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# THE GENERAL CONDITIONS OF THE CONTRACT (DESIGN/BUILD)

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## Notice 08-04

**Project Name:** Folsom Stadium – Removable Fencing & Monuments

**Project No.** PR 003428

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shall be established to perform statutory responsibilities current at any time during the performance of this Agreement.

(f) **AGREEMENT.** The word Agreement shall be considered to be the written Agreement entered into by the State of Colorado acting by and through the Principal Representative and Design/Build Entity for the performance of the work and payment therefor.

(g) **DRAWINGS.** The term Drawings shall mean all drawings approved by the Principal Representative which have been prepared by the Architect and/or Engineer and/or MEP showing the work to be done on the Project.

(h) **SHOP DRAWINGS.** The term Shop Drawings shall mean any and all detailed drawings prepared and submitted by vendors or manufacturers or manufacturers providing the products and equipment so specified on the contract drawings or so called for in the specifications.

(i) **WORK.** The term Work shall mean design, construction and services required by the Contract Documents, whether completed or partially completed and includes all other labor, materials, equipment and services provided or to be provided by the Design/Build Entity to fulfill the Design/Build Entity's obligations.

(j) **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.

## **ARTICLE 2. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS**

The Contractor, within ten (10) days from the date of the Agreement, will be required to:

- (a) Furnish fully executed Performance and Payment Bonds;
- (b) Furnish the requisite Insurance Policy and Certificates of Insurance;
- (c) Furnish Professional Liability Insurance.

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 materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

It is intended that work shall not be supplied when said work is not shown under any heading, section, branch, class or trade of the Specifications; unless such work is shown on drawings or is reasonably inferable therefrom as being necessary to produce the intended results.

Unless otherwise specified, if there be conflicting variance between the drawings and the specifications, the requirements of the specifications shall control unless the Architect/Engineer directs otherwise in writing.

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

## **ARTICLE 3. DETAIL DRAWINGS AND INSTRUCTIONS**

**A. DETAIL DRAWINGS.** The Architect/Engineer shall furnish 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 Contractor shall do no work without proper drawings and instructions.

The Contractor and the Architect/Engineer 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.

**B. INSTRUCTIONS--SCHEDULE OF VALUES.** Before finalization of this contract, the Contractor, using his own forms, in CSI standard format, shall submit to the Principal Representative and State Buildings Programs, for approval, a complete, itemized Schedule of Values of the various parts of the work, aggregating the total contract price. This Schedule of Values shall become Attachment A. The total cost of each item shall be broken down into:

(a) **MATERIAL**, which shall include the cost of material actually built into the project plus any local sales tax paid thereon; and

(b) **LABOR AND OTHER COSTS.** The cost of subcontracts shall be incorporated in the Contractor's Schedule of Values similarly broken down. This schedule, when approved, will be used in preparing Contractor's Application for Payment on State Form SC-7.2, as amended to include design, drafting and contract administration services and as approved by the Principal Representative.

**C. PROGRESS CHARTS.** The Contractor shall submit to State Buildings Programs and the Principal Representative within thirty (30) calendar days after the Notice to Proceed, on a form acceptable to the Principal Representative an overall timetable of the construction schedule for the project.

This timetable shall start with the date of the Notice to Proceed, and the completion time shall be the time specified in the Agreement. The timetable shall portray fully a schedule representing the various elements in the schedule of values. The time shown between the starting and completion dates of the various elements within the schedule of values shall represent one hundred per cent (100%) completion of each element.

In addition, the Contractor shall submit monthly progress charts. These charts shall reflect the schedule of values and the Contractor's work in place progress.

#### **ARTICLE 4. COPIES FURNISHED**

See Design/Build Agreement.

#### **ARTICLE 5. SHOP DRAWINGS**

The Contractor shall check and verify all field measurements, with such promptness as to cause no delay in his own work or in that of any other Contractor. All drawings submitted shall contain identifying nomenclature and each submittal shall be accompanied with a letter of transmittal, in duplicate, identifying in detail all enclosures.

The Architect/Engineer shall, with reasonable promptness, check the shop drawings to determine whether drawings and specifications have been properly interpreted and design requirements fulfilled. All corrections to the drawings shall be clearly noted and returned to the Contractor for any corrections required by the Architect/Engineer or Principal Representative. The Contractor shall then file with the Architect/Engineer two (2) complete sets of the corrected drawings and furnish such other copies as may be needed. Fabrication shall be started by the Contractor only after receiving approved shop drawings from the Architect/Engineer. Work which is improperly fabricated, whether through incorrect shop drawings, faulty workmanship or materials, will not be acceptable.

The approval of the Principal Representative of any drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing called the attention of the Principal Representative to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

**ARTICLE 6. DRAWINGS AND SPECIFICATIONS ON THE WORK**

The Contractor shall keep on the job site one copy of all drawings and specifications, including submittal and shop drawings, and all RFP documents for the work, in good order, available to the Architect/Engineer and representatives of the State. These shall be kept current with all changes, clarifications and supplemental instructions.

**ARTICLE 7. OWNERSHIP OF DRAWINGS**

All drawings, specifications, and copies thereof are and shall remain the property of the Principal Representative whether the construction for which they are made be completed or not.

