architect/Engineer or inspection by another authority, and if the inspection is by another authority, of the date fixed for such inspection, required certificates of inspection being secured by the Design/Build Entity. The Design/Build Entity shall give all required Notices to the Principal Representative or his or her designee for inspections required for the building inspection program. It shall be the responsibility of the Design/Build Entity to determine the Notice required by the State pursuant to Building Inspection Record for the Project, according to State form SBP-B.I.R., or the equivalent form required by the Principal Representative as approved by the State Buildings Program. If any such work is covered up without approval or consent of the Principal Representative and Architect/Engineer or prior to any building code inspection, it must, if required by the Architect/Engineer, the Principal Representative or the State Buildings Programs, be uncovered for examination, at the Design/Build Entity's expense. If such work is found to be not in accordance with the Contract Documents, the Design/Build Entity shall pay such costs, unless he or she shall show that the defect in the work was caused by another separate contractor engaged by the Principal Representative. In that event, the Principal Representative shall pay such cost. In addition, examination of questioned work may be ordered, and if so ordered, the work must be uncovered by the Design/Build Entity. If such work be found in accordance with the Contract Documents, the Design/Build Entity shall be reimbursed the cost of examination and replacement.

#### **ARTICLE 7. DESIGN/BUILD ENTITY'S SUPERINTENDENCE AND SUPERVISION**

The Design/Build Entity shall employ, and keep present on the Project during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Principal Representative. The superintendent shall not be changed except with the consent of the Principal Representative, unless the superintendent proves to be unsatisfactory to the Design/Build Entity and ceases to be in his or her employ. The superintendent shall represent the Design/Build Entity in his or her absence and all directions given to the superintendent shall be as binding as if given to the Design/Build Entity. Directions received by the superintendent shall be documented by the superintendent and confirmed in writing with the Design/Build Entity.

The Design/Build Entity shall give efficient supervision to the Work, using his or her best skill and attention. He or she shall carefully study and compare all Drawings, Specifications and other written instructions and

shall without delay report any error, inconsistency or omission which he or she may discover in writing to the Principal Representative and Architect/Engineer.

The superintendent shall see that the Work is carried out in accordance with the Contract Documents and in a uniform, thorough and first-class manner in every respect. The Design/Build Entity's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in the Design/Build Entity's Work. The Design/Build Entity shall lay out all work in a manner satisfactory to the Principal Representative and Architect/Engineer, making permanent records of all lines and levels required for excavation, grading, foundations, and for all other parts of the Work.

#### **ARTICLE 8. MATERIALS AND EMPLOYEES**

Unless otherwise stipulated, the Design/Build Entity shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the Work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be first class and of uniform quality. The Design/Build Entity shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Design/Build Entity is fully responsible for all acts and omissions of the Design/Build Entity's employees and shall at all times enforce strict discipline and good order among employees on the site. The Design/Build Entity shall not employ on the Work any person reasonably deemed unfit by the Principal Representative or anyone not skilled in the work assigned to him.

#### **ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS**

##### **A. SURVEYS**

The Principal Representative shall furnish all surveys, property lines and bench marks deemed necessary by the Architect/Engineer, unless otherwise specified.

##### **B. PERMITS AND LICENSES**

Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by the Design/Build Entity. Unless otherwise required, no local municipal or county building permit shall be required. However, State Buildings Programs requires each Principal Representative to administer a building code inspection program, the implementation of which may vary at each agency or institution of the State. The Design/Build Entity's employees shall become personally familiar with these local conditions and requirements and shall fully comply with such requirements. State electrical and plumbing permits are required, unless the requirement to obtain such permits is altered by State Building's Programs. The Design/Build Entity shall obtain and pay for such permits.

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Principal Representative, unless otherwise specified.

##### **C. TAXES**

###### **1. REFUND OF SALES AND USE TAXES**

The Design/Build Entity shall pay all local taxes required to be paid, including but not necessarily limited to all sales and use taxes. If requested by the Principal Representative prior to issuance of the Notice to Proceed or directed in the Supplementary General Conditions or the Specifications, the Design/Build Entity shall maintain records of such payments in respect to the Work, which shall be separate and distinct from all other records maintained by the Design/Build Entity, and the Design/Build Entity shall furnish such data as may be necessary to enable the State of Colorado, acting by and through the Principal Representative, to obtain any refunds of such taxes which may be available under the laws, ordinances, rules or regulations applicable to such taxes. When so requested or directed, the Design/Build Entity shall require Subcontractors at all tiers to pay all local sales and use taxes required to be paid and to maintain records and furnish the Design/Build Entity with such data as may be necessary to obtain refunds of the taxes paid by such Subcontractors. No State sales and use

taxes are to be paid on material to be used in this Project. On application by the purchaser or seller, the Department of Revenue shall issue to the Design/Build Entity or to a Subcontractor at any tier, a certificate or certificates of exemption per § 39-26-114(1)(d), C.R.S., and § 39-26-203, C.R.S.

2. **FEDERAL TAXES**

The Design/Build Entity shall exclude the amount of any applicable federal excise or manufacturers' taxes from the proposal. The Principal Representative will furnish the Design/Build Entity, on request, exemption certificates.

**D. LAWS AND REGULATIONS**

The Design/Build Entity shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn or specified.

The Design/Build Entity shall bear all costs arising from the performance of work required by the Drawings or Specifications that the Design/Build Entity knows to be contrary to such laws, ordinances, rules or regulations.

**ARTICLE 10. PROTECTION OF WORK AND PROPERTY**

**A. GENERAL PROVISIONS**

The Design/Build Entity shall continuously maintain adequate protection of all work and materials, protect the property from injury or loss arising in connection with this Contract and adequately protect adjacent property as provided by law and the Contract Documents. The Design/Build Entity shall make good any damage, injury or loss, except to the extent:

1. Caused by agents or employees of the Principal Representative; and,
2. Due to causes beyond the Design/Build Entity's control and not due to fault or negligence; provided such damage, injury or loss would not be covered by the insurance required to be carried by the Design/Build Entity;

**B. SAFETY PRECAUTIONS**

The Design/Build Entity shall take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. He or she shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and he or she shall designate a responsible member of his or her organization on the Project, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Principal Representative by the Design/Build Entity.

The Design/Build Entity shall provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time; and provide for the adequacy and safety of all scaffolding and hoisting equipment. The Design/Build Entity shall not permit open fires within the building enclosure. The Design/Build Entity shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep excavations and floors, pits and trenches free of water. The Design/Build Entity shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, except as otherwise noted.

The Design/Build Entity shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways,

trench covers, colored lights or danger signals and any other devices necessary or required to assure the safe passage of pedestrians and automobiles.

**C. EMERGENCIES**

In an emergency affecting the safety of life or of the Work or of adjoining property, the Design/Build Entity without special instruction or authorization from the Principal Representative, is hereby permitted to act, at his or her discretion, to prevent such threatened loss or injury; and he or she shall so act, without appeal, if so authorized or instructed. Provided the Design/Build Entity has no responsibilities for the emergency, if the Design/Build Entity incurs additional cost not otherwise recoverable from insurance or others on account of any such emergency work, the Contract sum shall be equitably adjusted in accordance with Article 35, Changes In The Work.

**ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK**

The Design/Build Entity shall keep on the job site one copy of the Contract Documents in good order, including current copies of all Drawings and Specifications for the Work, and any approved Shop Drawings, Product Data or Samples, and as-built drawings. As-built drawings shall be updated weekly by the Design/Build Entity and Subcontractors to reflect actual constructed conditions including dimensioned locations of underground work and the Design/Build Entity's failure to maintain such updates may be grounds to withhold portions of payments otherwise due in accordance with Article 33, Payments Withheld. All such documents shall be available to representatives of the State. In addition, the Design/Build Entity shall keep on the job site one copy of all approved addenda, Change Orders and requests for information issued for the Work.

The Design/Build Entity shall develop procedures to insure the currency and accuracy of as-built drawings and shall maintain on a current basis a log of requests for information and responses thereto, a Shop Drawing and Product Data submittal log, and a Sample submittal log to record the status of all necessary and required submittals.

**ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES**

**A. DETAIL DRAWINGS AND INSTRUCTIONS**

The Architect/Engineer shall furnish to the Design/Build Entity and Principal Representative, with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom.

The work shall be executed in conformity therewith and the Design/Build Entity shall do no work without proper drawings and instructions.

The Design/Build Entity, the Architect/Engineer, and the Principal Representative shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail drawings will be required, and the Architect/Engineer shall furnish them in accordance with that schedule. Under like conditions, a schedule shall be prepared, fixing the dates for the submission of shop drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

The Principal Representative may consent with such instructions by the Architect/Engineer or amend/revise such instructions at the discretion of the Principal Representative.

**B. SCHEDULES**

**1. SUBMITTAL SCHEDULES**

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase, a schedule shall be prepared by the Design/Build Entity fixing the dates for the submission and initial review of required Shop Drawings, Product Data and Samples for the beginning of manufacture and installation of materials, and for the completion of the various parts of the Work. It shall be prepared so as to cause no delay in the Work or in the work of any other separate contractor engaged by the Principal Representative. The schedule shall be

subject to change from time to time in accordance with the progress of the Work, and it shall be subject to the review and approval by the Principal Representative. The schedule shall be finalized, prepared and submitted with respect to each of the elements of the Work in time to avoid delay, considering reasonable periods for review, manufacture or installation.

At the time the schedule is prepared, the Design/Build Entity, the Architect/Engineer and Principal Representative shall jointly identify the Shop Drawing, Product Data and Samples, if any, which the Principal Representative shall receive for the purposes of owner coordination with existing facility standards and systems. The Design/Build Entity shall furnish a copy for the Principal Representative when so requested. Transmittal of Shop Drawings and Product Data copies to the Principal Representative shall be solely for the convenience of the Principal Representative and shall neither create nor imply responsibility or duty of review by the Principal Representative.

## 2. SCHEDULE OF VALUES

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase, the Design/Build Entity shall submit to the Principal Representative, for approval, and to the State Buildings Programs when specifically requested, a complete itemized schedule of the values of the various parts of the Work, as estimated by the Design/Build Entity, aggregating the total price. The schedule of values shall be in such detail as the Principal Representative shall require, prepared on forms acceptable to the Principal Representative. It shall, at a minimum, identify on a separate line each division of the Specifications including the general conditions costs to be charged to the Project. The Design/Build Entity shall revise and resubmit the schedule of values for approval when, in the opinion of the Principal Representative, such resubmittal is required due to changes or modifications to the Contract Documents or the Contract sum.

The total cost of each line item so separately identified shall, when requested by the Principal Representative, be broken down into reasonable estimates of the value of:

- a. Material, which shall include the cost of material actually built into the Project plus any local sales or use tax paid thereon; and,
- b. Labor and other costs.

The cost of subcontracts shall be incorporated in the Design/Build Entity's schedule of values, and when requested by the Principal Representative, shall be separately shown as line items.

This schedule of values, when approved, shall be used in preparing Design/Build Entity's applications for payment on State Form SBP-7.2, Application for Payment.

## 3. CONSTRUCTION SCHEDULES

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase, the Design/Build Entity shall submit to the Principal Representative, and to the State Buildings Programs when specifically requested, on a form acceptable to them, an overall timetable of the construction schedule for the Project. Unless the Supplementary General Conditions or the Specifications allow scheduling with bar charts or other less sophisticated scheduling tools, the Design/Build Entity's schedule shall be a critical-path method (CPM) construction schedule. The CPM schedule shall start with the date of the Notice to Proceed to Commence Construction for the first construction phase and include submittals activities, the various construction activities, change order work (when applicable), close-out, testing, demonstration of equipment operation when called for in the Specifications, and acceptance. The CPM shall at a minimum correlate to the schedule of values line items and shall be cost loaded if requested by the Principal Representative. The completion time shall be the time specified in the Agreement and all Project scheduling shall allocate float utilizing the full period available for construction as specified in the cost proposal, without indication of early completion, unless such earlier completion is approved in writing by the Principal Representative and State Building Programs.

The time shown between the starting and completion dates of the various elements within the construction schedule shall represent one hundred per cent (100%) completion of each element.

All other elements of the CPM schedule shall be as required by the Specifications. In addition, the Design/Build Entity shall submit monthly updates of the construction schedule. These updates shall reflect the Design/Build Entity's "work in place" progress.

When requested by the Principal Representative or the State Buildings Programs, the Design/Build Entity shall revise the construction schedule to reflect changes in the schedule of values.

When the testing of materials is required by the Specifications, the Design/Build Entity shall also prepare and submit to the Principal Representative a schedule for testing in accordance with Article 14, Samples and Testing.

### **ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

#### **A. SUBMITTAL PROCESS**

The Design/Build Entity shall check and field verify all dimensions. The Design/Build Entity shall check, approve and submit to the Principal Representative and Architect/Engineer in accordance with the schedule described in Article 12, Requests for Information and Schedules, all Shop Drawings, Product Data and Samples required by the specifications or required by the Design/Build Entity for the work of the various trades. All Drawings and Product Data shall contain identifying nomenclature and each submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures. The number of copies of Shop Drawings and Product Data to be submitted shall be as specified in the Specifications and if no number is specified then three copies shall be submitted.

The Architect/Engineer shall review and comment on the Shop Drawings and Product Data within the time provided in the agreed upon schedule for conformance with information given and the design concept expressed in, or reasonably inferred from, the Contract Documents. The nature of all corrections to be made to the Shop Drawings and Product Data, if any, shall be clearly noted, and the submittals shall be returned to the Design/Build Entity for such corrections. On resubmitted Shop Drawings, Product Data or Samples, the Design/Build Entity shall direct specific attention in writing on the transmittal cover to revisions other than those corrections requested by the Architect/Engineer on any previously checked submittal. The Architect/Engineer shall promptly review and comment on, and return to the Design/Build Entity and Principal Representative, the resubmitted items.

