ARCHITECT/ENGINEER AGREEMENT TERMS AND CONDITIONS
DESIGN/BID/BUILD
(STATE FORM SC-5.1TC)
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EXHIBITS:
A. Architect/Engineer Proposal (Including Design Services Schedule and Certificates of
   Insurance) (attached to SC-5.1)
B. Wage Rates Schedule (attached to SC-5.1)
C. Approved State Building Codes (Exhibit A of the Building Code Compliance Policy:
   Coordination of Approved Building Codes, Plan Reviews and Building Inspections)
D. Code Compliance Plan Review Procedures (Exhibit B of the Building Code Compliance
   Policy: Coordination of Approved Building Codes, Plan Reviews and Building Inspections)
E. Design Program/Program Plan (if applicable) (attached to SC-5.1)
F. Certification and Affidavit Regarding Unauthorized Immigrants (required at contract
   signing prior to commencing work) (attached to SC-5.1)
ARTICLE 1. BASIS OF COMPENSATION

1.1 PAYMENT, as set forth in SC-5.1

1.1.1 The Total Compensation, as set forth in SC-5.1

1.1.2 Monthly Payments, as set forth in SC-5.1

1.2 ADDITIONAL COMPENSATION

1.2.1 The Scope of Services to be provided pursuant to this Agreement includes all architectural and engineering services described herein, all services to be provided by the Architect/Engineer as described in Exhibit A, Architect/Engineer’s Proposal including items which under usual contracting for Architectural/Engineering services could be considered as additional services, and reimbursable items excepting those specifically identified in Article 2 of this Agreement to be reimbursed. All compensation set forth in Article 1.1 hereof shall fully compensate the Architect/Engineer and there shall be no further reimbursement or payment therefore, other than for Additional Services as hereinafter described. For purposes of this Agreement, Additional Services are defined as those not included within the Scope of Services as set forth in Article 1.1 or reasonably inferable therein, are not consistent with the approved Project program, and are specifically requested and approved in writing by the Principal Representative.

1.2.2 Subject to the provisions of paragraphs 6.4.1 and 6.4.2, if the Architect/Engineer is caused Additional Service, drafting or other expense due to changes ordered by the Principal Representative or by other circumstances beyond the Architect/Engineer’s control and not occasioned by any neglect or default of Architect/Engineer, then the Architect/Engineer shall be reimbursed for such Additional Service.

1.2.3 Direct personnel expense is defined as the direct salaries of all the Architect/Engineer's personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

1.2.4 The cost of such Additional Service including Principal Architect/Engineer's time, shall be paid at the agreed upon rates shown in the attached Wage Rate Schedule, Exhibit B.

1.2.5 For additional services of consultants, including associate Architect/Engineer, structural, mechanical, electrical and civil engineering services, the multiple 1.15 times the amounts billed to the Architect/Engineer for such services.

1.2.6 In addition, the Architect/Engineer shall also be reimbursed as described in Article 2.1 and paid as detailed in paragraph 1.2.4 related to the Additional Services.
1.2.7 The Architect/Engineer shall maintain an accurate cost accounting system as to all such additional expenses and shall make available to the Principal Representative all records, canceled checks and other disbursement media to substantiate any and all requests for payments hereunder.

1.2.8 The expenditures under this provision shall be disapproved unless the Architect/Engineer first shall have filed with the Principal Representative an estimate of the maximum cost of such additional service and been authorized, in writing, by the Principal Representative to proceed. If such an estimate is filed with the Principal Representative, then payment shall not exceed the maximum cost estimated by the Architect/Engineer and approved by the Principal Representative.

1.2.9 Payment for such Additional Services shall be monthly upon presentation of the Architect/Engineer's statement of services rendered.

1.3 PAYMENTS WITHHELD

1.3.1 No deductions shall be made from the Architect/Engineer's fee on account of penalty, liquidated damages, or other sums withheld from payments to the Contractor or on account of changes in Construction other than those for which the Architect/Engineer is held legally liable.

1.4 ARCHITECT/ENGINEER'S ACCOUNTING RECORDS

1.4.1 Records of the Architect/Engineer's direct personnel, consultant, and reimbursable expense pertaining to this Project and records of accounts between the Principal Representative and Contractor shall be kept on a generally recognized accounting basis and shall be available to the Principal Representative or his authorized representative at mutually convenient times and extending to three (3) years after final payment under this Agreement

1.5 CONDITION PRECEDENT, as set forth in SC-5.1

1.6 INTENT OF DOCUMENTS

1.6.1 In the event any disagreement exists as to the requirements of this Agreement and its exhibits, or if a conflict occurs between or within the requirements of this Agreement and its exhibits, the following order of precedence shall be followed to resolve the disagreement or conflict.

1. The Special Provisions, Article 10 of this Agreement (State Form SC-5.1);
2. Any Amendment of this Agreement;
3. All other terms of this Agreement (other than the Special Provisions); and

The Special Provisions of this Agreement, Article 10, shall in all cases, and without exception, take precedence, rule and control over all other provisions of this Agreement, any exhibits or amendments.