**ARTICLE 8. SAMPLES AND TESTING**

**A. SAMPLES.** The Contractor shall furnish for approval, with such promptness as to cause no delay in his work or in that of any other Contractor, all samples as directed by the principal Representative.

The Principal Representative shall check and approve such samples, with reasonable promptness, only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents.

**B. TESTING--GENERAL.** The Contractor shall provide such equipment and facilities as the Architect/Engineer, Principal Representative or Independent Testing Agency may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use any materials or equipment represented by samples until tests, if required, have been made and the materials or equipment found to be acceptable. Any product which becomes unfit for use after approval thereof shall not be incorporated into the work.

All materials or equipment proposed to be used may be tested at any time during their preparation or use. The Contractor 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, 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 (A.S.T.M.).

**C. TESTING--CONCRETE.** Unless amended by a Supplementary General Condition, the testing of concrete shall be at the expense of the Contractor. One copy of each and every such test shall be filed with State Buildings Programs.

**ARTICLE 9. MATERIALS, APPLIANCES, EMPLOYEES**

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, tools, equipment, 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 of good and uniform quality. The Contractor shall, if required, shall furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

**ARTICLE 10. ROYALTIES AND PATENTS**

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the State of Colorado harmless from loss on account thereof.

**ARTICLE 11. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS**

**A. SURVEYS.** Except as otherwise specified in the Contract Documents, the Principal Representative shall furnish all surveys, property lines and bench marks, and building corner stakes.

**B. PERMITS AND LICENSES.** Permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor. 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**

(a) **REFUND OF SALES AND USE TAXES.** The Contractor shall pay all local sales tax required to be paid, shall maintain such records in respect to his work, which shall be separate and distinct from all other records maintained by the Contractor. The Contractor 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.

The Contractor shall require each of his subcontractors to pay all local sales taxes required to be paid and to maintain such records and furnish the Contractor 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 a contractor or subcontractor, a certificate or certificates of exemption per Title 39-26-114 and 203, CRS 1973.

(b) **FEDERAL TAXES.** The Contractor shall exclude the amount of any applicable Federal excise or manufacturers taxes from his proposal. The Principal Representative will furnish the Contractor, on his request, the necessary certificates to aid the Contractor in the recovery of any such Federal taxes paid by the Contractor for materials and equipment built into the structures of this project, or to support the Contractor's failure to pay such taxes, as the case may be.

**D. LAWS AND REGULATIONS.** The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the Drawings and Specifications are at variance therewith, he shall promptly notify the Principal Representative in writing and any necessary changes shall be adjusted as provided in the Contract for changes in the work.

If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Principal Representative, he shall bear all costs arising therefrom.

**ARTICLE 12. PROTECTION OF WORK AND PROPERTY**

The Contractor shall continuously maintain adequate protection of all his work and materials, protect the property from injury or loss arising in connection with the Contract and adequately protect adjacent property as provided by law and the Contract Documents.

The Contractor shall make good any damage, injury or loss, except as may be:

- (a) Directly due to errors in the Contract Documents;
- (b) Caused by agents or employees of the Principal Representative;
- (c) Due to causes beyond the Contractor's control and not to his fault or negligence.

The Contractor shall take all necessary precautions for the safety of employees on the work, 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 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

workmen 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 shall designate a responsible member of his organization on the work, 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 Contractor.

The Contractor 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 during the execution of this Contract; and provide for the adequacy and safety of all scaffolding and hoisting equipment. The Contractor shall not permit open fires within the building enclosure. The Contractor 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 Contractor 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 to assure the safe passage of pedestrians and automobiles.

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor without special instruction or authorization from the Principal Representative, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury; and he shall so act, without appeal, if so authorized or instructed. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by agreement for extra compensation.

#### **ARTICLE 13. ACCESS TO WORK AND INSPECTION**

The Principal Representative and representatives of State Buildings Programs shall at all times have access to the work. The Contractor shall provide proper facilities for such access and for their inspection of the work.

The Principal Representative will judge the performance of the Contract as it relates to compliance with the RFP, design intent, minimum design requirements and specifications, quality of workmanship and material.

If any work should be covered up without approval or consent of the Architect/Engineer or Principal Representative, it must, if required, be uncovered for examination, at the Contractor's expense. Re-examination of questioned work may be ordered, and if so ordered, the work must be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the Contractor shall be reimbursed the cost of re-examination and replacement by the directing party. If such work be found not in accordance with the Contract Documents, the Contractor shall pay such costs, unless he shall show that the defect in the work was caused by another Contractor engaged by the Principal Representative. In that event, the Principal Representative shall pay such cost, with the right to reimbursement from such other Contractor.

If the Specifications, the Principal Representative's instructions, laws, ordinances or any public authority require any work to be specifically tested or approved, the Contractor shall give the Principal Representative timely notice of its readiness for observation by the Principal Representative 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 secure by the Contractor.