The Design/Build Entity shall thereafter furnish such other copies in the form approved by the Principal Representative and Architect/Engineer as may be needed for the prosecution of the work.

#### **B. FABRICATION AND ORDERING**

Fabrication shall be started by the Design/Build Entity only after receiving approved Shop Drawings from the Architect/Engineer. Materials shall be ordered in accordance with approved Product Data. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, will not be acceptable.

**C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS**

The review and comments of the Architect/Engineer or Principal Representative of Shop Drawings, Product Data or Samples shall not relieve the Design/Build Entity from responsibility for deviations from the Drawings or Specifications, unless he or she has in writing called the attention of the Architect/Engineer and Principal Representative to such deviations at the time of submission, nor shall it relieve the Design/Build Entity from responsibility for errors of any sort in Shop Drawings or Product Data. Review and comments on Shop Drawings or Product Data containing identified deviations from the Contract Documents shall not be the basis for a Change Order or a claim based on a change in the scope of the Work unless Notice is given to the Principal Representative of all additional costs, time and other impacts of the identified deviation by bringing it to their attention in writing at the time the submittals are made, and any subsequent change in the Contract sum or the Contract time shall be limited to cost, time and impacts so identified.

**D. DESIGN/BUILD ENTITY REPRESENTATIONS**

By preparing, approving, and/or submitting Shop Drawings, Product Data and Samples, the Design/Build Entity represents that the Design/Build Entity has determined and verified all materials, field measurements, and field construction criteria related thereto, and has checked and co-ordinated the information contained within each submittal with the requirements of the Work, the Project and the Contract Documents and prior reviews and approvals.

**ARTICLE 14. SAMPLES AND TESTING**

**A. SAMPLES**

The Design/Build Entity shall furnish for approval, with such promptness as to cause no delay in his or her work or in that of any other separate contractor engaged by the Principal Representative, all Samples as directed by the Principal Representative. The Architect/Engineer and Principal Representative shall check and approve such Samples, with reasonable promptness, but only for conformance with the design intent of the Contract Documents and the Project, and for compliance with any submission requirements given in the Contract Documents.

**B. TESTING - GENERAL**

The Design/Build Entity shall provide such equipment and facilities as the Architect/Engineer or Principal Representative may require for conducting field tests and for collecting and forwarding samples to be tested. Samples themselves shall not be incorporated into the Work after approval without the permission of the Architect/Engineer and Principal Representative.

All materials or equipment proposed to be used may be tested at any time during their preparation or use. The Design/Build Entity shall furnish the required samples without charge and shall give sufficient Notice of the placing of orders to permit the testing thereof. Products may be sampled either prior to shipment or after being received at the site of the Work.

Tests shall be made by an accredited testing laboratory. Except as otherwise provided in the Specifications, sampling and testing of all materials, and the laboratory methods and testing equipment, shall be in accordance with the latest standards and tentative methods of the American Society of Testing Materials (ASTM). The cost of testing which is in addition to the requirements of the Specifications shall be paid by the Design/Build Entity if so directed by the Principal Representative, and the Contract sum shall be adjusted accordingly by Change Order; provided however, that whenever testing shows portions of the Work to be deficient, all costs of testing including that required to verify the adequacy of repair or replacement work shall be the responsibility of the Design/Build Entity.

**C. TESTING - CONCRETE AND SOILS**

Unless otherwise specified or provided elsewhere in the Contract Documents, the Principal Representative will contract for and pay for the testing of concrete and for soils compaction testing through an independent laboratory or laboratories selected and approved by the Principal Representative. The Design/Build Entity shall assume the responsibility of arranging, scheduling and coordinating the concrete sample collection efforts and soils compaction efforts. Testing shall be

performed in accordance with the requirements of the Specifications, and if no requirements are specified, the Design/Build Entity shall request instructions and testing shall be as directed by the Architect/Engineer or the soils engineer, as applicable, and in accordance with standard industry practices.

The Principal Representative and the Architect/Engineer shall be given reasonable advance notice of each concrete pour and reserve the right to either increase or decrease the number of cylinders or the frequency of tests.

Soil compaction testing shall be at random locations selected by the soils engineer. In general, soils compaction testing shall be as directed by the soils engineer and shall include all substrate prior to backfill or construction.

**D. TESTING - OTHER**

Additional testing required by the Specifications will be accomplished and paid for by the Principal Representative in a manner similar to that for concrete and soils unless noted otherwise in the Specifications. In any case, the Design/Build Entity will be responsible for arranging, scheduling and coordinating additional tests. Where the additional testing will be contracted and paid for by the Principal Representative, the Design/Build Entity shall give the Principal Representative not less than one month advance written Notice of the date the first such test will be required.

**ARTICLE 15. SUBCONTRACTS**

**A. SUBCONTRACTOR PREQUALIFICATION**

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase, the Design/Build Entity shall submit to the Principal Representative and State Buildings Programs a complete list of all proposed pre-qualified Subcontractors, including the Architect/Engineer and other professional consultants. It shall be as complete as possible at the time, showing all known Subcontractors planned for the work. The list shall be supplemented as other Subcontractors are determined by the Design/Build Entity and any such supplemental list shall be submitted to the Principal Representative and State Buildings Programs not less than ten (10) days before the Subcontractor commences work.

The Design/Build Entity's list of all proposed pre-qualified Subcontractors shall include those Subcontractors, if any, which the Design/Build Entity indicated in its Technical Proposal would be employed for specific portions of the Work or if such indication was requested in the Request for Proposal documents issued by the State.

**B. SUBCONTRACTOR PROPOSALS**

If Design/Build Entity utilizes any Subcontractor on this Project, Design/Build Entity shall request and receive proposals from the Subcontractors and subcontracts will be awarded after the proposals are tabulated in a pre-approved format which compares to each Fixed Limit of Construction Cost budgeted line item, as indicated in the finalized Design/Build Entity's Cost Proposal, and, reviewed by, Design/Build Entity, and Principal Representative.

Should Design/Build Entity submit a proposal for subcontract work, the proposal conditions used shall be the same as for all subcontractor proposals. These Design/Build Entity proposals for subcontract work shall be submitted to the Principal Representative twenty-four (24) hours prior to receipt of other subcontractor proposals and be opened with the other proposals.

**C. SUBCONTRACT FORMS**

All subcontracts will be between Design/Build Entity and the Subcontractors. The form of subcontracts shall be furnished to the Principal Representative for review and consent as to form, which consent shall not be unreasonably withheld.

**D. SUBCONTRACTOR SUBSTITUTION**

The substitution of any Subcontractor listed in the Design/Build Entity's proposal shall be justified in writing not less than ten (10) days after the date of the Notice to Proceed with Design, and shall be subject to the approval of the Principal Representative. For reasons such as the Subcontractor's refusal to perform as agreed, subsequent unavailability or later discovered proposal errors, or other similar reasons, such substitution may be approved. The Design/Build Entity shall bear any additional cost incurred by such substitutions.

**E. DESIGN/BUILD ENTITY RESPONSIBLE FOR SUBCONTRACTORS**

The Design/Build Entity shall not employ any Subcontractor that the Principal Representative, within ten (10) days after the date of receipt of the Design/Build Entity's list of Subcontractors or any supplemental list, objects to in writing as being unacceptable to either the Principal Representative or State Buildings Programs. If a Subcontractor is deemed unacceptable, the Design/Build Entity shall propose a substitute Subcontractor and the Contract sum shall be adjusted by any demonstrated difference between the Subcontractor's bids, except where the Subcontractor has been debarred by the State or fails to meet qualifications of the Contract Documents to perform the work proposed.

The Design/Build Entity shall be fully responsible to the Principal Representative for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work to be done by Subcontractors shall be given to the Design/Build Entity.

**ARTICLE 16. RELATIONS OF DESIGN/BUILD ENTITY AND SUBCONTRACTOR**

The Design/Build Entity agrees to bind each Subcontractor to the terms of these General Conditions and to the requirements of the Drawings and Specifications, and any Addenda thereto, and also all the other Contract Documents, so far as applicable to the work of such Subcontractor. The Design/Build Entity further agrees to bind each Subcontractor to those terms of the General Conditions which expressly require that Subcontractors also be bound, including without limitation, requirements that Subcontractors waive all rights of subrogation, provide adequate general commercial liability and property insurance, automobile insurance and workers' compensation insurance as provided in Article 25, Insurance.

Nothing contained in the Contract Documents shall be deemed to create any contractual relationship whatsoever between any Subcontractor and the State of Colorado acting by and through its Principal Representative.

**ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS**

Should the Design/Build Entity cause damage to any separate contractor engaged by the Principal Representative on the work, the Design/Build Entity agrees, upon due Notice, to settle with such separate contractor by agreement, if he or she will so settle. If such separate contractor sues the Principal Representative on account of any damage alleged to have been so sustained, the Principal Representative shall notify the Design/Build Entity, who shall defend such proceedings if requested to do so by Principal Representative. If any judgment against the Principal Representative arises there from, the Design/Build Entity shall pay or satisfy it and pay all costs and reasonable attorney fees incurred by the Principal Representative, in accordance with Article 53(l), Indemnification, provided the Design/Build Entity was given due Notice of an opportunity to settle.

**ARTICLE 18. SEPARATE CONTRACTS**

The Principal Representative reserves the right to enter into other contracts in connection with the Project or the Contract. The Design/Build Entity shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his or her work with theirs. If any part of the Design/Build Entity's work depends, for proper execution or results, upon the work of any other separate contractor, the Design/Build Entity shall inspect and promptly report to the Principal Representative any defects in such work that render it unsuitable for such proper execution and results. Failure of the Design/Build Entity to so inspect and report shall constitute an acceptance of the other separate contractor's work as fit and proper for the reception of work, except as

to defects which may develop in the other separate contractor's work after the execution of the Design/Build Entity's work.

To insure the proper execution of subsequent work, the Design/Build Entity shall measure work already in place and shall at once report to the Principal Representative any discrepancy between the executed work and the Drawings.

#### **ARTICLE 19. USE OF PREMISES**

The Design/Build Entity shall confine apparatus, the storage of materials and the operations of workmen to limits indicated by law, ordinances, permits and any limits lines shown on the Drawings. The Design/Build Entity shall not unreasonably encumber the premises with materials.

The Design/Build Entity shall enforce all of the Principal Representative's instructions and prohibitions regarding, without limitation, such matters as signs, advertisements, fires, smoking, and security.

#### **ARTICLE 20. CUTTING, FITTING OR PATCHING**

The Design/Build Entity shall do all cutting, fitting or patching of work that may be required to make its several parts come together properly and fit it to receive or be received by work of other separate contractors shown upon, or reasonably inferred from, the Drawings and Specifications for the complete structure, and shall provide for such finishes to patched or fitted work as the Principal Representative may direct. The Design/Build Entity shall not endanger any work by cutting, excavating or otherwise altering the work and shall not cut or alter the work of any other separate contractor save with the consent of the Principal Representative.

#### **ARTICLE 21. UTILITIES**

##### **A. TEMPORARY UTILITIES**

Unless otherwise specifically stated in the Specifications or on the Drawings, the Principal Representative shall be responsible for the locations of all utilities as shown on the Drawings or indicated elsewhere in the Specifications, subject to the Design/Build Entity's compliance with all statutory or regulatory requirements to call for utility locates. When actual conditions deviate from those shown, the Design/Build Entity shall comply with the requirements of Article 37, Differing Site Conditions. The Design/Build Entity shall provide and pay for the installation of all temporary utilities required to supply all the power, light and water needed by him and other separate contractors for their Work and shall install and maintain all such utilities in such manner as to protect the public and workmen and conform with any applicable laws and regulations. Upon completion of the work, he or she shall remove all such temporary utilities from the site. The Design/Build Entity shall pay for all consumption of power, light and water used by him or her and the other separate contractors, without regard to whether such items are metered by temporary or permanent meters. The Design/Build Entity's Superintendent shall have full authority over all trades and Subcontractors at any tier to prevent waste. The cut-off date on permanent meters shall be either the agreed date of the date of the Notice of Substantial Completion or the Notice of Approval of Occupancy/Use of the Project.

##### **B. PROTECTION OF EXISTING UTILITIES**

Where existing utilities, such as water mains, sanitary sewers, storm sewers and electrical conduits, are shown on the Drawings, the Design/Build Entity shall be responsible for the protection thereof, without regard to whether any such utilities are to be relocated or removed as a part of the Work. If any utilities are to be moved, the moving must be conducted in such manner as not to cause undue interruption or delay in the operation of the same.

##### **C. CROSSING OF UTILITIES**

When new construction crosses highways, railroads, streets, or utilities under the jurisdiction of State, city or other public agency, public utility or private entity, the Design/Build Entity shall secure proper written permission before executing such new construction. The Design/Build Entity will be required to furnish a proper release before final acceptance of the Work.

## **ARTICLE 22. UNSUITABLE CONDITIONS**

The Design/Build Entity shall not work at any time, or permit any work to be done, under any conditions contrary to those recommended by manufacturers or industry standards which are otherwise proper, unsuited for proper execution, safety and performance. Any cost caused by ill-timed work shall be borne by the Design/Build Entity unless the timing of such work shall have been directed by the Principal Representative, after the award of the Contract, and the Design/Build Entity provided Notice of any additional cost.