ARTICLE 2. REIMBURSABLE EXPENSE

2.1 REIMBURSEMENT, as set forth in SC-5.1

2.1.1 Basic And Additional Services, as set forth in SC-5.1
2.1.2 Items For Reimbursement, as set forth in SC-5.1

ARTICLE 3. BASIC SERVICES OF ARCHITECT/ENGINEER

3.1 THE SERVICES

3.1.1 Professional Services, as set forth in SC-5.1

3.1.2 These services shall be performed by the Architect/Engineer or by consultants licensed or registered as required by the State of Colorado. If these special consulting services are to be performed by professionals in the Architect/Engineer’s employ, then the services must currently be and have been, for at least two (2) years previously, regularly a service of the Architect/Engineer’s organization. In the event the Architect/Engineer does not have as part of his regular staff and services, certain professional consultants and consulting services, such as but not limited to, structural, mechanical, electrical, acoustical and architectural, then such consulting services shall be performed by practicing professional consultants.

3.1.3 All professional consultants, staff or practicing, must be retained for the life of the project; provided, however, that acceptable replacements must be approved in writing, by the Principal Representative which approval shall not be unreasonably withheld.

3.1.4 Prior to designating a professional to perform any of these services as indicated in paragraph 11.13, the Architect/Engineer shall submit the name of such professional, together with a resume of his or her training and experience in work of like character and magnitude of the project being contemplated, to the Principal Representative, and receive approval in writing therefrom.

3.1.5 No consultant shall be engaged or perform work on the project wherein a conflict of interest exists, such as being connected with the sale or promotion of equipment or material which may be used on the project, provided however, that in unusual circumstances and with full disclosure to the Principal Representative of such interest, the Principal Representative may permit a waiver, in writing, in respect to the particular consultant.

3.1.6 The Architect/Engineer shall make certain to the best of its knowledge, information and belief, that the drawings and specifications prepared by him are in compliance with the Approved Codes as adopted by State Buildings Program (as a minimum standard) as indicated in Exhibit C, Approved Codes. Other or more restrictive standards as specified by the Principal Representative are as indicated in Exhibit C. Drawings and specifications are to be reviewed by the State’s approved Code Review Agents at the appropriate phases and with the required information as described in the attached Code Compliance Reviews, Exhibit D.

3.2 DEVELOPMENT OF THE PROJECT

A. PRE-DESIGN PHASE
   (As designated and defined in the Architect/Engineer’s Proposal, Exhibit A.)

B. SCHEMATIC DESIGN PHASE

.1 The Architect/Engineer shall attend all conferences as may be requisite to a complete understanding of the Project. The Architect/Engineer shall document all such conference notes and distribute same to the Principal Representative.
.2 The Architect/Engineer shall review the Design Program and/or the Facilities Program Plan (Exhibit E), furnished by the Principal Representative to ascertain the requirements of the Project and shall refine the design in accordance with Exhibit E.

.3 When agreement has been reached on the Schematic Design, the Architect/Engineer shall prepare a written report, accompanied by Drawings, setting forth the following:

(a) Analysis of the structure as it relates to the Approved Codes as defined in Exhibit C, including responses to the State's Code Review Agent;
(b) Recommended site location;
(c) Scope of site development;
(d) Correlation of spaces with approved State standards;
(e) Conceptual drawings of floor plans, elevations and sections;
(f) Conceptual drawings and descriptions of building plumbing, mechanical and electrical systems;
(g) Area computations, gross square footage, net square footage, volume;
(h) Outline of proposed construction materials;
(i) Review of the time anticipated for Construction Phase;
(j) Architect/Engineer's estimate of Probable Construction Cost.

.4 The above Schematic Design data shall be approved in writing by both the Principal Representative and State Buildings Program before commencement of the next phase.

C. DESIGN DEVELOPMENT PHASE

.1 The Architect/Engineer shall prepare a written report and drawings outlining in detail Design Development Documents from the approved Schematic Design Report. The report, when submitted for approval, shall include:

(a) Analysis of the structure as it relates to the Approved Codes as defined in Exhibit C, including responses to the State's Code Review Agent;
(b) Site development drawings, defining the proposed scope of development including earthwork, surface development, and utility infrastructure;
(c) Plans in one-line format of the proposed plumbing, mechanical, and electrical systems as necessary to define size, location, and quantity of equipment, materials, and constructions;
(d) Floor plans including proposed movable equipment and furnishings and exterior elevations;
(e) Proposed architectural finish schedule, HVAC, plumbing, and electrical fixture schedules;
(f) Outline specifications including Division 1 and cut-sheets and/or samples of proposed materials, equipment, system components per CSI format divisions;
(g) Architect/Engineer’s adjustments to the Schematic Design estimate of Probable Construction Costs;
(h) Review of the time anticipated for the Construction Phase.
If the Principal Representative requires, in writing, the Architect/Engineer shall prepare models, renderings or perspectives to portray fully the project in whole or in part as additional services to the Principal Representative.