#### **ARTICLE 14. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION**

Submit resumes for the proposed Project Manager, Project Engineer and Superintendent for Owner approval in a manner similar to the Contractor pre-qualification process if other than previously proposed. The Contractor shall keep on the work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Principal Representative. The Owner will have the right to replace a superintendent if supervision is not acceptable. The superintendent shall not be changed except with the consent of the Principal Representative, unless, the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence and all directions given

to him shall be as binding as if given to the Contractor. Directions shall be confirmed in writing to the Contractor.

The Contractor shall be given efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all Drawings, Specifications and other instructions and shall at once report to the Architect/Engineer and Principal Representative any error, inconsistency or omission which he may discover.

The superintendent shall see that the work is carried out in accordance with the Contract Documents and in a thorough and first-class manner in every respect. The Contractor's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in such Contractor's work. He shall layout the work, making permanent records of all lines and levels required for excavation, grading, foundations, and for all other parts of the work.

## ARTICLE 15. CHANGES IN THE WORK

Principal Representative, without invalidating the Contract, and with the approval of State Buildings Programs and the State Controller, may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted by change order at the time of ordering such change.

The Principal Representative shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purpose of the work, but otherwise, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by a written change order, approved by the Principal Representative, State Buildings Programs, and the State Controller. No claim for any change to the Contract sum shall be valid unless so ordered.

In all cases, a detailed proposal must be submitted on forms acceptable to the State, which includes an itemized list of materials, equipment, and labor, indicating quantities, time, and cost for completion of work.

Proposals shall be stated in lump-sum amount and shall be supported, when appropriate, by a separate breakdown, which may include the following:

1. Materials, quantities and unit prices (separate into general, mechanical, and electrical and/or other subcontractor's work).
2. Labor costs.
3. Field supervision only if time extension, other than weather delay, is approved as part of the change order, where such cost is directly attributable to the change.
4. Construction equipment (including small tools).
5. Workmen's compensation, public liability, and property damage insurance.
6. Overhead and profit.
7. Social Security and other payroll taxes such as unemployment.
8. Builder's risk insurance.
9. Bond premiums

Overhead and profit shall be limited to the percentages set forth below. Overhead shall include insurance premiums not itemized above, cost of office supervision and assistants, incidental job burdens, general office expense, and other indirect costs. The base applying the percentages shall be the total of direct costs, but shall not include the Social Security tax.

	OVERHEAD	PROFIT
To Subcontractors and/or the Contractor for work performed with their/his own forces:	10%	10%
To Contractor for work performed by other than his own forces	10%	5%

On proposal involving both additions and credits in the amount of the contract, the overhead and profit will be allowed on the net increase only. The proposals resulting in a net deduct to the

amount of the contract shall include 10% profit on the amount of the deduct but need not include an overhead percentage.

The value of any extra work or change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump-sum;
- (b) By unit prices named in the Contract or subsequently agreed upon;
- (c) By actual cost plus a fixed fee, or percentage, the latter agreed upon prior to starting the extra or changed work.
- (d) By determination by the Principal Representative of the amount of equitable adjustment attributable to the extra work or change.

Changed work shall be adjusted and considered separately for the work either added or omitted. The amount of adjustment for work omitted shall be estimated at the time it is authorized, and the agreed adjustment will be deducted from the subsequent monthly estimates.

The Contractor shall keep and present a correct account of the several items of cost, together with vouchers, on State Change Order Form SC-6.31. This requirement applies equally to work done by subcontractors.

The Principal Representative reserves the right to contract with any person or firm other than the Contractor for any or all extra work.

#### **ARTICLE 16. CLAIMS FOR EXTRA COST**

If the Contractor claims that any instructions, by drawings, or otherwise, or other act or neglect of the State, involve extra cost under this Contract, he shall give the Principal Representative written Notice thereof within a reasonable time after the receipt of such instructions or such act or neglect. In any event, before proceeding to execute the work, except in an emergency endangering life or property, the procedure shall be as provided for under Change in the Work. No such claim shall be valid unless so made.

In all such cases, the Contractor shall keep a correct account of the extra cost, in such form as the Principal Representative may direct, and shall present such account, supported by receipts. The Principal Representative shall be entitled to reject any claim for extra cost whenever the foregoing procedure is not followed.

The payments to the Contractor in respect of such extra costs shall be limited to reimbursement for the current additional expenditure by the Contractor made necessary by the change in the work, plus a reasonable amount for overhead and profit, determined solely with reference to the additional work, if any, required by the change, at or prior to the time of making the change, and the adjustment to the Contract shall be determined in accordance with Article 15.

#### **ARTICLE 17. DIFFERING SITE CONDITIONS**

- (a) The Contractor shall promptly, and before such conditions are disturbed, notify the Principal Representative in writing of:
  - (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
  - (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 this Contract. The Principal Representative shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's costs of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.
- (b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (a) above; provided, however, the time prescribed therefore may be extended by the State.
- (c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

## **ARTICLE 18. DEDUCTIONS FOR UNCORRECTED WORK**

If the Architect/Engineer, and the Principal Representative deem it inexpedient to correct work injured or not performed in accordance with the Contract, an equitable deduction from the Contract price may be authorized by change order. The Principal Representative reserves the right to obtain written notice from the Contractor's Architect/Engineer that such uncorrected work is acceptable.