## **ARTICLE 23. TEMPORARY FACILITIES**

### **A. OFFICE FACILITIES**

The Design/Build Entity shall provide and maintain without additional expense for the duration of the Project temporary office facilities, as required and as specified, for his or her own use and the use of the representatives of the Principal Representative and State Buildings Programs.

### **B. TEMPORARY HEAT**

The Design/Build Entity shall furnish and pay for all the labor, facilities, equipment, fuel and power necessary to supply temporary heating, ventilating and air conditioning, except to the extent otherwise specified, and shall be responsible for the installation, operation, maintenance and removal of such facilities and equipment. Unless otherwise specified, the permanent HVAC system shall not be used for temporary heat in whole or in part. If the Design/Build Entity desires to put the permanent system into use, in whole or in part, the Design/Build Entity shall set it into operation and furnish the necessary fuel and manpower to safely operate, protect and maintain that HVAC system. Any operation of all or any part of the permanent HVAC system including operation for testing purposes shall not constitute acceptance of the system, nor shall it relieve the Design/Build Entity of his or her one-year guarantee of the system from the date of the Notice of Substantial Completion of the entire Project, and if necessary due to prior operation, the Design/Build Entity shall provide manufacturers' extended warranties from the date of the Design/Build Entity's use prior to the date of the Notice of Substantial Completion.

### **C. WEATHER PROTECTION**

The Design/Build Entity shall, at all times, provide protection against weather, so as to maintain all work, materials, apparatus and fixtures free from injury or damages. The Design/Build Entity shall provide weathertight storage on substantial floors at least six (6) inches off the ground for all materials requiring protection from the weather.

### **D. DUST PARTITIONS**

If the Work involves work in an occupied existing building, the Design/Build Entity shall erect and maintain during the progress of the work, suitable dust-proof temporary partitions, or more permanent partitions as specified, to protect such building and the occupants thereof.

### **E. BENCH MARKS**

The Design/Build Entity shall maintain any site bench marks provided by the Principal Representative and shall establish any additional benchmarks specified by the Architect/Engineer or Principal Representative as necessary for the Design/Build Entity to layout the work and ascertain all grades and levels as needed.

### **F. SIGN**

The Design/Build Entity shall erect and permit one 4' x 8' sign only at the site to identify the Project as specified or directed by the Principal Representative which shall be maintained in good condition during the life of the Project.

### **G. SANITARY PROVISION**

The Design/Build Entity shall provide and maintain suitable, clean, temporary sanitary toilet facilities for any and all workmen engaged on the Work, for the entire construction period, in strict compliance with the requirement of all applicable codes, regulations, laws and ordinances, and no other facilities, new or existing, may be used by any person on the Project. When the Project is complete the Design/Build

Entity shall promptly remove them from the site, disinfect, and clean or treat the areas as required. If any new construction surfaces in the Project other than the toilet facilities provided for herein are soiled at any time, the entire areas so soiled shall be completely removed from the Project and rebuilt. In no event may present toilet facilities of any existing building at the site of the work be used by employees of the Design/Build Entity or any subcontractors.

#### **ARTICLE 24. CLEANING UP**

The Design/Build Entity shall keep the building and premises free from all surplus material, waste material, dirt and rubbish caused by employees or work, and at the completion of the Work shall remove all such surplus material, waste material, dirt, and rubbish, as well as all tools, equipment and scaffolding, and shall wash and clean all window glass and plumbing fixtures, perform cleanup and cleaning required by the Specifications and leave all of the work clean unless more exact requirements are specified.

#### **ARTICLE 25. INSURANCE**

##### **A. GENERAL**

The Design/Build Entity 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 Design/Build Entity 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 **per Article 54.E** 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".

##### **B. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)**

This insurance must protect the Design/Build Entity 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 Design/Build Entity or by any Subcontractor under him or anyone directly or indirectly employed by the Design/Build Entity 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	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal Injury	\$1,000,000

The following coverages shall be included in the CGL:

1. Per project general aggregate (CG 25 03 or similar)
2. Additional Insured status in favor of the State of Colorado and any other parties as outlined in The Contract and must include both ONGOING Operations AND COMPLETED Operations per CG2010 10/01 and CG 2037 10/01 or equivalent as permitted by law.
3. The policy shall be endorsed to be **primary and non-contributory** with any insurance maintained by Additional Insureds.
4. A waiver of Subrogation in favor of all Additional Insured parties.
5. Personal Injury Liability
6. Contractual Liability coverage to support indemnification obligation per Article 53.I
7. Explosion, collapse and underground (xcu)

The following exclusionary endorsements are prohibited in the CGL policy:

1. Damage to Work performed by Subcontract/Vendor (CG 22-94 or similar)

2. Contractual Liability Coverage Exclusion modifying or deleting the definition of an "insured contract" from the unaltered SO CG 0001 1001 policy from (CG 24 26 or similar)
3. If applicable to the Work to be performed: Residential or multi-family
4. If applicable to the Work to be performed :Exterior insulation finish systems
5. If applicable to the Work to be performed: Subsidence or Earth Movement

The Design/Build Entity shall maintain general liability coverage including Products and Completed Operations insurance, and the Additional Insured with primary and non-contributory coverage as specified in this Contract for three (3) years after completion of the project.

**C. 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

**D. WORKERS' COMPENSATION INSURANCE**

The Design/Build Entity 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 Design/Build Entity 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 Design/Build Entity 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 Design/Build Entity shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

**E. UMBRELLA LIABILITY INSURANCE (for construction projects exceeding \$10,000,000, provide the following coverage):**

The Design/Build Entity shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in Section B-D above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in Sections above may be satisfied by the Design/Build Entity purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned.

Each occurrence	\$5,000,000
Aggregate	\$5,000,000

**F. BUILDER'S RISK INSURANCE**

Unless otherwise expressly stated in the Supplementary General Conditions (e.g. where the State elects to provide for projects with a completed value of less than \$1,000,000), 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, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property 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 final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, or the Date of Notice specified on the Notice of Acceptance, State Form SBP-6.27 or whichever is later.

This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as named insureds.

All associated deductibles shall be the responsibility of the Design/Build Entity. Such policy may have a deductible clause but not to exceed ten thousand dollars (\$10,000.00).

Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

Design/Build Entity shall maintain Builders Risk coverage including partial use by Owner. The Design/Build Entity shall waive all rights of subrogation as regards the State of Colorado and the Principal Representative, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment For damages caused by fire or thoeer causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. The Design/Build Entity shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts.

Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Design/Build Entity shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

The Principal Representative, with approval of the State Controller, shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.

**G. PROFESSIONAL ERRORS AND OMISSIONS LIABILITY INSURANCE**

The Design/Build Entity shall require the Architect/Engineer or other such consultant providing professional services to the Design/Build Entity 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 (3) years beyond the completion and acceptance of the Work. The Architect/Engineer shall be responsible for all claims, damages, losses or expenses including attorney's fees, arising out of or resulting from the performance of Professional Services contemplated in this Agreement, provided that any such claim, damage, loss or expense is

caused by any negligent act, error or omission of the Architect/Engineer, any consultant or associated thereof, or anyone directly or indirectly employed by the Architect/Engineer. 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 the occur.

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

**H. POLLUTION LIABILITY INSURANCE**

If Design/Build Entity is providing directly or indirectly work with pollution/environmental hazards, the Design/Build Entity must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. State of Colorado must be included as additional insureds on the policy. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor/Vendor.

**I. ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS**

Certificates of Insurance and/or insurance policies required under this Contract shall be subject to the following stipulations and additional requirements:

1. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Design/Build Entity;
2. If any of the said policies shall fail at any time to meet the requirements of the Contract Documents as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Contract Documents, the Design/Build Entity shall promptly obtain a new policy, submit the same to the Principal Representative and State Building Programs for approval if requested, and submit a Certificate of Insurance as hereinbefore provided. Upon failure of the Design/Build Entity to furnish, deliver and maintain such insurance as provided herein, this Contract, in the sole discretion of the State of Colorado, may be immediately declared suspended, discontinued, or terminated. Failure of the Design/Build Entity in obtaining and/or maintaining any required insurance shall not relieve the Design/Build Entity from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of the Design/Build Entity concerning indemnification;
3. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to the Principal Representative;
4. Receipt, review or acceptance by the Principal Representative of any insurance policies or certificates of insurance required by this Contract shall not be construed as a waiver or relieve the Design/Build Entity from its obligation to meet the insurance requirements contained in these General Conditions.

**ARTICLE 26. DESIGN/BUILD ENTITY'S PERFORMANCE AND PAYMENT BONDS**

The Design/Build Entity shall furnish a Performance Bond and a Labor and Material Payment Bond on State Forms SBP-6.22, Performance Bond, and SBP-6.221, Labor and Material Payment Bond, or such other forms as State Buildings Programs may approve for the Project, executed by a corporate Surety authorized to do business in the State of Colorado and in the full amount of the Contract sum. The expense of these bonds shall be borne by the Design/Build Entity and the bonds shall be filed with the Principal Representative and State Buildings Programs.

If, at any time, a Surety on such a bond is found to be, or ceases to be in strict compliance with any qualification requirements of the Contract Documents, or loses its right to do business in the State of

Colorado, another Surety will be required, which the Design/Build Entity shall furnish to the Principal Representative and State Buildings Programs within ten (10) days after receipt of Notice from the Principal Representative or after the Design/Build Entity otherwise becomes aware of such conditions.

**ARTICLE 27. LABOR AND WAGES**

In accordance with laws of Colorado, C.R.S. § 8-17-101, et. seq., as amended, Colorado labor shall be employed to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the Project. If the Federal Davis-Bacon Act shall be applicable to the Project, as indicated in Article 54B, Modification of Article 27, the minimum wage rates to be paid on the Project will be specified in the Contract Documents.

**ARTICLE 28. ROYALTIES AND PATENTS**

The Design/Build Entity shall be responsible for assuring that all rights to use of products and systems have been properly arranged and shall take such action as may be necessary to avoid delay, at no additional charge to the Principal Representative, where such right is challenged during the course of the work. The Design/Build Entity shall pay all royalties and license fees required to be paid and shall defend all suits or claims for infringement of any patent rights and shall save the State of Colorado and the Principal Representative harmless from loss on account thereof, in accordance with Article 53I, Indemnification.

**ARTICLE 29. ASSIGNMENT**

Except as otherwise provided hereafter the Design/Build Entity shall not assign the whole or any part of this Contract without the written consent of the Principal Representative. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by C.R.S. § 4-9-406, et. seq., as amended, provided that written Notice of assignment adequate to identify the rights assigned is received by the Principal Representative and the controller for the agency, department, or institution executing this Contract (as distinguished from the State Controller). Such assignment of the right to payment shall not be deemed valid until receipt by the Principal Representative and such controller and the Design/Build Entity assumes the risk that such written Notice of assignment is received by the Principal Representative and the controller for the agency, department, or institution involved. In case the Design/Build Entity assigns all or part of any moneys due or to become due under this Contract, 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 moneys due or to become due to the Design/Build Entity shall be subject to all claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this Contract, whether said service or materials were supplied prior to or after the assignment. Nothing in this Article shall be deemed a waiver of any other defenses available to the Principal Representative against the Design/Build Entity or the assignee.

**ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE**

The Design/Build Entity shall promptly remove from the premises all work or materials condemned or declared irreparably defective as failing to conform to the Contract Documents on receipt of written Notice from the Architect/Engineer or the Principal Representative, whether incorporated in the Work or not. The Principal Representative reserves the right to consult with the Architect/Engineer on any item in question and to obtain documentation of opinions rendered. If such materials shall have been incorporated in the Work, or if any unsatisfactory work is discovered, the Design/Build Entity shall promptly replace and re-execute his or her work in accordance with the requirements of the Contract Documents without expense to the Principal Representative, and shall also bear the expense of making good all work of other separate contractors destroyed or damaged by the removal or replacement of such defective material or work.

If the Design/Build Entity does not remove such condemned or irreparably defective work or material within a reasonable time, the Principal Representative may, after giving a second seven (7) day advance Notice to the Design/Build Entity and the Surety, remove them and may store the material at the Design/Build Entity's expense. The Principal Representative may accomplish the removal and replacement with its own forces or with another separate contractor. If the Design/Build Entity does not pay the expense of such removal and pay all storage charges within ten (10) days thereafter, the Principal Representative may, upon ten (10) days' written Notice, sell such material at auction or at private sale and account for the net proceeds thereof, after deducting all costs and expenses which should have been borne by the Design/Build Entity. If the

Design/Build Entity shall commence and diligently pursue such removal and replacement before the expiration of the seven day period, or if the Design/Build Entity shall show good cause in conjunction with submittal of a revised CPM schedule showing when the work will be performed and why such removal of condemned work should be scheduled for a later date, the Principal Representative shall not proceed to remove or replace the condemned work.

Should any defective work or material be discovered during the process of construction, or should reasonable doubt arise as to whether certain material or work is in accordance with the Contract Documents, the value of such defective or questionable material or work shall not be included in any application for payment, or if previously included, shall be deducted by the Architect/Engineer or the Principal Representative from the next application submitted by the Design/Build Entity.

If the Design/Build Entity does not perform repair, correction and replacement of defective work, in lieu of proceeding by issuance of a Notice of intent to remove condemned work as outlined above, the Principal Representative may, not less than seven (7) days after giving the original written Notice of the need to repair, correct, or replace defective work, deduct all costs and expenses of replacement or correction from the Design/Build Entity's next application for payment in addition to the value of the defective work or material. The Principal Representative may also make an equitable deduction from the Contract sum by unilateral Change Order, in accordance with Article 33, Payments Withheld, and Article 35, Changes In The Work.