The final Design Development Documents shall be approved in writing by both the Principal Representative and State Buildings Program before commencement of the next phase.

D. CONSTRUCTION DOCUMENTS PHASE

The Architect/Engineer shall prepare the final Construction Documents from the approved Design Development Documents. These Construction Documents, when submitted for approval, shall include:

(a) Complete architectural, structural, plumbing, mechanical and electrical construction drawings. These drawings shall be on durable and reproducible material. If the Project is a structure, the title sheet of the Project shall reflect an accurate take-off of:
   (1) Gross square footage,
   (2) Gross building volume.

   This takeoff shall be made in accordance with AIA Document-D101, current Edition. In addition, the net assignable square footage shall be shown when requested.

(b) Complete architectural, structural, mechanical and electrical specifications.
   The format for these technical specifications shall be the current edition of MasterFormat published by the Construction Specifications Institute.

(c) The Architect/Engineer’s adjustments to the Design Development estimate of Probable Construction Cost.

The Architect/Engineer shall cooperate with the State’s Code Review Agent to check the Construction Drawings and Specifications for compliance with the Approved Codes as defined in Exhibit C, and shall include the minimum data as required by the Code Compliance Review Exhibit D.

The final Construction Documents shall be approved in writing by both the Principal Representative and State Buildings Program before commencement of the next phase.

E. BIDDING PHASE

The Architect/Engineer shall assist the Principal Representative in obtaining competitive bids (including attending the bid opening if requested by the Principal Representative), bid evaluation, determination of the successful bid and in awarding and preparing contracts for construction.

Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary General Conditions, Specifications, Drawings and all published addenda.
.3 If requested by the Principal Representative the Architect Engineer shall distribute the Bidding Documents to prospective bidders and request their return upon completion of the bidding process.

.4 The Architect/Engineer shall participate in or, at the Principal Representative's direction, shall organize and conduct a pre-bid conference for prospective bidders.

.5 The Architect/Engineer shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders and shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

.6 Copies Of Documents, as set forth in SC-5.1

F. CONTRACT ADMINISTRATION PHASE

.1 The Architect/Engineer shall become familiar with the terms and conditions of the latest edition of the State’s General Conditions of the Construction Contract SC-6.23 for construction and shall administer the Contract for construction in accordance with such terms and conditions.

.2 The Architect/Engineer, its structural, mechanical and electrical engineers will visit the site at intervals appropriate to the stage of construction, or as may be otherwise agreed by the Principal Representative in writing to become generally familiar with the progress and quality of the Work to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. Observation may extend to all or any part of the work and to the preparation, fabrication or manufacture of materials. However, the Architect/Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality of the Work. The Architect/Engineer shall keep the Principal Representative informed of the progress and quality of the Work, and shall endeavor to guard the Principal Representative against defects and deficiencies in the Work.

.3 The Architect/Engineer shall attend construction progress meetings to monitor the construction and perform the duties required by this Article 3, including assisting the Principal Representative in reaching an informal partnering agreement with the Contractor. Subject to the requirements of Article 1.2, attendance at meetings subsequently required by such an informal partnering agreement shall be reimbursed as Additional Services but only to the extent in excess of those otherwise reasonably necessary to perform all architectural/engineering services described herein. If, through no fault of the Architect/Engineer, trips to observe construction during the Construction Phase of the Project are required in excess of those reasonably necessary to perform all architectural/engineering services described herein, the Architect/Engineer's compensation for the Construction Administration Phase shall be adjusted as an Additional Service for the cost to the Architect/Engineer of such trips, and paid in accordance with Article 1.2.

.4 The Architect/Engineer shall review and approve or take other appropriate action upon Contractor's submittals such as shop drawings, product data and samples as indicated in the Contract Documents, but only for the limited purpose of checking for
conformance with information given and the design concept expressed in the
Contract Documents. The Architect/Engineer shall review Contractor requests for
information and other submittal schedules and shall agree to reasonable times for
initial reviews. The Architect/Engineer's action shall be taken in conformity with
approved submittal schedules and with such reasonable promptness as to cause
no delay in the Work or in the construction by separate contractors of the Principal
Representative, while allowing sufficient time in the Architect/Engineer's
professional judgment to permit adequate review. Review of such submittals is not
conducted for the purpose of determining the accuracy and completeness of other
details such as dimensions and quantities or for substantiating instructions for
installation or performance of equipment or systems designed by the Contractor, all
of which remain the responsibility of the Contractor to the extent required by the
Contract Documents. The Architect/Engineer's review shall not constitute approval
of a specific item nor indicate approval of an assembly of which the item is a
component. When professional certification of performance characteristics of
materials, systems or equipment is required by the Contract Documents, the
Architect/Engineer shall be entitled to rely upon such certification to establish that
the materials, systems or equipment will meet the performance criteria required by
the Contract Documents. In addition, the Architect/Engineer shall review, and if
applicable comment on, the Contractor's construction schedule for conformity with
the requirements of the Contract Documents.