## **ARTICLE 19. DELAYS AND EXTENSIONS OF TIME**

If the Contractor be delayed at any time in the progress of the work by any act or neglect of the State of Colorado or of any employee of the State of Colorado, or by any separately employed Contractor, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any other causes beyond the Contractor's control, the time of completion of the work shall be extended for a period equal to such portion of the period of delays as the Contractor shall be able to show he could not have avoided by the exercise of due diligence.

The Contractor shall advise, in writing, the Principal Representative within three (3) days from the beginning of the delay and shall file a written claim for an extension of time within seven (7) days after the period of delay has ceased.

This article does not preclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

## **ARTICLE 20. CORRECTION OF WORK BEFORE ACCEPTANCE**

The Contractor shall promptly remove from the premises all materials condemned by written Notice from the Architect/Engineer or the Principal Representative as failing to conform to the Contract Documents, whether incorporated in the work or not. The Principal Representative reserves the right to consult with the Contractor's 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 Contractor shall promptly replace and re-execute his work in accordance with the Contract without expense to the Principal Representative, and shall also bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement of such defective material or work.

If the Contractor does not remove such condemned work or material within a reasonable time, the Principal Representative may remove them and may store the material at the Contractor's expense. If the Contractor does not pay the expense of such removal and withdraw the stored materials 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 Contractor.

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 questions material or work shall not be included in any Application for Payment, or if previously included, shall be deducted by the Principal Representative from the next application submitted by the Contractor.

## **ARTICLE 21. CORRECTION OF WORK AFTER ACCEPTANCE**

Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship, and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of Notice of Acceptance. The Principal Representative shall give notice of observed defects with reasonable promptness

**ARTICLE 22. STATE'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY DAMAGES**

- A. STATE'S RIGHT TO DO THE WORK.** If the Contractor should neglect to prosecute the work properly or fail to perform any provision of the Contract, the Principal Representative, after seven (7) days written Notice to the Contractor and the Surety may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.
- B. TEMPORARY SUSPENSION OF WORK.** The State shall have the authority to suspend the work, either wholly or in part, for such period or periods, as it may deem necessary due to:
- (a) Unsuitable weather;
  - (b) Faulty workmanship;
  - (c) Improper superintendence;
  - (d) Contractor's failure to carry out order or to perform any provision of the Contract Documents;
  - (e) 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 Contractor shall store materials in such manner that they will not become an obstruction or become damaged in any way; and he shall take every precaution to prevent damage to or deterioration of the work, provide suitable drainage and erect temporary structures, where necessary.
- Such Notice of Suspension of work shall be in writing and the Contractor shall again proceed with the work when so notified in writing.
- C. DELAY DAMAGES.** The Principal Representative and the State of Colorado shall not be liable to the Contractor for the payment of any claim for extra costs, extra compensation or damages occasioned by hindrances or delays encountered in the work when such hindrance or delay is caused by the other contractors. The Principal Representative and the State of Colorado shall be liable to the Contractor for the payment of such a claim only when the hindrance or delay is caused by the negligent or wrongful act of the Principal Representative or State of Colorado. In such event, the Contractor must submit its claim for extra costs within seven (7) days after the occurrence of the event giving rise thereto, or such claim is waived. Such a claim shall be subject to Article 16, Claims for Extra Cost.

**ARTICLE 23. STATE'S RIGHTS TO TERMINATE CONTRACT**

- A. GENERAL.** If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed to take over his affairs, or if he should fail to prosecute his work with due diligence and carry the work forward in accordance with his work schedule and the time limits set forth in the Contract Documents, or if he 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 Contractor and the Surety on his performance and payment bonds, stating his intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative bases his right to exercise such remedy. In such event, unless the matter complained of is satisfactorily cleared within ten (10) days after service 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**
- (a) The Principal Representative may terminate the services of the Contractor, which termination shall take effect immediately upon service of notice thereof on the Contractor and his Surety, whereupon the Surety shall have the right to take over and perform the Contract. If the Surety, does not commence performance of the Contract within ten (10) days after service 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 shall deem best. In the event of such termination of his service, the Contractor shall not be entitled to any further payment under his 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 Contractor, such excess shall be paid to the Contractor. If, however, the

- cost, expenses and damages exceed such unpaid balance of the contract price, the Contractor and his Surety shall pay the difference to the Principal Representative.
- (b) The Principal Representative may take control of the work and either make good the deficiencies of the Contractor or direct the activities of the Contractor in doing so, employing such additional help as the Principal Representative deems advisable. In such event, the Principal Representative shall be entitled to collect from the Contractor and his Surety, or to deduct from any payment then or thereafter due the Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of Contractor.
  - (c) The Principal Representative may require the Surety on the Contractor's bond to take control of the work at once and see to it that all the deficiencies of the Contractor are made good, with due diligence. 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 upon termination of the services of the Contractor or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern in respect of the work done by the Surety, the Surety being substituted for the Contractor as to such provisions, including provisions as to payment for the work and provisions of this Article as to the right of the Principal Representative to do the work or to take control of the work.