If the Design/Build Entity disagrees with the Notice to remove work or materials condemned or declared irreparably defective, the Design/Build Entity may request facilitated negotiation of the issue and the Principal Representative's right to proceed with removal and to deduct costs and expenses of repair shall be suspended and tolled until such time as the parties meet and negotiate the issue

#### **ARTICLE 31. APPLICATIONS FOR PAYMENTS**

##### **A. DESIGN/BUILD ENTITY'S SUBMITTALS**

On or before the first day of each month and no more than five days prior thereto, the Design/Build Entity may submit applications for payment for the work performed during such month covering the portion of the Work completed as of the date indicated, and payments on account of this Contract shall be due within thirty (30) days after the last day of the period for which payment is requested. The Design/Build Entity shall submit the application for payment to the Principal Representative and the Architect/Engineer on State forms SBP-7.2, Certificate for Design/Build Entity's Payment, or such other format as the State Buildings Programs shall approve, in an itemized format in accordance with the schedule of values or a cost loaded CPM when required, supported to the extent reasonably required by the Principal Representative by receipts or other vouchers, showing payments for materials and labor, prior payments and payments to be made to Subcontractors and such other evidence of the Design/Build Entity's right to payments as the Principal Representative may direct.

If payments are made on account of materials not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by the Design/Build Entity of bills of sale or such other procedure as will establish the Principal Representative's title to such material or otherwise adequately protect the Principal Representative's interests, and shall provide proof of insurance whenever requested by the Principal Representative and shall be subject to the right to inspect the materials at the request of the Principal Representative.

All applications for payment, except the final application, and the payments there under, shall be subject to correction in the next application rendered following the discovery of any error.

##### **B. ARCHITECT/ENGINEER CERTIFICATION**

The Architect/Engineer after appropriate observation of the progress of the work shall certify to the Principal Representative the amount that the Design/Build Entity is entitled to on the certificate for Design/Build Entity's payment.

**C. RETAINAGE WITHHELD**

Unless otherwise provided in the Supplementary General Conditions, an amount equivalent to five percent (5%) of the amount shown to be due the Design/Build Entity on each application for payment shall be withheld until the work required by the Contract has been performed. The withheld percentage of the contract price of any such work, improvement, or construction shall be administered according to § 24-91-101, et seq., C.R.S., as amended, and except as provided in § 24-91-103, C.R.S., as amended, and Article 31D, shall be retained until the Work or discrete portions of the Work, have been completed satisfactorily, finally or partially accepted, and advertised for final settlement as further provided in Article 41.

**D. RELEASE OF RETAINAGE**

The Design/Build Entity may, for satisfactory and substantial reasons shown to the Principal Representative's satisfaction, make a written request to the Principal Representative for release of part or all of the withheld percentage applicable to the work of a Subcontractor which has completed the subcontracted work in a manner finally acceptable to the Principal Representative, the Architect/Engineer and the Design/Build Entity. Any such request shall be supported by a written approval from the Surety furnishing the Design/Build Entity's bonds and any surety that has provided a bond for the Subcontractor. The release of any such withheld percentage shall be further supported by such other evidence as the Principal Representative may require, including but not limited to, evidence of prior payments made to the Subcontractor, copies of the Subcontractor's contract with the Design/Build Entity, any applicable warranties, as-built information, maintenance manuals and other customary close-out documentation. The Principal Representative shall not be obligated to review such documentation nor shall the Principal Representative be deemed to assume any obligations to third parties by any review undertaken.

The Design/Build Entity's obligation under these General Conditions to guarantee work for one year from the date of the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion of the applicable portion or phase of the Project, shall be unaffected by such partial release; unless a Notice of Partial Substantial Completion is issued for the work subject to the release of retainage.

Any rights of the Principal Representative which might be terminated by or from the date of any final acceptance of the Work, whether at common law or by the terms of this Contract, shall not be affected by such partial release of retainage prior to any final acceptance of the entire Project.

The Design/Build Entity remains fully responsible for the Subcontractor's work and assumes any risk that might arise by virtue of the partial release to the Subcontractor of the withheld percentage, including the risk that the Subcontractor may not have fully paid for all materials, labor and equipment furnished to the Project.

If the Principal Representative considers the Design/Build Entity's request for such release satisfactory and supported by substantial reasons, the Principal Representative and the Architect/Engineer shall make a "final inspection" of the applicable portion of the Project to determine whether the Subcontractor's work has been completed in accordance with the Contract Documents. A final punch list shall be made for the Subcontractor's work and the procedures of Article 41, Completion, Final Inspection, Acceptance and Settlement, shall be followed for that portion of the work, except that advertisement of the intent to make final payment to the Subcontractor shall be required only if the Principal Representative has reason to believe that a supplier or Subcontractor to the Subcontractor for which the request is made, may not have been fully paid for all labor and materials furnished to the Project.

**ARTICLE 32. CERTIFICATES FOR PAYMENTS**

State Form SBP-7.2, Certificate For Contractor's Payment, as modified to include design and construction administration services and as approved by the Principal Representative and its continuation detail sheets, when submitted, shall constitute the Certificate of Contractor's Application for Payment, and shall be a representation by the Design/Build Entity to the Principal Representative that the Work has progressed to

the point indicated, the quality of the Work is in accordance with the Contract Documents, and materials for which payment is requested have been incorporated into the Project except as noted in the application. If requested by the Principal Representative, the Certificate of Contractor's Application for Payment shall be sworn under oath and notarized.

### **ARTICLE 33. PAYMENTS WITHHELD**

The Principal Representative or State Buildings Programs may withhold, or on account of subsequently discovered evidence nullify, the whole or any part of any application on account of, but not limited to any of the following:

1. Defective work not remedied;
2. Claims filed or reasonable evidence indicating probable filing of claims;
3. Failure of the Design/Build Entity to make payments to Subcontractors for material or labor;
4. A reasonable doubt that the Contract can be completed for the balance of the contract price then unpaid;
5. Damage or injury to another separate contractor or any other person, persons or property except to the extent of coverage by a policy of insurance;
6. Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinances, codes, rules or regulations or the directions of the Architect/Engineer or Principal Representative;
7. Failure to submit a monthly construction schedule;
8. Failure of the Design/Build Entity to keep work progressing in accordance with the time schedule;
9. Failure to keep a superintendent on the work;
10. Failure to maintain as built drawings of the work in progress;
11. Unauthorized deviations by the Design/Build Entity from the Contract Documents; or
12. On account of liquidated damages.

In addition, the Principal Representative or State Buildings Programs may withhold or nullify the whole or any part of any application for any reason noted elsewhere in these General Conditions of the Contract. Nullification shall mean reduction of amounts shown as previously paid on the application. The amount withheld or nullified may be in such amount as the Principal Representative estimates to be required to allow the Principal Representative to accomplish the Work, cure the failure and cover any damages or injuries, including an allowance for attorneys fees and costs where appropriate. When the grounds for such withholding or nullifying are removed, payment shall be made for the amounts thus withheld or nullified on such grounds.

### **ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK**

If the Principal Representative or the Architect/Engineer deem it inexpedient to correct work injured or not performed in accordance with the Contract Documents, the Principal Representative may, after consultation with the Architect/Engineer and ten (10) days' Notice to the Design/Build Entity of intent to do so, make reasonable reductions from the amounts otherwise due the Design/Build Entity on the next application for payment. Notice shall specify the amount or terms of any contemplated reduction. The Design/Build Entity may during this period elect to correct or perform the work. If the Design/Build Entity does not elect to correct or perform the work, an equitable deduction from the Contract sum shall be made by Change Order, in accordance with Article 35, Changes In The Work, unilaterally if necessary. If either party elects facilitation of this issue after Notice is given, the ten-day notice period shall be extended and tolled until facilitation has occurred.

### **ARTICLE 35. CHANGES IN THE WORK**

*The Principal Representative, or such other Procurement Officer as the Principal Representative may designate, without invalidating the Agreement, and with the approval of State Buildings Programs and the State Controller, may order extra work or make changes with or without the consent of the Design/Build Entity as hereafter provided, by altering, adding to or deducting from the Work, the Contract sum being adjusted accordingly. All such changes in the Work shall be within the general scope of and be executed under the conditions of the Contract, except that any claim for extension of time made necessary due to the change or any claim of other delay or other impacts caused by or resulting from the change in the Work shall be presented by the Design/Build Entity and adjusted by Change Order to the extent known at the time such*

change is ordered and before proceeding with the extra or changed work. Any claims for extension of time or of delay or other impacts, and any costs associated with extension of time, delay or other impacts, which are not presented before proceeding with the change in the Work, and which are not adjusted by Change Order to the extent known, shall be waived.

The Principal Representative or the Architect/Engineer with the consent of the Principal Representative, shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the intent of the Contract Documents, but otherwise, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by 1) a written Change Order, approved by the Principal Representative, State Buildings Programs, and the State Controller prior to proceeding with the changed work; or 2) by an Emergency Field Change Order approved by the Principal Representative and State Buildings Programs as hereafter provided in Article 35C, Emergency Field Ordered Changed Work; or 3) by an allocation in writing of any allowance already provided in the encumbered contract amount, the Contract sum being later adjusted to decrease the Contract sum by any unallocated or unexpended amounts remaining in such allowance. No change to the Contract sum shall be valid unless so ordered.

#### **A. THE VALUE OF CHANGED WORK**

1. The value of any extra work or changes in the Work shall be determined by agreement in one or more of the following ways:
  - a. By estimate and acceptance of a lump-sum amount;
  - b. By unit prices specified in the Agreement, or subsequently agreed upon, that are extended by specific quantities;
  - c. By actual cost plus a fixed fee in a lump sum amount for profit, overhead and all indirect and off-site home office costs, the latter amount agreed upon in writing prior to starting the extra or changed work.
2. Where the Design/Build Entity and the Principal Representative cannot agree on the value of extra work, the Principal Representative may order the Design/Build Entity to perform the changes in the Work and a Change Order may be unilaterally issued based on an estimate of the change in the Work prepared by the Architect/Engineer or Principal Representative. The value of the change in the Work shall be the Principal Representative's determination of the amount of equitable adjustment attributable to the extra work or change. The Principal Representative's determination shall be subject to appeal by the Design/Build Entity pursuant to the claims process in Article 36, Claims. The Principal Representative is the Procurement Officer for purposes of all of the remedy provisions of the Contract.
3. Except as otherwise provided in Article 35B, Detailed Breakdown, below, the Cost Principles of the Colorado Procurement Rules in effect on the date of this Contract, pursuant to § 24-107-101, C.R.S., as amended, shall govern all Contract changes.

#### **B. DETAILED BREAKDOWN**

In all cases where the value of the extra or changed work is not known based on unit prices in the Design/Build Entity's proposal or the Agreement, a detailed change proposal shall be submitted by the Design/Build Entity on a Change Order Proposal (SC-6.312), or in such other format as the Principal Representative and State Buildings Program approve, with which the Principal Representative may require an itemized list of materials, equipment and labor, indicating quantities, time and cost for completion of the changed work.

Such detailed change proposals shall be stated in lump sum amounts and shall be supported by a separate breakdown, which shall include estimates of all or part of the following when requested by the Principal Representative:

1. Materials, indicating quantities and unit prices including taxes and delivery costs if any (separated where appropriate into general, mechanical and electrical and/or other

- Subcontractors' work; and the Principal Representative may require in its discretion any significant subcontract costs to be similarly and separately broken down).
2. Labor costs, indicating hourly rates and time and labor burden to include Social Security and other payroll taxes such as unemployment, benefits and other customary burdens.
  3. Costs of project management time and superintendence time of personnel stationed at the site, and other field supervision time, but only where a time extension, other than a weather delay, is approved as part of the Change Order, and only where such project management time and superintendence time is directly attributable to and required by the change.
  4. Construction equipment (including small tools). Expenses for equipment and fuel shall be based on customary commercially reasonable rental rates and schedules. Equipment and hand tool costs shall not include the cost of items customarily owned by workers.
  5. Workers' compensation costs, if not included in labor burden.
  6. The cost of commercial general liability and property damage insurance premiums but only to the extent charged the Design/Build Entity as a result of the changed work.
  7. Overhead and profit, as hereafter specified.
  8. Builder's risk insurance premium costs.
  9. Bond premium costs.
  10. Testing costs not otherwise excluded by these General Conditions.
  11. Subcontract costs.
  12. Architect/Engineer Design Services Costs.

Unless modified in the Supplementary General Conditions, overhead and profit shall not exceed the percentages set forth in the table below.

	OVERHEAD	PROFIT	COMMISSION
To the Design/Build Entity or to Subcontractors for the portion of work performed with their own forces:	10%	5%	0%
To the Design/Build Entity or to Subcontractors for work performed by others at a tier immediately below either of them:	5%	0%	5%

Overhead shall include: a) insurance premium for policies not purchased for the Project and itemized above, b) home office costs for office management, administrative and supervisory personnel and assistants, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) interest costs on capital, h) general office expenses except those attributable to increased rental expenses for temporary facilities, and all other indirect costs, but shall not include the Social Security tax and other direct labor burdens. The term "work" as used in the proceeding table shall include labor, materials and equipment and the "Commission" shall include all costs and profit for carrying the subcontracted work at the tiers below except direct costs as listed in items 1 through 11 above if any.

On proposals for work involving both additions and credits in the amount of the Contract sum, the overhead and profit will be allowed on the net increase only. On proposals resulting in a net deduct to the amount of the Contract sum, profit on the deducted amount shall be returned to the Principal Representative at fifty percent (50%) of the rate specified. The inadequacy of the profit specified shall not be a basis for refusal to submit a proposal.