.5 All changes in the work shall be documented on Change Order/Amendment State
Forms SC-6.31 and SC-6.0, supplied by the Principal Representative, and the
Architect/Engineer shall keep a current record of all variations or departures from
the Contract Documents as originally approved.

.6 The Architect/Engineer shall prepare all Change Orders/Amendments for the
Principal Representative and recommend for approval/disapproval in accordance
with the Contract Documents, the Contract Sum, the Contract Time and Code
Compliance. If necessary the Architect/Engineer shall prepare, reproduce and
distribute Drawings and Specifications to describe Work to be added, deleted or
modified. The Architect/Engineer shall review all requests for changes in the Work
with such reasonable promptness as to cause no delay in the Work or in the
activities of the Principal Representative, Contractor or separate contractors of the
Principal Representative, while allowing sufficient time in the Architect/Engineer's
professional judgment to permit adequate review.

.7 Every Change Order/Amendment must be approved in writing by the Principal
Representative and the Architect/Engineer, and must also be approved and signed
by State Buildings Program and then validated by the State Controller's signature
prior to commencement of the change in the Work.

.8 The Architect/Engineer shall prepare and issue Emergency Field Change Orders as
required by the Principal Representative, but such Emergency Field Change Orders
shall be issued only in accordance with the policies of State Buildings Program to
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 Change 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.

.9 Unless otherwise agreed, the Architect/Engineer or an appropriate consultant shall observe for contract compliance the following, as a minimum, if applicable:

(a) Bearing surfaces of excavations before concrete is placed;
(b) Reinforcing steel after installation and before concrete is placed;
(c) Structural concrete;
(d) Laboratory reports on all concrete;
(e) Structural steel during and after erection and prior to its being covered or enclosed;
(f) Steel welding;
(g) Mechanical and plumbing work following its installation and prior to its being covered or enclosed;
(h) Electrical work following its installation and prior to its being covered or enclosed.

.10 The observation contemplated in this article does not include the responsibility to conduct testing, quantity surveys or field dimensions, but it does include the responsibility to confirm that tests were conducted as required in the Contract Documents as well as a review of the test results. The Architect/Engineer may rely upon the test reports provided by the Principal Representative.

.11 The Architect/Engineer shall exercise due diligence to safeguard the State of Colorado against defects, deficiencies, noncompliance with the Contract Documents, and/or unsatisfactory workmanship. If, in the opinion of the Architect/Engineer, the work is not being carried out in a sound, efficient and skillful manner, the Architect/Engineer shall promptly notify the Principal Representative in writing setting forth the reasons.

.12 The Architect/Engineer shall keep accurate accounts with respect to the construction on the Project including fiscal accounting, changes in the Work, directives, and other documentation to establish a clear history of the Project.

.13 If at any time the Architect/Engineer delegates any of its responsibility for the observation of the Work to some other person, such other person must be properly qualified by training and experience to observe the work. The Principal Representative and State Buildings Program may review and approve the qualifications of all persons in writing, other than the Architect/Engineer, performing the functions of the Architect/Engineer in respect to the services required by this agreement.

.14 The Architect/Engineer shall review and approve the contractor’s itemized schedule of values, subject to final approval by the Principal Representative, and see to the proper issuance of State Form SBP-7.2, used as an Application and Certificate for Contractor’s Payment. The approval of the Architect/Engineer shall be for overall adequacy of line item detail and reasonableness as a basis for evaluating the general allocation of costs and the related progress of the work only and shall impose no duty on the Architect/Engineer to review or verify the accurateness of the line item values proposed by the Contractor. The Architect/Engineer will,
within five (5) working days after the receipt of each Contractor's Project Application for Payment, review the Contractor's Project Application for Payment and either execute an Application and Certificate for Contractor's Payment (State Form SBP-7.2) to the Principal Representative for such amounts as the Architect/Engineer determines are properly due, or notify the Principal Representative and the Contractor in writing of the reasons for withholding a Certificate. If the Architect/Engineer certifies an amount different from the amount requested or otherwise alters the Contractor's application for payment, a copy shall be forwarded to the Contractor.

If the Architect/Engineer is unable to certify all or portions of the amount requested due to the absence or lack of required supporting evidence, the Architect/Engineer shall advise the Contractor of the deficiency. If the deficiency is not corrected at the end of ten (10) days, the Architect/Engineer may either certify the remaining amounts properly supported to which the Contractor is entitled, or return the application for payment to the Contractor for revision with a written explanation as to why it could not be certified.

.15 The execution and issuance of a State Form SBP-7.2, Application and Certificate for Contractor's Payment shall constitute a representation by the Architect/Engineer to the Principal Representative that, based on the Architect/Engineer's observations at the site and on the data comprising the Contractor's Project Application for Payment, the construction has progressed to the point indicated; that to the best of the Architect/Engineer's knowledge, information and belief, the quality of construction is in accordance with the Contract Documents and that the Contractor is entitled to payment in the amount certified. However, the issuance of a State Form SPB 7.2, Application and Certificate for Contractor’s Payment shall not be a representation that the Architect/Engineer has made any examination to ascertain how or for what purpose the Contractor has used the monies paid on account of previously issued Certificates.