#### ARTICLE 24. TERMINATION FOR CONVENIENCE OF STATE

- (a) The performance of work under this Contract may be terminated, in whole or from time to time in part, by the State whenever for any reason the Principal Representative shall determine that such termination is in the best interest of State. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.
- (b) After receipt of the Notice of Termination, the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal performance of any work terminated by the Notice. With respect to such canceled commitments, the Contractor 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 may require, which approval or ratification shall be final for all purposes of this clause, and
  - (2) assign to the State, in the manner, at the time, and to the extent directed by the Principal Representative, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the State 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.
- (c) The Contractor shall submit his termination claim to the Principal Representative promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his 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 Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- (d) Costs claimed, agreed to, or determined pursuant to (b) above and (e) below shall be in accordance with the provisions of CHAPTER 7 (COST PRINCIPLES) of the Colorado Procurement Rules as in effect on the date of this Contract.
- (e) Subject to the provisions of paragraph above, the Contractor and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss

upon outstanding commitments for personal services which he is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this Contract and the Contractor shall be paid the agreed amount.

- (f) The State may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the termination of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.
- (g) The Contractor agrees to transfer title and deliver to the State, in the manner, at the time, and to the extent, if any, direct by the Principal Representative, such information and items which, if the Contract had been completed, would have been required to be furnished to the State, including:
  - (1) completed or partially completed plans, drawings and information; and
  - (2) 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 Contractor 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 State to the Contractor 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 Contractor 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 Contractor and in which the State has or may acquire an interest.
- (h) Any disputes as to questions of fact which may arise hereunder shall be subject to the provisions of ARTICLE 109 (REMEDIES) of the Colorado Procurement Code.

#### **ARTICLE 25. CONTRACTOR'S RIGHT TO STOP WORK 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 not act or fault of the Contractor or of anyone employed by him, then the Contractor 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 any certificate for payment within ten (10) days after it is due, or if the Principal Representative shall fail to pay the Contractor within fifteen (15) days after its maturity and presentation, then the Contractor may on seven (7) days written Notice to the Principal Representative stop work and give written Notice of intention to terminate this Contract. If the Principal Representative shall thereafter fail to pay the Contractor within seven (7) days after receipt of such Notice, then the Contractor may terminate the Contract and recover from the Principal Representative payment for all work executed, any losses sustained upon any plant or materials, and a reasonable profit.

The Contractor shall not be entitled to stop work because a dispute exists with respect to an equitable adjustment in contract price, time of performance, or both, as a result of changes, delays, or other circumstances governed by Articles 15-20 and 22.

#### **ARTICLE 26. APPLICATIONS FOR PAYMENTS**

At least ten (10) days before each payment falls due, the Contractor shall submit to the Principal Representative, on State forms, an itemized application for payment, supported to the extent required by the Principal Representative by receipts or other vouchers, showing payments for materials and labor, payments to subcontractors and such other evidence of the Contractor'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 Contractor 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, including applicable insurance. All estimates, except the final estimate, and the payments thereunder, shall be subject to correction in the next estimate rendered following the discovery of any error.

Unless otherwise provided in the Supplementary General Conditions, an amount equivalent to ten percent (10%) of the amount shown to be due the Contractor on each estimate shall be withheld until fifty percent (50%) of the work required by the Contract has been performed. Thereafter, the remaining estimates shall be paid without retaining additional funds, if in the opinion of the Principal Representative, satisfactory progress is being made in the work. The withheld percentage of the contract price of any such work, improvement, or construction shall be administered according to Title 24-91-101 thru 110, CRS, and shall be retained until the Contract is completed satisfactorily and finally accepted.

#### **ARTICLE 27. CERTIFICATES FOR PAYMENTS**

State Form SC-7.2, as modified to include design, drafting and contract administration services and as approved by the Owner shall be used as a Certificate of Contractor's Application for Payment.

#### **ARTICLE 28. 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 estimate on account of:

- (a) Defective work not remedied;
- (b) Claims filed or reasonable evidence indicating probable filing of claims;
- (c) Failure of the Contractor to make payments to subcontractors or for material or labor;
- (d) reasonable doubt that the Contract can be completed for the balance of the contract price then unpaid;
- (e) Damage to another Contractor;
- (f) Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinances, codes, rules or regulations;
- (g) Failure to submit a monthly progress chart;
- (h) Failure of the Contractor to keep his work progressing in accordance with his time schedule;
- (i) Failure to keep a superintendent on the work;
- (j) Unauthorized deviations by the Contractor from the Contract Documents.

When the grounds for such withholding or nullifying are removed, payment shall be made for the amounts thus withheld on such grounds.

#### **ARTICLE 29. LIABILITY INSURANCE**

Not Used. See Design/Build Agreement.

#### **ARTICLE 30. WORKMEN'S COMPENSATION INSURANCE**

Not Used. See Design/Build Agreement.

#### **ARTICLE 31. BUILDER'S RISK INSURANCE**

Not Used. See Design/Build Agreement.

#### **ARTICLE 32. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS**

The Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond on approved State forms, executed by a corporate Surety licensed to transact such business in the State of Colorado and in full amount of the contract price. The expense of these bonds shall be borne by the Contractor and the bonds filed with State Buildings Programs.

If, at any time, a Surety on such a bond becomes irresponsible or loses his right to do business in the State of Colorado, another Surety will be required, which the Contractor shall furnish to State Buildings Programs within ten (10) days after receipt of Notice.