Except in the case of Change Orders or Emergency Field Change Orders agreed to on the basis of a lump sum amount or unit prices as described in paragraphs 35A1 and 35A2 above, The Value of Changed Work, the Design/Build Entity shall keep and present a correct and fully auditable account of the several items of cost, together with vouchers, receipts, time cards and other proof of costs incurred, summarized on a Change Order form (SC-6.31) using such format for supporting documentation as the Principal Representative and State Buildings Programs approve. This requirement applies equally to work done by Subcontractors. Only auditable costs shall be

*reimbursable on Change Orders where the value is determined on the basis of actual cost plus a fixed fee pursuant to paragraph 35A3 above, or where unilaterally determined by the Principal Representative on the basis of an equitable adjustment in accordance with the Procurement Rules, as described above in Article 35A, The Value Of Changed Work.*

*Except for proposals for work involving both additions and credits, changed work shall be adjusted and considered separately for work either added or omitted. The amount of adjustment for work omitted shall be estimated at the time it is directed to be omitted, and when reasonable to do so, the agreed adjustment shall be reflected on the schedule of values used for the next Design/Build Entity's application for payment.*

*The Principal Representative reserves the right to contract with any person or firm other than the Design/Build Entity for any or all extra work; however, unless specifically required in the Contract Documents, the Design/Build Entity shall have no responsibility without additional compensation to supervise or coordinate the work of persons or firms separately contracted by the Principal Representative.*

**C. EMERGENCY FIELD CHANGE ORDERED WORK**

The Principal Representative, without invalidating the Agreement, and with the approval of State Buildings Programs and without the approval of the State Controller, may order extra work or make changes in the case of an emergency that is a threat to life or property or where the likelihood of delays in processing a normal Change Order will result in substantial delays and or significant cost increases for the Project. Emergency Field Orders are not to be used solely to expedite normal Change Order processing absent a clear showing of a high potential for significant and substantial cost or delay. Such changes in the Work may be directed through issuance of an Emergency Field Change Order signed by the Design/Build Entity, the Principal Representative (or by a designee specifically appointed to do so in writing), and approved by the Director of State Buildings Program or his or her delegate. The change shall be directed using an Emergency Field Change Order form (SC-6.31E).

If the amount of the adjustment of the Contract price and time for completion can be determined at the time of issuance of the Emergency Field Change Order, those adjustments shall be reflected on the face of the Emergency Field Change Order. Otherwise, the Emergency Field Change Order shall reflect a not to exceed (NTE) amount for any schedule adjustment (increasing or decreasing the time for completion) and an NTE amount for any adjustment to Contract sum, which NTE amount shall represent the maximum amount of adjustment to which the Design/Build Entity will be entitled, including direct and indirect costs of changed work, as well as any direct or indirect costs attributable to delays, inefficiencies or other impacts arising out of the change. Emergency Field Change Orders directed in accordance with this provision need not bear the approval signatures of the State Controller.

On Emergency Field Change Orders where the price and schedule have not been finally determined, the Design/Build Entity shall submit final costs for adjustment as soon as practicable. No later than seven (7) days after issuance, except as otherwise permitted, and every seven days thereafter, the Design/Build Entity shall report all costs to the Principal Representative. Weekly cost reports and the final adjustment of the Emergency Field Change Orders amount and the adjustment to the Project time for completion shall be prepared in accordance with the procedures described in Article 35A, The Value of Changed Work, and 35B, Detailed Breakdown, above. Unless otherwise provided in writing signed by the Director of State Buildings Programs to the Principal Representative and the Design/Build Entity, describing the extent and limits of any greater authority, individual Emergency Field Change Orders shall not be issued for more than \$25,000, nor shall the cumulative value of Emergency Field Change Orders exceed an amount of \$100,000.

**D. APPROPRIATION LIMITATIONS - § 24-91-103.6, C.R.S., as amended**

The amount of money appropriated, as shown on the Agreement (SC 8.0), is equal to or in excess of the Contract amount. No Change Order, Emergency Field Change Order, or other type of order or directive shall be issued by the Principal Representative, or any agent acting on his or her behalf,

which directs additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, as shown on the Agreement (SC-8.0), unless one of the following occurs: (1) the Design/Build Entity is provided written assurance from the Principal Representative that sufficient additional lawful appropriations exist to cover the cost of the additional work; or (2) the work is covered by a Design/Build Entity remedy provision under the Contract, such as a claim for extra cost. By way of example only, no assurance is required for any order, directive or instruction by the Architect/Engineer or the Principal Representative to perform work which is determined to be within the performance required by the Contract Documents; the Design/Build Entity's remedy shall be as described elsewhere in these General Conditions.

Written assurance shall be in the form of an Amendment to the Contract reciting the source and amount of such appropriation available for the Project. No remedy granting provision of this Contract shall obligate the Principal Representative to seek appropriations to cover costs in excess of the amounts recited as available to pay for the work to be performed.

### **ARTICLE 36. CLAIMS**

It is the intent of these General Conditions to provide procedures for speedy and timely resolution of disagreements and disputes at the lowest level possible. In the spirit of on the job resolution of job site issues, the parties are encouraged to use the partnering processes of Article 2D, Partnering, Communications and Cooperation, before turning to the more formal claims processes described in this Article 36, Claims. The use of non-binding dispute resolution, whether through the formal processes described in Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, or through less formal alternative processes developed as part of a partnering plan, are also encouraged. Where such process cannot resolve the issues in dispute, the claims process that follows is intended to cause the issues to be presented, decided and where necessary, documented in close proximity to the events from which the issues arise. To that end, and in summary of the remedy granting process that follows commencing with the next paragraph of this Article 36, Claims, the Design/Build Entity shall 1) first, informally present the claim to Principal Representative as described hereafter, and 2) failing resolution in the field, give Notice of intent to exercise statutory rights of review of a formal contract controversy, and 3) seek resolution outside the Contract as provided by the Procurement Code.

If the Design/Build Entity claims that any instructions, by detailed drawings, or otherwise, or any other act or omission of the Principal Representative affecting the scope of the Design/Build Entity's work, involve extra cost, extra time or changes in the scope of the Work under this Contract, the Design/Build Entity shall have the right to assert a claim for such costs or time.

Unless it is the Principal Representative's judgment and determination that the work is not included in the performance required by the Contract Documents, the Design/Build Entity shall proceed with the work as originally directed. Where the Design/Build Entity's claim involves a dispute concerning the value of work unilaterally directed pursuant to Article 35A2 the Design/Build Entity shall also proceed with the work as originally directed while his or her claim is being considered.

The Design/Build Entity shall give the Principal Representative Notice of any claim promptly but in no case later than ten (10) days from the date of the occurrence effecting the claim. The Notice of claim shall state the grounds for the claim and the amount of the claim to the extent known in accordance with the procedures of Article 35, Changes In The Work. The period in which Notice must be given may be extended by the Principal Representative if requested in writing by the Design/Build Entity with good cause shown, but any such extension to be effective shall be in writing.

The Principal Representative shall respond in writing within a reasonable time, and except where a request for facilitation of negotiation has been made as hereafter provided, in no case later than seven (7) business days (or at such other time as the Design/Build Entity and Principal Representative agree) after receipt of the Design/Build Entity's Notice of claim regarding such instructions or alleged act or omission. If no response to the Design/Build Entity's claim is received within seven (7) business days of Design/Build Entity's Notice (or at such other time as the Design/Build Entity and Principal Representative agree) and the

instructions have not been retracted, it shall be deemed that the Principal Representative has denied the claim.

The Principal Representative may grant or deny the claim in whole or in part, and a Change Order shall be issued if the claim is granted. To the extent any portion of claim is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the work be determined by any method allowed in Article 35A, The Value of Changed Work. Except in the case of a deemed denial, the Principal Representative shall provide a written explanation regarding any portion of the Design/Build Entity's claim that is denied.

If the Design/Build Entity disagrees with the Principal Representative's judgment and determination on the claim and seeks an equitable adjustment of the Contract sum or time for performance, he or she shall give Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy within ten (10) days of receipt of the Principal Representative's decision denying the claim. A "contract controversy," as such term is used in the Colorado Procurement Code, § 24-109-106, C.R.S., shall not arise until the initial claim process described above in this Article 36 has been properly exhausted by the Design/Build Entity. The Design/Build Entity's failure to proceed with work directed by the Principal Representative or to exhaust the claim process provided above in this Article 36, shall constitute an abandonment of the claim by the Design/Build Entity and a waiver of the right to contest the decision in any forum.

At the time of filing the Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy, the Design/Build Entity may request that the Principal Representative defer a decision on the contract controversy until a later date or until the end of the Project. If the Principal Representative agrees, he or she shall so advise the Design/Build Entity in writing. If no such request is made, or if the Principal Representative does not agree to such a request, the Principal Representative shall render a written decision within twenty (20) business days and advise the Design/Build Entity of the reasons for any denial. Unless the claim has been decided by the Principal Representative (as opposed to delegates of the Principal Representative), the person who renders the decision on this statutory contract controversy shall not be the same person who decided the claim. To the extent any portion of the contract controversy is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the work be determined by any method allowed in Article 35A, The Value of Changed Work. In the event of a denial the Principal Representative shall give Notice to the Design/Build Entity of his or her right to administrative and judicial reviews as provided in the Colorado Procurement Code, § 24-109-201 *et seq*, C.R.S., as amended. If no decision regarding the contract controversy is issued within twenty (20) business days of the Design/Build Entity's giving Notice (or such other date as the Design/Build Entity and Principal Representative have agreed), and the instructions have not been retracted or the alleged act or omission have not been corrected, it shall be deemed that the Principal Representative has ruled by denial on the contract controversy. Except in the case of a deemed denial, the Principal Representative shall provide an explanation regarding any portion of the contract controversy that involves denial of the Design/Build Entity's claim.

Either the Design/Build Entity or the Principal Representative may request facilitation of negotiations concerning the claim or the contract controversy, and if requested, the parties shall consult and negotiate before the Principal Representative decides the issue. Any request for facilitation by the Design/Build Entity shall be made at the time of the giving of Notice of the claim or Notice of the contract controversy. Facilitation shall extend the time for the Principal Representative to respond by commencing the applicable period at the completion of the facilitated negotiation, which shall be the last day of the parties' meeting, unless otherwise agreed in writing.

Disagreement with the decision of the Principal Representative to deny any claim or denying the contract controversy, shall not be grounds for the Design/Build Entity to refuse to perform the work directed or to suspend or terminate performance. During the period that any claim or contract controversy decision is pending under this Article 36, Claims, the Design/Build Entity shall proceed diligently with the work directed.

In all cases where the Design/Build Entity proceeds with the work and seeks equitable adjustment by filing a claim and or statutory appeal, the Design/Build Entity shall keep a correct account of the extra cost, in

accordance with Article 35B, Detailed Breakdown supported by receipts. The Principal Representative shall be entitled to reject any claim or contract controversy whenever the foregoing procedures are not followed and such accounts and receipts are not presented.

The payments to the Design/Build Entity in respect of such extra costs shall be limited to reimbursement for the current additional expenditure by the Design/Build Entity made necessary by the change in the work, plus a reasonable amount for overhead and profit, determined in accordance with Article 35B, Detailed Breakdown, determined solely with reference to the additional work, if any, required by the change.

#### **ARTICLE 37. DIFFERING SITE CONDITIONS**

##### **A. NOTICE IN WRITING**

*The Design/Build Entity shall promptly, and where possible before conditions are disturbed, give the Principal Representative Notice in writing of:*

- 1. subsurface or latent physical conditions at the site differing materially from those indicated in or reasonably assumed from the information provided in the Contract Documents; and,*
- 2. unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.*

*The Principal Representative shall promptly investigate the conditions, and if it is found that such conditions do materially so differ and cause an increase or decrease in the Design/Build Entity's costs of performance of any part of the work required by the Contract Documents, whether or not such work is changed as a result of such conditions, an equitable adjustment shall be made and the Contract sum shall be modified in accordance with Article 35, Changes In The Work.*

*If the time required for completion of the work affected by such materially differing conditions will extend the work on the critical path as indicated on the CPM schedule, the time for completion shall also be equitably adjusted.*

##### **B. LIMITATIONS**

*No claim of the Design/Build Entity under this clause shall be allowed unless the Design/Build Entity has given the Notice required in Article 37A, Notice In Writing, above. The time prescribed for presentation and adjustment in Articles 36, Claims and 38, Delays And Extensions Of Time, shall be reasonably extended by the Principal Representative to the extent required by the nature of the differing conditions; provided, however, that even when so extended no claim by the Design/Build Entity for an equitable adjustment hereunder shall be allowed if not quantified and presented prior to the date the Design/Build Entity requests a final inspection pursuant to Article 41A, Notice Of Completion.*

#### **ARTICLE 38. DELAYS AND EXTENSIONS OF TIME**

*If the Design/Build Entity is delayed at any time in the progress of the Work by any act or neglect of the Principal Representative, or of its employee or agent, or by any separately employed contractor or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any other causes beyond the Design/Build Entity's control, including weather delays as defined below, the time of Completion of the Work shall be extended for a period equal to such portion of the period of delays directly affecting the completion of the Work as the Design/Build Entity shall be able to show he or she could not have avoided by the exercise of due diligence.*

*The Design/Build Entity shall provide Notice in writing to the Principal Representative and State Buildings Programs within three (3) business days from the beginning of such delay and shall file a written claim for an extension of time within seven (7) business days after the period of such delay has ceased, otherwise, any claim for an extension of time is waived.*

*All claims for extension of time due to a delay claimed to arise or result from ordered changes in the scope of the Work, or due to instructions claimed to increase the scope of the Work, shall be presented to the Principal Representative and State Buildings Programs as part of a claim for extra cost, if any, in accordance*

with Article 36, Claims, and in accordance with the Change Order procedures required by Article 35, Changes In The Work.