.16 The Architect/Engineer shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Contractor and all subcontractors. All decisions involving interpretations of the Contract Documents by the Architect/Engineer, and all decisions in matters relating to the execution and progress of the Work, shall be made within a reasonable time and shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. All interpretations shall be in writing or in graphic form and the Architect/Engineer shall send a copy of to the Principal Representative. The Architect/Engineer shall exercise due diligence to be reasonably available to the Contractor to timely interpret and make decisions with respect to questions relating to the design or concerning the Contract Documents.

.17 The Architect/Engineer shall make judgments regarding whether directed work is extra or outside the scope of Work required by the Contract Documents at the time any direction or interpretation is first given. The Architect/Engineer shall endeavor to respond to any written request by the Contractor for a judgment regarding whether any directed work is included within the performance required by the Contract Documents within three (3) business days of receipt of such request.
.18 If the Contractor gives Notice of any claim regarding the interpretation, decision, judgment or direction of the Architect/Engineer, or otherwise, the Architect/Engineer shall provide to the Principal Representative on request such available information as may assist the Principal Representative in evaluating the claim. In the event either the Principal Representative or the Contractor elect to require the other party to participate in facilitated negotiations, the Architect/Engineer shall assist the Principal Representative as required and shall participate in such negotiations to the extent requested by either the facilitator or the Principal Representative. Unless it is the written decision of the facilitator (which includes the basis for the decision), that the decision or judgment of the Architect/Engineer was wholly incorrect, the Architect/Engineer shall be reimbursed for such assistance or participation as an Additional Service in accordance with Article 1.2.

.19 The Architect/Engineer shall have the authority to reject constructed work which does not conform to the Contract Documents, and whenever, in the Architect/Engineer's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect/Engineer shall have authority to require special inspection or testing of constructed work in accordance with the provisions of the Contract Documents, whether or not such constructed work is then fabricated, installed or completed, provided, however, that the Architect/Engineer shall take such action only after consultation with the Principal Representative. However, the Architect/Engineer's authority to act under the Contract Documents and any decision made by the Architect/Engineer in good faith either to exercise or not to exercise such authority shall not give rise to any duty on the part of the Architect/Engineer to the Contractor, any subcontractor of any tier, any of their agents or employees, or any other person performing any of the construction.

.20 When the Work is substantially complete in the opinion of the Contractor, the Contractor, under Article 41(A) of the General Conditions, is required to file a written Notice with the Architect/Engineer with an attached preliminary punch-list of remaining items to be completed or corrected. The Architect/Engineer shall thereafter notify State Buildings Program and the Principal Representative, that the work, in the opinion of the Contractor, is substantially complete under the terms of the Contract. This Notice shall receive prompt action by the notified parties.

.21 When the Architect/Engineer determines after review of the Contractor's written Notice that the Work or a portion of the Work is ready for an inspection to determine whether the Work is substantially complete in accordance with Article 41(A) of the General Conditions of the Contract, the Architect/Engineer with the Principal Representative and the Contractor shall, within ten days of receipt of the Contractor's Notice, conduct an inspection to determine whether the Work is substantially complete and in accordance with the requirements of the Contract Documents. State Buildings Program shall be notified of the inspection. If the construction has been completed to the required state, a punch list shall be made by the Architect/Engineer in concert with the Principal Representative and Contractor 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;
(d) Date for Completion of the Punch List Items.

.22 If the Architect Engineer determines, after consultation with the Principal Representative, that the Work or a portion of the Work, is substantially complete in accordance with the criteria outlined in Article 41 of the General Conditions of the Contract for Construction, then the Architect/Engineer shall prepare the Notice of Substantial Completion, State Form SBP-07 or the Notice of Partial Substantial Completion, State Form SBP-071, which the Architect Engineer shall transmit in writing to the Contractor and the Principal Representative for signature. The required number of copies of the punch list must be countersigned by the Contractor and the Principal Representative and will then be transmitted by the Architect/Engineer to the Contractor, the Principal Representative, and State Buildings Program. 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 Architect/Engineer and State Buildings Program.

.23 The Principal Representative may require the Architect/Engineer to make a reasonable number of additional inspections to confirm the completion of the punch list by the Contractor.

.24 The Notice of Substantial Completion, or the Notice of Partial Substantial Completion, shall establish the Date of Substantial Completion or the Date of Partial Substantial Completion and such date shall be the date of commencement of the Contractor’s twelve month guarantee, except to the extent stated otherwise in accordance with the limited exceptions provided in the General Conditions of the Contract. The Notice of Substantial Completion, or the Notice of Partial Substantial Completion, shall state the responsibilities of the Principal Representative and the Contractor for security, maintenance, heat, utilities, property insurance premiums and damage to the finished construction as required. The Notice of Substantial Completion, or the Notice of Partial Substantial Completion, shall be submitted to the Principal Representative and the Contractor for their written acceptance of the responsibilities assigned to them in such Notice. The Notice of Substantial Completion, or the Notice of Partial Substantial Completion, shall attach and incorporate the Architect/Engineer’s final punch list and Contractor’s schedule for the completion of each and every item identified on the final punch list as required by Article 41C(6) of the General Conditions of the Contract.