### **ARTICLE 33. DAMAGES**

If either party to this Contract shall suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone employed by him, then he shall be reimbursed by the other party for such damage, provided, the Principal Representative shall be responsible for and at his option insure against loss of use of any of his existing property, due to fire or otherwise, however caused.

Claims 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 as expressly stipulated otherwise in the case of faulty work or materials.

### **ARTICLE 34. LIENS**

Colorado Statutes do not provide for any right of lien against public buildings. In lieu thereof, Title 3826-107, Colorado Revised Statutes, as amended, 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 Contractor until all such creditors have been put on notice by publication in the public press of such pending payment and given opportunity to stop payment to the Contractor in the amount of such claims.

### **ARTICLE 35. ASSIGNMENT**

The Contractor shall not assign the whole or any part of this Contract as any moneys due or to become due hereunder without the written consent of the State Controller and Principal Representative. No assignment without said prior approval shall be valid. In case the Contractor 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 Contractor 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.

### **ARTICLE 36. MUTUAL RESPONSIBILITY OF CONTRACTORS**

Should the Contractor cause damage to any separate contractor on the work, the Contractor agrees, upon due notice, to settle with such contractor by agreement, if he 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 Contractor, who shall defend such proceedings. If any judgment against the Principal Representative arises therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Principal Representative.

### **ARTICLE 37. SEPARATE CONTRACTS**

The Principal Representative reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor 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 Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work.

To insure the proper execution of his subsequent work, the Contractor 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 38. SUBCONTRACTS**

The Contractor shall, within ten (10) days after the Date of Notice on the Notice to Proceed, submit to the Principal Representative and State Buildings Programs a complete list of his subcontractors on a schedule approved by the Principal Representative for such submittal.

The Contractor shall not employ any subcontractor that the Principal Representative, within fifteen (15) days after the Date of Notice on the Notice to Proceed, objects to in writing, as being unacceptable to either the Principal Representative or State Buildings Programs

The Contractor shall be fully responsible to the Principal Representative for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work being done by subcontractors shall be given to the Contractor.

#### **ARTICLE 39. RELATIONS OF CONTRACTOR AND SUBCONTRACTOR**

The Contractor 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, unless specially noted to the contrary. 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 40. ARCHITECT/ENGINEER'S STATUS**

In case of termination of employment or the death of the Architect/Engineer, the Contractor 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 41. ARCHITECT/ENGINEER'S DECISIONS**

Not Used.

#### **ARTICLE 42. ARBITRATION**

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract. Any provision of this Contract whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Contract to the extent that the Contract is capable of execution.

#### **ARTICLE 43. USE OF PREMISES**

The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances and permits. The Contractor shall not unreasonably encumber the premises with his materials.

The Contractor shall enforce the Principal Representative's instructions regarding signs, advertisements, fires and smoking.

#### **ARTICLE 44. CUTTING, PATCHING**

The Contractor shall do all cutting, fitting or patching of his 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 contractors shown upon, or reasonably implied by, the RFP, Drawings and Specifications for the complete structure, and he shall make good after them as the Principal Representative may direct.

Any cost caused by defective or ill-timed work shall be borne by the party responsible therefor.

The Contractor shall not endanger any work by cutting, excavating or otherwise altering the work and shall not cut or alter the work of any other contractor save with the consent of the Architect/Engineer and the Principal Representative.

#### **ARTICLE 45. CLEANING UP**

The Contractor shall keep the building and premises free from all surplus material, waste material, dirt and rubbish caused by his employees or work, and at the completion of his work he shall remove all

such surplus material, waste material, dirt, and rubbish, as well as all his tools, equipment and scaffolding, and shall leave his work clean and spotless, unless more exact requirements are specified. In case of dispute, the State of Colorado, acting by and through the Principal Representative, may remove all such items and charge the cost of such removal to the Contractor or contractors involved.

The Contractor shall make such minor repairs and alterations in respect to his work as may be necessary to make the building ready for occupancy. The Contractor shall replace all broken and scratched glass with new and perfect material.

#### **ARTICLE 46. LABOR AND WAGES**

In accordance with laws of Colorado, Title 8-17-1 01 to 103, CRS, 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, the minimum wage rates to be paid on the project will be specified in the Contract Documents.

#### **ARTICLE 47. EQUAL OPPORTUNITY, DISCRIMINATION AND AFFIRMATIVE ACTION**

The Contractor agrees to comply with the letter and spirit of the Colorado Anti-discrimination Act of 1957, as amended, and other applicable laws respecting discrimination and unfair employment practices (24-34-402, CRS 1973, as amended), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975. Pursuant thereto, the following provisions shall be contained in all State contracts or subcontracts.