*Except as otherwise provided in this paragraph, no extension of time shall be granted when the Design/Build Entity has failed to utilize a CPM schedule or otherwise identify the Project's critical path as specified in Article 12, Requests for Information and Schedules, or has elected not to do so when allowed by the Supplementary General Conditions or the Specifications to use less sophisticated scheduling tools, or has failed to maintain such a schedule. Delay directly affecting the completion of the Work shall result in an extension of time only to the extent that completion of the Work was affected by impacts to the critical path shown on the Design/Build Entity's CPM schedule.*

*Extension of the time for completion of the Work will be granted for delays due to weather conditions only when the Design/Build Entity demonstrates that such conditions were more severe and extended than those reflected by the ten-year average for the month, as evidenced by the Climatological Data, U. S. Department of Commerce, for the Project area.*

*Extensions of the time for completion of the Work due to weather will be granted on the basis of one and three tenths (1.3) calendar days for every day that the Design/Build Entity would have worked but was unable to work, with each separate extension figured to the nearest whole calendar day.*

*For weather delays and delays caused by events, acts or omissions not within the control of the Principal Representative or any person acting on the Principal Representative's behalf, the Design/Build Entity shall be entitled to an extension of time only and shall not be entitled to recovery of additional cost due to or resulting from such delays. This Article does not, however, preclude the recovery of damages for delay by either party under other provisions in the Contract Documents.*

#### **ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS**

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

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

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

The obligation to participate in facilitated negotiations shall be as described above and elsewhere in these General Conditions, as by way of example in Article 36, Claims, or Article 34, Deductions for Uncorrected Work, and to the extent not more particularly described or limited elsewhere, each party's obligations shall be as follows:

1. a party shall not initiate communication with the facilitator regarding the issues in dispute; except that any request for facilitation shall be made in writing with copies sent, faxed or delivered to the other party;

2. a party shall prepare a brief written description of its position if so requested by the facilitator (who may elect to first discuss the parties' positions with each party separately in the interest of time and expense);
3. a party shall respond to any reasonable request for copies of documents requested by the facilitator, but such requests, if voluminous, may consist of an offer to allow the facilitator access to the parties' documents;
4. a party shall review any meeting agenda proposed by a facilitator and endeavor to be informed on the subjects to be discussed;
5. a party shall meet with the other party and the facilitator at a mutually acceptable place and time, or, if none can be agreed to, at the time and place designated by the facilitator for a period not to exceed four hours unless the parties agree to a longer period;
6. a party shall endeavor to assure that any facilitation meeting shall be attended by any other persons in their employ that the facilitator requests be present, if reasonably available including the Architect/Engineer;
7. each party shall participate in such facilitated face-to-face negotiations of the issues in dispute through persons fully authorized to resolve the issue in dispute;
8. each party shall be obligated to participate in negotiations requested by the other party and to perform the specific obligations described in paragraphs (1) through (10) this Article 39, Facilitated Negotiation, no more than three times during the course of the Project;
9. neither party shall be under any obligation to resolve any issue by facilitated negotiation, but each agrees to participate in good faith and the Principal Representative shall appropriately document any resolution or agreement reached and to execute any Amendment or Change Order to the Contract necessary to implement their agreement; and,
10. any discussions and documents prepared exclusively for use in the negotiations shall be deemed to be matters pertaining to settlement negotiations and shall not be subsequently available in further proceedings except to the extent of any documented agreement.

In accordance with State Fiscal Rules and Article 52G, Binding Arbitration Prohibited, nothing in this Article 39 shall be deemed to call for arbitration or otherwise obligate the State to participate in any form of binding alternative dispute resolution.

A partnering plan developed as described in Article 2D, Partnering, Communications and Cooperation, may modify or expand the requirements of this Article but may not reduce the obligation to participate in facilitated negotiations when applicable. In the case of small projects estimated to be valued under \$500,000, the requirements of this Article may be deleted from this Contract, by modification in Article 54, Optional Provisions And Elections. When so modified, the references to the parties' right to elect facilitated negotiation elsewhere in these General Conditions shall be deleted.

#### **ARTICLE 40. RIGHT OF OCCUPANCY**

The Principal Representative shall have the right to take possession of and to use any completed or partially completed portions of the Work, even if the time for completing the entire Work or portions of the Work has not expired and even if the Work has not been finally accepted, and the Design/Build Entity shall fully cooperate with the Principal Representative to allow such possession and use. Such possession and use shall not constitute an acceptance of such portions of the Work.

Prior to any occupancy of the Project, an inspection shall be made by the Principal Representative, the Architect/Engineer, State Buildings Programs and the Design/Build Entity. Such inspection shall be made for the purpose of ensuring that the building is secure, protected by operation safety systems as designed, operable exits, power, lighting and HVAC systems, and otherwise ready for the occupancy intended and the Notice of Substantial Completion has been issued for the occupancy intended. The inspection shall also document existing finish conditions to allow assessment of any damage by occupants. The Design/Build Entity shall assist the Principal Representative in completing and executing State Form SBP-01, Approval of Occupancy/Use, prior to the Principal Representative's possession and use. Any and all areas so occupied will be subject to a final inspection when the Design/Build Entity complies with Article 41, Completion, Final Inspection, Acceptance and Settlement.

**ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT**

**A. NOTICE OF COMPLETION**

When the Work, or a discrete physical portion of the Work (as hereafter described) which the Principal Representative has agreed to accept separately, is substantially complete and ready for final inspection, the Design/Build Entity shall file a written Notice with the Principal Representative that the Work, or such discrete physical portion, in the opinion of the Design/Build Entity, is substantially complete under the terms of the Contract. The Design/Build Entity shall prepare and submit with such Notice a comprehensive list of items to be completed or corrected prior to final payment, which shall be subject to review and additions as the Principal Representative shall determine after inspection. If the Architect/Engineer or the Principal Representative believe that any of the items on the list of items submitted, or any other item of work to be corrected or completed, or the cumulative number of items of work to be corrected or completed, will prevent a determination that the Work is substantially complete, those items shall be completed by the Design/Build Entity and the Notice shall then be resubmitted.

**B. FINAL INSPECTION**

Within ten (10) days after the Design/Build Entity files written Notice that the Work is substantially complete, the Architect/Engineer, the Principal Representative, and the Design/Build Entity shall make a "final inspection" of the Project to determine whether the Work is substantially complete and has been completed in accordance with the Contract Documents. State Buildings Programs shall be notified of the inspection not less than three (3) business days in advance of the inspection. The Design/Build Entity shall provide the Principal Representative and the Architect/Engineer an updated punch list in sufficient detail to fully outline the following:

1. work to be completed, if any; and
2. work not in compliance with the Drawings or Specifications, if any.

A final punch list shall be made by the Architect/Engineer and Principal Representative in sufficient detail to fully outline to the Design/Build Entity:

1. work to be completed, if any;
2. work not in compliance with the Drawings or Specifications, if any; and
3. unsatisfactory work for any reason, if any.

The required number of copies of the final punch list will be countersigned by the authorized representative of the Principal Representative and will then be transmitted by the Architect/Engineer to the Design/Build Entity, the Principal Representative, and State Buildings Programs.

**C. NOTICE OF SUBSTANTIAL COMPLETION**

Notice of Substantial Completion shall establish the date of substantial completion of the Project. The Design/Build Entity acknowledges and agrees that because the departments, agencies and institutions of the State of Colorado are generally involved with the business of the public at large, greater care must be taken in establishing the date of substantial completion than might otherwise be the case to ensure that a project or building or discrete physical portion of the Work is fully usable and safe for public use, and that such care necessarily raises the standard by which the concept of substantial completion is applied for a public building.

The Notice of Substantial Completion shall not be issued until the following have been fully established:

1. All required building code inspections have been called for and the appropriate code officials have affixed their signatures to the Building Inspection Record indicating successful completion of all required code inspections;
2. All required corrections noted on the Building Inspection Record shall have been completed unless the Architect/Engineer, the Principal Representative and State Buildings Programs, in their complete and absolute discretion, all concur that the condition requiring the remaining

- correction is not in any way life threatening, does not otherwise endanger persons or property, and does not result in any undue inconvenience or hardship to the Principal Representative or the public;
3. The building, structure or Project can be fully and comfortably used by the Principal Representative and the public without undue interference by the Design/Build Entity's employees and workers during the completion of the final punch list taking into consideration the nature of the public uses intended and taking into consideration any stage or level of completion of HVAC system commissioning or other system testing required by the Specifications to be completed prior to issuance of the Notice of Substantial Completion;
  4. The Project has been fully cleaned as required by these General Conditions, and as required by any stricter requirements of the Specifications, and the overall state of completion is appropriate for presentation to the public; and
  5. The Design/Build Entity has provided a schedule for the completion of each and every item identified on the punch list which specifies the Subcontractor or trade responsible for the work, and the dates the completion or correction of the item will be commenced and finished; such schedule will show completion of all remaining final punch list items within the period indicated in the Contract for final punch list completion prior to Final Acceptance, with the exception of only those items which are beyond the control of the Design/Build Entity despite due diligence. The schedule shall provide for a reasonable punch list inspection process. Unless liquidated damages have been specified in Article 54D(2), the cost to the Principal Representative, if any, for re-inspections due to failure to adhere to the Design/Build Entity's proposed punch-list completion schedule shall be the responsibility of the Design/Build Entity and may be deducted by the Principal Representative from final amounts due to the Design/Build Entity.

Substantial completion of the entire Project shall not be conclusively established by a decision by the Principal Representative to take possession and use of a portion, or all of the Project, where portions of the Project cannot meet all the criteria noted above. Notice of Substantial Completion for the entire Project shall, however, only be withheld for substantial reasons when the Principal Representative has taken possession and uses all of the Project in accordance with the terms of Article 40, Right Of Occupancy. Failure to furnish the required completion schedule shall constitute a substantial reason for withholding the issuance of any Notice of Substantial Completion.

The Design/Build Entity shall have the right to request a final inspection of any discrete physical portion of the Project when in the opinion of the Principal Representative, the Architect/Engineer and State Buildings Programs a final punch list can be reasonably prepared, without confusion as to which portions of the Project are referred to in any subsequent Notice of Partial Final Settlement which might be issued after such portion is finally accepted. Discrete physical portions of the Project may be, but shall not necessarily be limited to, such portions of the Project as separate buildings where a Project consists of multiple buildings. Similarly, an addition to an existing building where the Project also calls for renovation or remodeling of the existing building may constitute a discrete physical portion of the Project. In such circumstances, when in the opinion of the Principal Representative, the Architect/Engineer and State Buildings Programs, the requirements for issuance of a Notice of Substantial Completion can be satisfied with respect to the discrete portion of the Project, a partial Notice of Substantial Completion may be issued for such discrete physical portion of the Project.

#### **D. NOTICE OF ACCEPTANCE**

The Notice of Acceptance shall establish the completion date of the Project. It shall not be authorized until the Design/Build Entity shall have performed all of the work to allow completion and approval of the Pre-Acceptance Checklist (SBP-05).

Where partial Notices of Substantial Completion have been issued, partial Notices of Final Acceptance may be similarly issued when appropriate for that portion of the Work. Partial Notice of Final Acceptance may also be issued to exclude the work described in Change Orders executed during late stages of the Project where a later completion date for the Change Ordered work is expressly provided for in the Contract as amended by the Change Order, provided the work can be adequately described

to allow partial advertisement of any Notice of Partial Final Settlement to be issued without confusion as to the work included for which final payment will be made.

#### **E. SETTLEMENT**

Final payment and settlement shall be made on the date fixed and published for such payment except as hereafter provided. The Principal Representative shall not authorize final payment until all items on the Pre-Acceptance check list (SBP-05) have been completed, the Notice of Acceptance issued, and the Notice of Contractors Settlement published. If the work shall be substantially completed, but Final Acceptance and completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of the Design/Build Entity, the Principal Representative in his or her discretion may release all amounts due to the Design/Build Entity except such amounts as may be in excess of three times the cost of completing the unfinished work or the cost of correcting the defective work, as estimated by the Principal Representative and approved by State Buildings Programs. Before the Principal Representative may issue the Notice of Design/Build Entity's Settlement and advertise the Project for final payment, the Design/Build Entity shall have corrected all items on the punch list except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have:

1. Delivered to the Principal Representative:
  - a. All guarantees and warranties;
  - b. All statements to support local sales tax refunds, if any;
  - c. Three (3) complete bound sets of required operating maintenance instructions; and,
  - d. One (1) set of as-built Contract Documents showing all job changes.
2. Demonstrated to the operating personnel of the Principal Representative the proper operation and maintenance of all equipment.

Upon completion of the foregoing, the Project shall be advertised in accordance with the Notice of Design/Build Entity's Settlement by two publications of Notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Project or the Design/Build Entity from Subcontractors, suppliers or materialmen based on good faith disputes; the resolution of the question of payment in such cases being directed by statute.

Except as hereafter provided, on the date of final settlement thus advertised, provided the Design/Build Entity has submitted a written Notice to the Principal Representative that no claims have been filed, and further provided the Principal Representative shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due the Design/Build Entity, the Principal Representative and the State Controller shall withhold from the Design/Build Entity on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as the Principal Representative reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to complete unfinished work or the cost to repair defective work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Design/Build Entity, as set forth in the published Notice of Design/Build Entity's Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a Notice of such action at law shall have been filed with the Principal Representative and the State Controller. At the expiration of the ninety (90) day period, the Principal Representative shall authorize the State Controller to release to the Design/Build Entity all other money not the subject of such action at law or withheld based on the cost to complete unfinished work or the cost to repair defective work.