.25 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 Architect/Engineer 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 Architect/Engineer, State Buildings Program and the Construction Manager. 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 Architect/Engineer shall assist the Principal
Representative in completing and executing State Form SBP-01 Notice of 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 contractor
complies with Article 41, Completion, Final Inspection, Acceptance and Settlement.

.26 The Contractor shall forward the completed close-out documents to the
Architect/Engineer for signature. Upon receipt from the Contractor of written notice
that the Architect/Engineer’s final punch list is sufficiently complete the
Architect/Engineer shall make a final inspection of work remaining on the final
punch list and prepare the Pre Acceptance Checklist State Form SBP-05. The
Architect/Engineer upon receipt and verification that the close-out documents and
the items of work are complete, shall prepare and forward to the Principal
Representative a letter (including the signed close-out documents) stating that to
the best of the Architect/Engineer’s knowledge, information and belief, and on the
basis of observations and inspections, the Work, or designated portion hereof, has
been completed in accordance with the terms and conditions of the Contract
Documents and is ready for the issuance of a Notice of Acceptance or Notice of
Partial Acceptance as appropriate. A Notice of Partial Acceptance shall be based
only upon the work for which a Notice of Partial Substantial Completion has been
executed and all necessary items of work and other requirements have been
completed.

.27 Upon receipt from the Architect/Engineer of the letter recommending issuance of a
Notice of Final Acceptance or a Notice of Partial Final Acceptance, the Principal
Representative shall sign the Notice of Acceptance, State Form SC-6.27, and
forward to the Contractor for its approval and signature. The date of the Notice of
Acceptance shall establish the date of final completion of the project. The Notice of
Acceptance must be fully executed before final payment is authorized or the project
advertised for Final Settlement.

.28 The Architect/Engineer shall receive and forward to the Principal Representative for
review, written warranties and related close-out documents assembled by the
Contractor and reviewed and approved by the Architect/Engineer as consistent with
the Contract Documents. A summary of all such requirements shall be located
consistently within individual sections of the Specifications. When such materials
have been received and approved the Architect/Engineer shall certify the
Contractor’s Final Application for Payment and forward the same to the Principal
Representative

.29 Except as otherwise agreed below in 3.2.G, POST CONSTRUCTION PHASE, the
Architect/Engineer, the Principal Representative and the Contractor shall make at
least two complete inspections of the work after the work has been accepted. One
such inspection, the Six-Month Warranty Inspection, shall be made approximately
six (6) months after the Date of Substantial Completion or the Date of Partial
Substantial Completion; and another such inspection, the Eleven-Month Warranty
Inspection, shall be made approximately eleven (11) months after the Date of
Substantial Completion or the Date of Partial Substantial Completion. The Principal
Representative shall schedule and so notify all parties concerned, including State
Buildings Program, of these inspections.
Written lists of defects and deficiencies and reports of these observations shall be made by the Architect/Engineer and forwarded to the Contractor and all of the other participants within ten (10) days after the completion of each observation. The Contractor is obligated in its agreement with the Principal Representative to 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 Architect/Engineer and the Principal Representative. The Architect/Engineer shall follow through on all list items and notify the Principal Representative when such have been completed.

G. POST CONSTRUCTION PHASE
(As designated and defined in the Architect/Engineer Proposal, Exhibit A.)

ARTICLE 4. TIME

4.1 DESIGN SERVICES SCHEDULE

4.1.1 The Architect/Engineer will complete the phases of project development in accordance with the Architect/Engineer's Design Services Schedule included in Exhibit A. The Architect/Engineer shall submit for the Principal Representative's approval, a Project Design Services Schedule for the performance of the Architect/Engineer's services which may be adjusted as required, and which shall include allowances for the periods of time required for the Principal Representative's review and approval of submissions and for approvals of the authorities having jurisdiction over the project. This schedule, when approved by the Principal Representative, shall not, except for reasonable cause, be exceeded by the Architect/Engineer.

4.2 TERM

4.2.1 The term of this agreement will end upon expiration of the one (1) year warranty period, or upon subsequent completion and acceptance by the Principal Representative of the Warranty Work identified or in progress at the end of such one (1) year warranty period.

ARTICLE 5. THE PRINCIPAL REPRESENTATIVE'S RESPONSIBILITIES

5.1 THE RESPONSIBILITIES

5.1.1 The Principal Representative shall:

(a) Provide full information as to his requirements for the Project through the State Buildings Program Delegate. If a State Buildings Program Delegate has not been authorized, then the Principal Representative will work with State Buildings Program to designate an individual to act on behalf of the Principal Representative as per (b), (c), (d), (e) and (f) as listed below:

(b) Designate a representative authorized to act in his/her behalf as indicated in paragraph 11.11. The representative shall examine documents submitted by the Architect/Engineer and render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect/Engineer's work. The representative shall observe the procedure of issuing orders to contractors only through the Architect/Engineer.