During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The Contractor will take affirmative action to insure that applicants are employed and that employees during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.
- (3) The Contractor will send to each labor union or representative of workers with which he has collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of the contractor's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and of the rules, regulations, and relevant Orders of the Governor.
- (4) The Contractor and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (5) A labor organization will not exclude any Individual otherwise qualified from full membership rights in such labor organization, or to expel any such individual from membership in such labor organizations or discriminate against any of its members in the full employment of work opportunity, because of race, creed, color, sex, national origin, or ancestry.
- (6) A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this Contract to be discriminatory or obstruct or prevent any person from complying with the provisions of this Contract or any order issued thereunder, or attempt, either directly or indirectly, to commit any act defined in this Contract to be discriminatory.
- (7) In the event of the Contractors non-compliance with the non-discrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled,

terminated or suspended in whole or in part and the Contractor may be declared Ineligible for further State contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975 and the rules, regulations, or orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations, or orders promulgated in accordance therewith, or as otherwise provided by law.

- (8) The Contractor will include the provisions of paragraphs (1) through (8) in every sub-contract and sub-contractor purchase order unless exempted by rules, regulations, or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action by April 18, 1975, so that such provisions will be binding upon each sub-contractor or vendor. The Contractor will take such action with respect to an sub-contracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with the sub-contractor or vendor as a result of such direction by the contracting agency, the Contractor may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

#### **ARTICLE 48. PREFERENCE OF BIDDERS, MATERIALS AND EQUIPMENT**

The selection of materials and equipment for the work shall be in accordance with the laws of Colorado which read substantially as follows:

"A resident bidder shall be allowed a preference against a non-residential bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the non-resident bidder is a resident (Title 8-19-101 to 103, CRS, as amended).

#### **ARTICLE 49. 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 as ESSENTIAL CONDITIONS of this Contract; and It is further understood and agreed that the work embraced in this Contract shall be commenced in the time to be specified in the Notice to Proceed.

It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work the new time limit fixed by such extension shall be of the essence of this Contract.

The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the parties hereto, that the stipulated time for the completion of the work described herein is a reasonable time for the 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 said Contractor shall neglect, fail or refuse to complete the work within the time specified in the Agreement, such failure shall constitute a breach of the Contract and the State of Colorado, acting by and through the Principal Representative shall be entitled to liquidated damages if and as specified in the Supplementary General Conditions of the Contract Documents or the Design/Build Agreement.

#### **ARTICLE 50. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT**

A. **NOTICE OF COMPLETION.** When the work is complete and ready for final inspection, the Contractor shall file a written Notice with the Architect/Engineer and Principal Representative that the work, in the opinion of the Contractor, is complete under the terms of the Contract.

B. **FINAL INSPECTION.** Within ten (10) days after the Contractor files written Notice that the work is complete, the Architect/Engineer, the Principal Representative, and the Contractor shall make a final inspection" of the project to determine whether the work has been completed in accordance with the Contract Documents (State Buildings Programs to be notified of inspection). A

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

- (a) Work to be completed, if any;
- (b) Work not in compliance with the drawings or specifications, if any;
- (c) Unsatisfactory work for any reason, if any.

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

**C. NOTICE OF ACCEPTANCE.** The Notice of Acceptance shall establish the completion date of the project.

**D. SETTLEMENT.** The Principal Representative shall not authorize final payment until all items on the punch list have been completed, the Notice of Acceptance Issued, and the Notice of Contractors Settlement published. If the work shall be substantially completed, but final completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of the Contractor, the Principal Representative in his discretion may release to the Contractor 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 advertise, the Contractor shall:

- 1 Deliver to the Principal Representative:
  - (a) All guaranties and warranties;
  - (b) All statements to support local sales tax refunds;
  - (c) Three (3) complete bound sets of required operating maintenance instructions; and
  - (d) One (1) set of drawings showing all job changes.
2. Demonstrate to the operating personnel of the Principal Representative:
  - (a) Proper operation and maintenance of all equipment.

Upon completion of the foregoing the project shall be advertised in accordance with the Notice of Contractor's Settlement by two publications of notice, the last publication appearing at least ten (10) days prior to the time of final settlement.

On the date of final settlement thus advertised, and after the Contractor has submitted a written Notice to the Principal Representative that no claims have been filed, 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 Contractor, the Principal Representative and the State Controller shall withhold from the Contractor 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 duly authorized agent or assignee. 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 Contractor, as set forth in the published Notice of Contractors 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 State Controller shall release to the Contractor all monies as are not the subject of such action at law.

## ARTICLE 51. WARRANTIES AND GUARANTIES

The Contractor shall guaranty his work for a period of one year from the date of the Notice of Acceptance.

In case of work performed for which warranties are required by the specifications, the Contractor shall secure the required warranties and deliver copies thereof to the Principal Representative upon completion of the work.

These warranties, as such, do not in any way lessen the Contractor's responsibilities under his contract. Whenever guaranties or warranties are required by the specifications for a longer period than one year, such longer period shall govern.

## **ARTICLE 52. GUARANTY INSPECTIONS AFTER COMPLETION**

The Architect/Engineer, the Principal Representative and the Contractor together shall make at least one complete inspection of the work after the work has been accepted. This inspection, the "Eleven-Month Guaranty Inspection" shall be made approximately eleven (11) months after the acceptance of the work. The Principal Representative shall schedule and so notify all parties concerned, including State Buildings Programs, of these inspections.