Notices of Partial Final Settlement may be similarly advertised, provided all conditions precedent have been satisfied as though that portion of the work affected stood alone, a Notice of Partial Acceptance has been issued, and the consent of surety to the partial final settlement has been obtained in writing. Thereafter, partial final payments may be made to the Design/Build Entity subject to the same conditions regarding unpaid claims.

**ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE**

The Design/Build Entity warrants that the materials used and the equipment furnished shall be new and of good quality unless specified to the contrary. The Design/Build Entity further warrants that the Work shall in all respects be free from material defects not permitted by the Specifications and shall be in accordance with the requirements of the Contract Documents. Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Design/Build Entity of responsibility for defects or faulty materials or workmanship. The Design/Build Entity shall be responsible to the Principal Representative for such warranties for the longest period permitted by any applicable statute of limitations.

In addition to these general warranties, and without limitation of these general warranties, for a period of one year after the date of any Notice of Substantial Completion, or any Notice of Partial Substantial Completion if applicable, the Design/Build Entity shall remedy defects, and faulty workmanship or materials, and work not in accordance with the Contract Documents which were not accepted at the time of the Notice of Final Acceptance, all in accordance with the provisions of Article 44, One-Year Guarantee And Special Guarantees And Warranties.

**ARTICLE 43. LIENS**

Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, § 38-26-107, C.R.S., provides adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of the particular public work in that final payment may not be made to a Design/Build Entity until all such creditors have been put on Notice by publication in the public press of such pending payment and given opportunity for a period of up to ninety (90) days to stop payment to the Design/Build Entity in the amount of such claims.

**ARTICLE 44. ONE-YEAR GUARANTEE AND SPECIAL GUARANTEES AND WARRANTIES**

**A. ONE-YEAR GUARANTEE OF THE WORK**

The Design/Build Entity shall guarantee to remedy defects and repair or replace the Work for a period of one year from the date of the Notice of Substantial Completion or from the dates of any partial Notices of Substantial Completion issued for discrete physical portions of the Work. The Design/Build Entity shall remedy any defects due to faulty materials or workmanship and shall pay for, repair and replace any damage to other work resulting there from, which shall appear within a period of one year from the date of such Notice(s) of Substantial Completion. The Design/Build Entity shall also remedy any deviation from the requirements of the Contract Documents which shall later be discovered within a period of one year from the date of the Notice of Substantial Completion; provided, however, that the Design/Build Entity shall not be required to remedy deviations from the requirements of the Contract Documents where such deviations were obvious, apparent and accepted by the Principal Representative at the time of the Notice of Final Acceptance. The Principal Representative shall give Notice of observed defects or other work requiring correction with reasonable promptness. Such Notice shall be in writing to the Design/Build Entity.

The one year guarantee of the Design/Build Entity's work may run separately for discrete physical portions of the Work for which partial Notices of Substantial Completion have been issued, however, it shall run from the last Notice of Substantial Completion with respect to all or any systems common to the work to which more than one Notice of Substantial Completion may apply.

This one-year guarantee shall not be construed to limit the Design/Build Entity's general warranty described in Article 42, General Warranty and Correction of Work After Acceptance, that all materials and equipment are new and of good quality, unless specified to the contrary, and that the Work shall in all respects be free from material defects not permitted by the Specifications and in accordance with the requirements of the Contract Documents.

## **B. SPECIAL GUARANTEES AND WARRANTIES**

In case of work performed for which product, manufacturers or other special warranties are required by the Specifications, the Design/Build Entity shall secure the required warranties and deliver copies thereof to the Principal Representative upon completion of the work.

These product, manufacturers or other special warranties, as such, do not in any way lessen the Design/Build Entity's responsibilities under the Contract. Whenever guarantees or warranties are required by the Specifications for a longer period than one year, such longer period shall govern.

### **ARTICLE 45. GUARANTEE INSPECTIONS AFTER COMPLETION**

The Architect/Engineer, the Principal Representative and the Design/Build Entity together shall make at least two (2) complete inspections of the work after the Work has been determined to be substantially complete and accepted. One such inspection, the "Six-Month Guarantee Inspection," shall be made approximately six (6) months after date of the Notice of Substantial Completion, unless in the case of smaller projects valued under \$500,000 this inspection is declined in Article 54A, Modification of Article 45, in which case the inspection to occur at six months shall not be required. Another such inspection, the "Eleven-Month Guaranty Inspection" shall be made approximately eleven (11) months after the date of the Notice of Substantial Completion. The Principal Representative shall schedule and so notify all parties concerned, including State Buildings Programs, of these inspections. If more than one Notice of Substantial Completion has been issued at the reasonable discretion of the Principal Representative separate eleven month inspections may be required where the one year guarantees do not run reasonably concurrent.

Written punch lists and reports of these inspections shall be prepared by the Architect/Engineer, approved by the Principal Representative, and forwarded to the Design/Build Entity and State Buildings Programs, and all other participants within ten (10) days after the completion of the inspections. The punch list shall itemize all guarantee items, prior punch list items still to be corrected or completed and any other requirements of the Contract Documents to be completed which were not waived by final acceptance because they were not obvious or could not reasonably have been previously observed. The Design/Build Entity shall immediately initiate such remedial work as may be necessary to correct any deficiencies or defective work shown by this report, and shall promptly complete all such remedial work in a manner satisfactory to the Principal Representative and State Buildings Programs.

If the Design/Build Entity fails to promptly correct all deficiencies and defects shown by this report, the Principal Representative may do so, after giving the Design/Build Entity ten (10) days written Notice of intention to do so.

The State of Colorado, acting by and through the Principal Representative, shall be entitled to collect from the Design/Build Entity all costs and expenses incurred by it in correcting such deficiencies and defects, as well as all damages resulting from such deficiencies and defects.

### **ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES**

*It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress, and the time for completion of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Agreement, and it is understood and agreed that the Work embraced in this Contract shall be commenced at the time specified in the Notice to Proceed to Commence Design Phase (SBP-8.26).*

*It is further agreed that time is of the essence of each and every portion of this Contract, and of any portion of the Work described on the Drawings or Specifications, wherein a definite and certain length of time is fixed for the performance of any act whatsoever. The parties further agree that where under the Contract additional time is allowed for the completion of the Work or any identified portion of the Work, the new time limit or limits fixed by such extension of the time for completion shall be of the essence of this Agreement.*

*The Design/Build Entity acknowledges that subject to any limitations in the Request for Proposal, issued for the Project, the Design/Build Entity's proposal is consistent with and considers the number of days to substantially complete the Project and the number of days to finally complete the Project to which the parties*

may have stipulated in the Agreement, which stipulation was based on the Design/Build Entity's proposal. The Design/Build Entity agrees that work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure the Project will be substantially complete, and fully and finally complete, as recognized by the issuance of all required Notices of Substantial Completion and Notices of Final Acceptance, within any times stipulated and specified in the Agreement, as the same may be amended by Change Order or other written modification, and that the Principal Representative will be damaged if the times of completion are delayed.

It is expressly understood and agreed, by and between the parties hereto, that the times for the Substantial Completion of the Work or for the final acceptance of the Work as may be stipulated in the Agreement, and as applied here and in Article 54D, Modifications of Article 46, are reasonable times for these stages of completion of the Work, taking into such consideration all factors, including the average climatic range and usual industrial conditions prevailing in the locality of the building operations.

If the Design/Build Entity shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Contract and the State of Colorado, acting by and through the Principal Representative, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in Article 54D, Modification of Article 46.

The Design/Build Entity and the Design/Build Entity's Surety shall be jointly liable for and shall pay the Principal Representative, or the Principal Representative may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the entire Project is 1) substantially completed, and the Notice (or all Notices) of Substantial Completion are issued, 2) finally complete and accepted and the Notice (or all Notices) of Acceptance are issued, or 3) both. Delay in substantial completion shall be measured from the Date of the Notice to Proceed and delay in final completion and acceptance shall be measured from the Date of the Notice of Substantial Completion.

In the first instance, specified in Article 54D(1), Modification of Article 46, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed to Commence Design Phase, until the date of the Notice of Substantial Completion. Unless otherwise specified in any Supplementary General Conditions, in the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.

In the second instance, specified in Article 54D(2), Modification of Article 46, liquidated damages, if any, shall be the amount specified in Article 54D, Modification of Article 46, for each calendar day in excess of the number of calendar days specified in the Design/Build Entity's proposal for the Project and stipulated in the Agreement to finally complete the Project (as defined by the issuance of the Notice of Acceptance) after the final Notice of Substantial Completion has been issued.

In the third instance, when so specified in both Articles 54D(1) and (2), both types of liquidated damages shall be separately assessed where those delays have occurred.

The parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Contract was formed; the liquidated damages in the first instance representing an estimate of damages due to the inability to use the Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all guarantees and warranties, the submittals of sales and use tax payment forms, the calling for the final inspection and the completion of the final punch list.

The parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed substantial completion or final acceptance. Such liquidated damages shall not be avoided by virtue

*of the fact of concurrent delay caused by the Principal Representative, or anyone acting on behalf of the Principal Representative, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with Article 38, Delays And Extensions Of Time.*

#### **ARTICLE 47. DAMAGES**

If either party to this Contract shall suffer damage under this Contract in any manner because of any wrongful act or neglect of the other party or of anyone employed by either of them, then the party suffering damage shall be reimbursed by the other party for such damage. Except to the extent of damages liquidated for the Design/Build Entity's failure to achieve timely completion as set forth in Article 46, Time of Completion and Liquidated Damages, the Principal Representative shall be responsible for, and at his or her option may insure against, loss of use of any existing property not included in the Work, due to fire or otherwise, however caused. Notwithstanding the foregoing, or any other provision of this Contract, to the contrary, 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, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et seq.*, CRS, as now or hereafter amended.

Notice of intent to file a claim under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except that in the case of claims by the Principal Representative involving warranties against faulty work or materials Notice shall be required only to the extent stipulated elsewhere in these General Conditions. Claims made to the Principal Representative involving extra cost or extra time arising by virtue of instructions to the Design/Build Entity to which Article 36, Claims, applies shall be made in accordance with Article 36. Other claims arising under the Contract involving extra cost or extra time which are made to the Principal Representative under this clause shall also be made in accordance with the procedures of Article 36, whether or not arising by virtue of instructions to the Design/Build Entity.

Provided written Notice of intent to file a claim is provided as required in the preceding paragraph, nothing in this Article shall limit or restrict the rights of either party to bring an action at law or to seek other relief to which either party may be entitled, including consequential damages, if any, and shall not be construed to limit the time during which any action might be brought. Nothing in these General Conditions shall be deemed to limit the period of time during which any action may be brought as a matter of contract, tort, warranty or otherwise, it being the intent of the parties to allow any and all actions at law or in equity for such periods as the law permits. All such rights shall, however be subject to the obligation to assert claims and to appeal denials pursuant to Article 36, Claims, where applicable.

#### **ARTICLE 48. STATE'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY DAMAGES**

##### **A. STATE'S RIGHT TO DO THE WORK**

If after receipt of Notice to do so, the Design/Build Entity should neglect to prosecute the Work properly or fail to perform any provision of the Contract, the Principal Representative, after a second seven (7) days' advance written Notice to the Design/Build Entity and the Surety may, without prejudice to any other remedy the Principal Representative may have, take control of all or a portion of the Work, as the Principal Representative deems necessary and make good such deficiencies deducting the cost thereof from the payment then or thereafter due the Design/Build Entity, as provided in Article 30, Correction Of Work Before Acceptance and Article 33, Payments Withheld.

##### **B. TEMPORARY SUSPENSION OF WORK**

*The Principal Representative shall have the authority to suspend the Work, either wholly or in part, for such period or periods as may be deemed necessary due to:*

1. *Unsuitable weather;*
2. *Faulty workmanship;*

3. *Improper superintendence;*
4. *Design/Build Entity's failure to carry out orders or to perform any provision of the Contract Documents;*
5. *Loss of, or restrictions to, appropriations;*
6. *Conditions, which may be considered unfavorable for the prosecution of the Work.*

*If it should become necessary to stop work for an indefinite period, the Design/Build Entity shall store materials in such manner that they will not become an obstruction or become damaged in any way; and he or she shall take every precaution to prevent damage to or deterioration of the Work, provide suitable drainage and erect temporary structures where necessary.*

*Notice of suspension of work shall be provided to the Design/Build Entity in writing stating the reasons therefore. The Design/Build Entity shall again proceed with the work when so notified in writing.*

*The Design/Build Entity understands and agrees that the State of Colorado cannot predict with certainty future revenues and could ultimately lack the revenue to fund the appropriations applicable to this Contract. The Design/Build Entity further acknowledges and agrees that in such event that the Principal Representative may, upon Notice to the Design/Build Entity, suspend the work in anticipation of a termination of the Contract for the convenience of the State, pursuant to Article 50, Termination For Convenience of State. If the Contract is not so terminated the Contract sum and the Contract time shall be equitably adjusted at the time the Principal Representative directs the work to be recommenced and gives Notice that the revenue to fund the appropriation is available.*

#### **C. DELAY DAMAGES**

The Principal Representative and the State of Colorado shall be liable to the Design/Build Entity for the payment of any claim for extra costs, extra compensation or damages occasioned by hindrances or delays encountered in the work only when and to the limited extent that such hindrance or delay is caused by an act or omission within the control of the Principal Representative or other persons or entities acting on behalf of the Principal Representative. Further, the Principal Representative and the State of Colorado shall be liable to the Design/Build Entity for the payment of such a claim only if the Design/Build Entity has provided required Notice of the delay or impact, or has presented its claim for an extension of time or claim of other delay or other impact due to changes ordered in the work before proceeding with the changed work. Except as otherwise provided, claims for extension of time shall be Noticed and filed in accordance with Article 38, Delays and Extensions of Time, within three (3) business days of the beginning of the delay with any claim filed within seven (7) days after the delay has ceased, or such claim is waived. Claims for extension of time or for other delay or other impact resulting from changes ordered in the Work shall be presented and adjusted as provided in Article 35, Changes in the Work.