(c) Establish the Fixed Limit of Construction Cost.
(d) Furnish the Architect/Engineer a certified survey of the site, giving, as required, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the building site; locations, dimension and complete data pertaining to existing buildings, other improvements and trees; full information as to available service and utility lines both public and private; and test borings and pits necessary for determining subsoil conditions.

(e) Secure and pay for structural, chemical, mechanical, soil mechanics or other tests and reports if required.

(f) Arrange and pay for such legal, audit and insurance counseling services as may be required for the Project.

5.1.2 If the representative observes or otherwise becomes aware of any defect in the Project, he shall give prompt written notice thereof to the Architect/Engineer.

ARTICLE 6. PROJECT CONSTRUCTION COST

6.1 BUDGETING AND FIXED LIMIT OF CONSTRUCTION COST

6.1.1 A Fixed Limit of Construction Cost for the Project shall be established by the Principal Representative incorporating the portion of the Project Budget for all construction of all elements of the Project designed or specified by the Architect/Engineer. The Architect/Engineer shall evaluate the Project Budget and the Fixed Limit of Construction Cost as it pertains to construction of all elements of the Project designed or specified by the Architect/Engineer.

6.2 COST OF THE WORK

6.2.1 The Architect/Engineer's estimate of Probable Construction Cost means the cost of the work to the Principal Representative, but such cost shall not include any Architect/Engineer's or special consultant's fees incurred by the Principal Representative or equipment installed by the Principal Representative under separate contract unless the Architect/Engineer is required by the Principal Representative to prepare drawings and specifications, and observe the installation of such equipment.

6.3 OWNER FURNISHED MATERIAL

6.3.1 When labor or material is furnished by the Principal Representative below its market cost, the cost of the work shall be computed upon the market cost as to such labor or materials furnished by the Principal Representative.

6.4 FIXED LIMIT OF CONSTRUCTION COST EXCEEDED

6.4.1 It is recognized that neither the Architect/Engineer nor the Principal Representative has control over the cost of labor, materials or equipment, over the subcontractors’ methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect/Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project Budget or the Fixed Limit of Construction Cost. Nothing contained in this Agreement shall otherwise relieve the Architect/Engineer from the responsibility of providing the services required to keep the Project within the Fixed Limit of Construction Cost for the Project.
6.4.2 If the Fixed Limit of Construction Cost for the Project, as established by the Principal Representative, is exceeded or projected to be exceeded by:

(a) The lowest figures from responsible proposals, if any, and the Architect/Engineer's final estimate of Probable Construction Cost, then the Principal Representative may, in its sole discretion, do one of the following:

1. Revise the Project scope and quality as required to reduce the construction cost.
2. Give written approval for the increase in the Fixed Limit of Construction Cost for the Project;
3. Authorize rebidding of the Project or portions of the Project within a reasonable time:
4. Abandon the Project, terminating this Agreement in accordance with Article 10; or

6.4.3 In the case of clause .1 above in the preceding paragraph, the Architect/Engineer shall, at no additional cost to the state, modify the drawings and specifications and/or any other appropriate items as may be necessary, to keep the cost of the Project within the Fixed Limit of Construction for the Project UNLESS: (1) such increase is specifically attributable to a scope increase in the Project requested in writing by the Principal Representative; or (2) the projected cost overrun occurs within the scope of an estimate of Probable Construction Cost furnished by the Architect/Engineer, together with the reasons and details, prior to the Principal Representative releasing the Construction Documents for bid.

ARTICLE 7. OWNERSHIP OF DOCUMENTS

7.1 INSTRUMENTS OF SERVICE

7.1.1 Drawings, specifications and other documents, include those in electronic form, prepared by the Architect/Engineer and the Architect/Engineer’s consultants are Instruments of Service for use solely with respect to this Project. The Architect/Engineer and the Architect/Engineer’s consultants shall be deemed the authors and owners of their respective instruments of service and shall retain all common law, statutory and other reserved rights, including copyrights.

7.1.2 Upon execution of this Agreement, the Architect/Engineer hereby grants to the State a perpetual nonexclusive license to reproduce and use, and permit others to reproduce and use for the State, the Architect/Engineer’s Instruments of Service solely for purposes of constructing, using and maintaining the Project or for future alterations, or additions to the Project. The Architect/Engineer shall obtain similar nonexclusive licenses from the Architect/Engineer’s consultants consistent with this Agreement. If, and upon the date the Architect/Engineer is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the State to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project, or for future alterations, or additions to the Project.
7.1.3 Any unilateral use by the State of the Instruments of Service for completing, using, maintaining, adding to or altering the Project or facilities shall be at the State’s sole risk and without liability to the Architect/Engineer and the Architect/Engineer’s consultants; provided, however, that if the State’s unilateral use occurs for completing, using or maintaining the Project as a result of the Architect/Engineer’s breach of this Agreement, nothing in this Article shall be deemed to relieve the Architect/Engineer of liability for its own acts or omissions or breach of this Agreement.