Written punch lists and reports of these inspections shall be made by the Architect/Engineer and forwarded to the Contractor, State Buildings Programs, and all other participants within ten (10) days after the completion of the inspections. The Contractor 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 Contractor fails to promptly correct all deficiencies and defects shown by this report, the Principal Representative may do so, after giving the Contractor 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 Contractor 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 53. 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 such portions of the work has not expired and even if the work has not been finally accepted. Such possessions 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 Architect/Engineer, State Buildings Programs and the Contractor. Any and all areas so occupied will be subject to a final inspection when the Contractor complies with Article 50A of the General Conditions.

## **ARTICLE 54. UTILITIES**

**A. TEMPORARY UTILITIES.** The Contractor shall provide and pay for the installation for all temporary utilities required to supply all the power, light and water needed by him and other 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 shall remove all such temporary utilities from the site. The Owner shall pay for all consumption of power, light and water used by the Contractor and the other contractors, without regard to whether such items are metered by temporary or permanent meters. The superintendent shall have full authority over all trades to prevent waste. The cut-off date on permanent meters shall be either the agreed date of occupancy or the date of final acceptance of the project, whichever shall be the earlier date.

**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 Contractor 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 Contractor shall secure proper written permission before executing such new construction. The Contractor will be required to furnish a proper release before final acceptance of the work.

## **ARTICLE 55. SANITARY PROVISIONS**

The Contractor shall provide and maintain suitable, weather tight, painted, sanitary toilet facilities for any and all workmen engaged on the work, for the entire construction period, and in strict compliance with the requirement of all applicable codes, regulations, laws and ordinances. The Contractor shall keep toilets clean and supplied with accessories at all times, and when toilet facilities are no longer required he 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 any Contractor.

#### **ARTICLE 56. TEMPORARY HEAT**

The Contractor shall furnish and pay for all temporary heat. The Contractor shall furnish all the labor, facilities and equipment necessary to supply temporary heat and shall be responsible for the installation, operation, maintenance and removal of such facilities and equipment subject to the approval of the Architect/Engineer and the Principal Representative.

The permanent heating system in whole or in part shall not be used for temporary heat. If the Contractor desires to put the permanent heating system into operation for testing purposes, in whole or in part, he shall set it into operation and furnish the necessary fuel and manpower to safely operate, protect and maintain that heating system.

Any operation of all or any part of the permanent heating system shall not constitute acceptance of the system, nor shall it relieve the Contractor of his one-year guaranty of the system. The one-year period of said guaranty should not commence, in any event, until the final acceptance of the entire project.

#### **ARTICLE 57. PROTECTION AGAINST WEATHER**

The Contractor shall, at all times, provide protection against weather, so as to maintain all work, materials, apparatus and fixtures free from injury or damages. At the end of the work day, all new work likely to be damaged shall be covered or otherwise protected as required.

Wet work shall not be performed when temperature is below 40°F or is likely to go below 40°F within the ensuing 48 hours, except when sufficient protective heat is provided and the approval of the Architect/Engineer and Principal Representative is obtained in writing.

The Contractor shall provide weather tight storage on substantial floors at least six (6) inches off the ground for all materials requiring protection from the weather.

#### **ARTICLE 58. TEMPORARY OFFICE FACILITIES AT THE SITE**

Temporary Office Facilities and Temporary Housing Facilities shall be addressed via separate contract between the Owner and the Contractor.

#### **ARTICLE 59. BENCH MARK AND BATTER BOARDS**

A permanent bench mark, approved by the Contractor's Architect/Engineer, from which all grades are to be taken shall be established near the site of the work by the Owner. From this bench mark, the Contractor shall ascertain all grades and levels to the building as needed. The Contractor's design drawings will include all necessary information to establish the bench mark.

The Contractor shall stake out the building, rigidly set the required batter boards and be responsible for their maintenance and continued accuracy.

#### **ARTICLE 60. WORK IN EXISTING BUILDINGS**

If the work involves an addition to an existing building, the Contractor shall erect and maintain during the progress of the work, suitable dust-proof partitions to protect such building and the occupants thereof.

If any portions of an existing building are to be remodeled or repaired, such portions shall be adequately partitioned off with dust-proof partitions. All remodeling work shall be scheduled for approval.

The various Contractors shall schedule their work jointly, in order that each may accomplish his work within such existing building in an orderly fashion, or in such manner as to permit full use of the building and without impairment of any existing facilities.

#### **ARTICLE 61. UNSUITABLE CONDITIONS**

The Contractor shall not work at any time, or permit any work to be done, under any conditions unsuited to its perfect execution, safety and performance. Any cost caused by ill-timed work shall be borne by the Contractor responsible therefor.

## **ARTICLE 62. SIGN**

~~The Contractor shall erect one sign only at the site to identify the project. The Contractor will prepare a drawing specifying the nomenclature on the sign for Principal Representative approval. The sign panel shall be 3' x 4' in size and made of 3/4" exterior type plywood, suitably cased at the exposed edges, properly painted and lettered. The sign shall be placed in a prominent location, properly supported in position and maintained in good condition during the life of the project.~~

## **ARTICLE 63. MEASUREMENTS**

Before ordering any material or doing any work, the Contractor shall verify all measurements at the project and shall be responsible for the correctness of same. The Owner shall not be responsible for the scaling of Drawings.

END