### **ARTICLE 49. STATE'S RIGHTS TO TERMINATE CONTRACT**

#### **A. GENERAL**

*If the Design/Build Entity should be adjudged bankrupt, or if he or she should make a general assignment for the benefit of his or her creditors, or if a receiver should be appointed to take over his affairs, or if he or she should fail to prosecute his or her work with due diligence and carry the work forward in accordance with the construction schedule and the time limits set forth in the Contract Documents, or if he or she should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by him, the Principal Representative may serve written Notice on the Design/Build Entity and the Surety on performance and payment bonds, stating his or her intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative bases his or her right to exercise such remedy.*

*In such event, unless the matter complained of is satisfactorily cleared within ten (10) days after delivery of such Notice, the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies at once.*

## **B. CONDITIONS AND PROCEDURES**

1. *The Principal Representative may terminate the services of the Design/Build Entity, which termination shall take effect immediately upon service of Notice thereof on the Design/Build Entity and his or her Surety, whereupon the Surety shall have the right to take over and perform the Contract. If the Surety does not provide Notice to the Principal Representative of its intent to commence performance of the Contract within ten (10) days after delivery of the Notice of termination, the Principal Representative may take over the Work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the Work to completion by such means as he or she shall deem best. In the event of such termination of his or her service, the Design/Build Entity shall not be entitled to any further payment under the Contract until the Work is completed and accepted. If the Principal Representative takes over the Work and if the unpaid balance of the contract price exceeds the cost of completing the Work, including compensation for any damages or expenses incurred by the Principal Representative through the default of the Design/Build Entity, such excess shall be paid to the Design/Build Entity. If, however, the cost, expenses and damages exceed such unpaid balance of the contract price, the Design/Build Entity and his or her Surety shall pay the difference to the Principal Representative.*
2. *The Principal Representative may require the Surety on the Design/Build Entity's bond to take control of the Work and see to it that all the deficiencies of the Design/Build Entity are made good, with due diligence within ten (10) days of delivery of Notice to the Surety to do so. As between the Principal Representative and the Surety, the cost of making good such deficiencies shall all be borne by the Surety. If the Surety takes over the Work, either by election upon termination of the services of the Design/Build Entity pursuant to Section B(1) of this Article 49, State's Right To Terminate Contract, or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern the work to be done by the Surety, the Surety being substituted for the Design/Build Entity as to such provisions, including provisions as to payment for the Work, the times of completion and provisions of this Article as to the right of the Principal Representative to do the Work or to take control of all or a portion of the Work.*
3. *The Principal Representative may take control of all or a portion of the Work and make good the deficiencies of the Design/Build Entity, or the Surety if the Surety has been substituted for the Design/Build Entity, with or without terminating the Contract, employing such additional help as the Principal Representative deems advisable in accordance with the provisions of Article 48A, State's Right To Do The Work; Temporary Suspension Of Work; Delay Damages. In such event, the Principal Representative shall be entitled to collect from the Design/Build Entity and his or her Surety, or to deduct from any payment then or thereafter due the Design/Build Entity, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of Design/Build Entity. If the Contract is not terminated, a Change Order to the Contract shall be executed, unilaterally if necessary, in accordance with the procedures of Article 35, Changes In The Work.*

## **C. ADDITIONAL CONDITIONS**

*If any termination by the Principal Representative for cause is later determined to have been improper, the termination shall be automatically converted to and deemed to be a termination by the Principal Representative for convenience and the Design/Build Entity shall be limited in recovery to the compensation provided for in Article 50, Termination For Convenience Of State. Termination by the Design/Build Entity shall not be subject to such conversion.*

## **ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE**

### **A. NOTICE OF TERMINATION**

*The performance of Work under this Contract may be terminated, in whole or from time to time in part, by the Principal Representative whenever for any reason the Principal Representative shall determine that such termination is in the best interest of the State. Termination of work hereunder shall be effected by delivery to the Design/Build Entity of a Notice of such termination specifying the extent to which the performance of work under the Contract is terminated and the date upon which such termination becomes effective.*

## **B. PROCEDURES**

*After receipt of the Notice of termination, the Design/Build Entity shall, to the extent appropriate to the termination, cancel outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the Design/Build Entity shall exercise all reasonable diligence to accomplish the cancellation or diversion of all applicable outstanding commitments covering personal performance of any work terminated by the Notice. With respect to such canceled commitments, the Design/Build Entity agrees to:*

- 1. settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with approval or ratification of the Principal Representative, to the extent he or she may require, which approval or ratification shall be final for all purposes of this clause; and,*
- 2. assign to the Principal Representative, in the manner, at the time, and to the extent directed by the Principal Representative, all of the right, title, and interest of the Design/Build Entity under the orders and subcontracts so terminated, in which case the Principal Representative shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.*

*The Design/Build Entity shall submit his or her termination claim to the Principal Representative promptly after receipt of a Notice of termination, but in no event later than three (3) months from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request of the Design/Build Entity within such three month period or authorized extension thereof. Upon failure of the Design/Build Entity to submit his or her termination claim within the time allowed, the Principal Representative may determine, on the basis of information available to him, the amount, if any, due to the Design/Build Entity by reason of the termination and shall thereupon pay to the Design/Build Entity the amount so determined.*

*Costs claimed, agreed to, or determined pursuant to the preceding and following paragraph shall be in accordance with the provisions of § 24-107-101, C.R.S., as amended, and associated Cost Principles of the Colorado Procurement Rules as in effect on the date of this Contract.*

*Subject to the preceding provisions, the Design/Build Entity and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to the Design/Build Entity by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Design/Build Entity and any reasonable loss upon outstanding commitments for personal services which he or she is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which the Design/Build Entity is unable to cancel, the Design/Build Entity shall have exercised reasonable diligence to divert such commitments to other activities and operations. Any such agreement shall be embodied in an Amendment to this Contract and the Design/Build Entity shall be paid the agreed amount.*

*The Principal Representative may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Design/Build Entity in connection with the termination portion of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such payments is within the amount to which the Design/Build Entity will be entitled hereunder.*

*The Design/Build Entity agrees to transfer title and deliver to the Principal Representative, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if the Contract had been completed, would have been required to be furnished to the Principal Representative, including:*

- a. completed or partially completed plans, Drawings and information; and,*
- b. materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the Notice.*

*Other than the above, any termination inventory resulting from the termination of the Contract may, with written approval of the Principal Representative, be sold or acquired by the Design/Build Entity under the conditions prescribed by and at a price or prices approved by the Principal Representative. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Principal Representative to the Design/Build Entity under this Contract or shall otherwise be credited to the price or cost of work covered by this Contract or paid in such other manners as the Principal Representative may direct. Pending final disposition of property arising from the termination, the Design/Build Entity agrees to take such action as may be necessary, or as the Principal Representative may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Design/Build Entity and in which the State has or may acquire an interest.*

*Any disputes as to questions of fact, which may arise hereunder, shall be subject to the Remedies provisions of the Colorado Procurement Code, §§ 24-109-101, et seq., C.R.S., as amended.*

**ARTICLE 51. DESIGN/BUILD ENTITY'S RIGHT TO STOP WORK AND/OR TERMINATE CONTRACT**

If the Work shall be stopped under an order of any court or other public authority for a period of three (3) months through no act or fault of the Design/Build Entity or of any one employed by him, then the Design/Build Entity may on seven (7) days' written Notice to the Principal Representative stop work or terminate this Contract and recover from the Principal Representative payment for all work executed, any losses sustained on any plant or material, and a reasonable profit. If the Principal Representative shall fail to issue or otherwise act in writing upon any certificate for payment within ten (10) days after it is due, or if the Principal Representative shall fail to pay the Design/Build Entity any sum certified that is not disputed in whole or in part by the Principal Representative in writing to the Design/Build Entity within thirty (30) days then the Design/Build Entity may on ten (10) days' written Notice to the Principal Representative stop work and/or give written Notice of intention to terminate this Contract.

If the Principal Representative shall thereafter fail to pay the Design/Build Entity any amount not disputed in writing by the Principal Representative within ten (10) days after receipt of such Notice, then the Design/Build Entity may terminate this Contract and recover from the Principal Representative payment for all work executed, any losses sustained upon any plant or materials, and a reasonable profit.

**ARTICLE 52. SPECIAL PROVISIONS**

**A. 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.

**B. 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.

**C. 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.

**D. INDEPENDENT CONTRACTOR 4 CCR 801-2**

Design/Build Entity shall perform its duties hereunder as an independent contractor and not as an employee. Neither Design/Build Entity nor any agent or employee of Design/Build Entity shall be deemed to be an agent or employee of the State. Design/Build Entity 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 Design/Build Entity or any of its agents or employees. Unemployment insurance benefits will be available to Design/Build Entity and its employees and agents only if such coverage is made available by Design/Build Entity or a third party.

Design/Build Entity shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Design/Build Entity shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Design/Build Entity 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.

**E. COMPLIANCE WITH LAW**

Design/Build Entity 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.

**F. 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.

**G. 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 contract or incorporated herein by reference shall be null and void.

**H. 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. Design/Build Entity hereby certifies and warrants that, during the term of this contract and any extensions, Design/Build Entity has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Design/Build Entity 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.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST CRS 24-18-201 & CRS 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. Design/Build Entity has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Design/Build Entity's services and Design/Build Entity shall not employ any person having such known interests.

**J. VENDOR OFFSET CRS 24-30-202(1) & CRS 24-30-202.4**

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.

**K. 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]** Design/Build Entity 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), 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 Design/Build Entity that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Design/Build Entity **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Design/Build Entity has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Design/Build Entity participates in the Department program, Design/Build Entity shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Design/Build Entity has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Design/Build Entity 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, Design/Build Entity shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

Design/Build Entity, 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 53. MISCELLANEOUS PROVISIONS**

**A. CONSTRUCTION OF LANGUAGE**

The language used in these General Conditions shall be construed as a whole according to its plain meaning, and not strictly for or against any party. Such construction shall, however, construe language to interpret the intent of the parties giving due consideration to the order of precedence noted in Article 2C, Intent of Documents.

**B. 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.

**C. 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.

**D. AUTHORITY**

Each person executing the Agreement and its Exhibits in a representative capacity expressly represents and warrants that he or she has been duly authorized by one of the parties to execute the Agreement and has authority to bind said party to the terms and conditions hereof.

**E. INTEGRATION OF UNDERSTANDING**

This Contract is intended as the complete integration of all understandings between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written Change Order or Amendment to this Contract.

**F. 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.

**G. 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.

**H. 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.

**I. INDEMNIFICATION**

Design/Build Entity 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 fees and related costs, incurred as a result of any act or omission by Design/Build Entity, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

**J. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Design/Build Entity under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this section shall apply.

Design/Build Entity 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.

Design/Build Entity'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 Design/Build Entity's performance shall be part of the normal contract administration process and Design/Build Entity'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 Design/Build Entity'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 Design/Build Entity'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. Design/Build Entity 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 Design/Build Entity 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 Design/Build Entity and prohibit Design/Build Entity from bidding on future contracts. Design/Build Entity 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 Design/Build Entity, by the Executive Director, upon a showing of good cause.

**K. 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.

**ARTICLE 54. OPTIONAL PROVISIONS AND ELECTIONS**

The provisions of this Article 54 alter the preceding Articles or enlarge upon them as indicated: The Principal Representative and or the State Buildings Programs shall mark boxes and initial where applicable.

**A. MODIFICATION OF ARTICLE 45. GUARANTEE INSPECTIONS AFTER COMPLETION**

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

\_\_\_\_\_ Principal Representative initial

**B. MODIFICATION OF ARTICLE 27. LABOR AND WAGES**

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

\_\_\_\_\_ Principal Representative initial

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

If the box is marked, and initialed by the State as noted, the requirement to participate in facilitated negotiations shall be deleted from this Contract. Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, shall be deleted in its entirety and all references to the right to the same where ever they appear in the contract shall be similarly deleted.

The box may be marked only for projects with an estimated value of less than \$500,000.

\_\_\_\_\_ Principal Representative initial

**D. MODIFICATION OF ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES**

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

1. For the inability to use the Project, for each day after the number of calendar days specified in the Design/Build Entity's proposal for the Project and the Agreement for achievement of Substantial Completion, until the day that the Project has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Design/Build Entity agrees that an amount equal to \_\_\_\_\_ (\$) shall be assessed against Design/Build Entity from amounts due and payable to the Design/Build Entity under the Contract, or the

Design/Build Entity and the Design/Build Entity's Surety shall pay to the Principal Representative such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.

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

**E. NOTICE IDENTIFICATION**

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

Notice to Principal Representative: \_\_\_\_\_  
\_\_\_\_\_

With copies to: State Buildings Programs (or Delegate)  
State of Colorado  
\_\_\_\_\_  
\_\_\_\_\_

Notice to Design/Build Entity: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_