7.2 AS-BUILT DRAWINGS/RECORD DRAWINGS

7.2.1 The Architect/Engineer and its consultants shall, upon completion of the Construction Phase receive redline As-Built Drawings from the Contractor. These redline changes shall describe the built condition of the Project. This information and all of the incorporated changes directed by Bidding Addenda, Change Order/Amendment or Architect/Engineer’s Supplementary Instructions shall be incorporated by the Architect/Engineer and its consultants into a Record Drawings document provided to the Principal Representative in the form of an electro-media format and a reproducible format as agreed between the parties. The Architect/Engineer shall also provide the Principal Representative with the As-built Drawings received from the Contractor.

ARTICLE 8. INSURANCE

8.1 GENERAL
The Architect/Engineer 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 Architect/Engineer shall continue to provide evidence of such coverage to State of Colorado on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement. All below insurance policies shall include a provision preventing cancellation without thirty (30) days’ prior notice by certified mail. A completed Certificate of Insurance shall be filed with the Principal Representative and State Buildings Program 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”.

8.2 COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)
This insurance must protect the Architect/Engineer 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 Architect/Engineer or by any Subcontractor under him or anyone directly or indirectly employed by the Architect/Engineer 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.

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Aggregate</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Products – Completed Operations Aggregate</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Each Occurrence</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Personal Injury</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

The following coverages shall be included in the CGL:

1. Additional Insured status in favor of the State of Colorado.
2. The policy shall be endorsed to be primary and non-contributory with any insurance maintained by Additional Insureds.
3. A waiver of Subrogation in favor of all Additional Insured parties.
8.3 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

8.4 WORKERS’ COMPENSATION INSURANCE
The Architect/Engineer 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 Architect/Engineer 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 Architect/Engineer 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 Architect/Engineer shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

8.5 PROFESSIONAL ERRORS AND OMISSIONS LIABILITY
The Architect/Engineer promises and agrees to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts (indicated in the following table) as minimum coverage or such other minimum coverage as determined by the Principal Representative and approved by the State Buildings Program. The policy, including claims made forms, shall remain in effect for the duration of this Agreement and for at least three years beyond the completion and acceptance of the Work. The 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 associate thereof, or anyone directly or indirectly employed by Architect/Engineer. The Architect/Engineer shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of Renewals of said policy as they occur.

<table>
<thead>
<tr>
<th>For a Fixed Limit of Construction Cost</th>
<th>Minimum Coverage per Claim</th>
<th>Minimum Coverage in the Aggregate</th>
</tr>
</thead>
<tbody>
<tr>
<td>$999,999 and under</td>
<td>$250,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>$1,000,000 to $4,999,999</td>
<td>$500,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>$5,000,000 to $19,999,999</td>
<td>$1,000,000</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>$20,000,000 and Above</td>
<td>$2,000,000</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>
ARTICLE 9. TERMINATION OR SUSPENSION OF AGREEMENT

9.1 DEFAULT

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

9.2 TERMINATION FOR CONVENIENCE OF STATE

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

9.2.2 After receipt of the Notice of Termination, the Architect/Engineer shall exercise all reasonable diligence to accomplish the cancellation of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any services terminated by the Notice. With respect to such canceled commitments, the Architect/Engineer 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 the Principal Representative may require, which approval or ratification shall be final for all purposes of this clause, and

.2 Assign to the State, in a like manner, at the time, and to the extent directed by the Principal Representative, all of the rights, title, and interest of the Architect/Engineer 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.

9.2.3 The Architect/Engineer shall submit its termination claim to the Principal Representative promptly after receipt of a Notice of Termination, but in no event later than one (1) month from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request by the Architect/Engineer within such one (1) month period or authorized extension thereof. Upon failure of the Architect/Engineer to submit its 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 Architect/Engineer by reason of the termination and shall thereupon pay to the Architect/Engineer the amount so determined.

9.2.4 Subject to the provisions of paragraph 9.2.3 above, the Architect/Engineer and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to the Architect/Engineer by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Architect/Engineer and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel. Any such agreement shall be embodied in an amendment to this Agreement and the Architect/Engineer shall be paid the agreed amount.

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Rev. 7/2015
9.2.5 The Principal Representative under mutually agreed upon terms and conditions, will make partial payments to the Architect/Engineer against costs incurred by the Architect/Engineer in connection with the termination portion of this Agreement.

9.2.6 The Architect/Engineer agrees to transfer title and deliver to the State, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if this Agreement 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.

9.3 SUSPENSION

9.3.1 In the event of an occurrence of non-appropriation, including without limitation restriction, limitation, delay or retraction of appropriation, the Principal Representative may, upon the giving of seven (7) days written notice, suspend the performance of the Architect/Engineer after which the Architect/Engineer shall perform no further work and shall be due no further fees, reimbursable costs or other compensation until the Principal Representative gives notice that the period of suspension has ended. Suspension of services may be in whole or in part, as specified by the Principal Representative.

9.3.2 If the Project is suspended in whole or in part for more than three (3) months for cause not attributable to the Architect/Engineer's services, the Architect/Engineer shall be compensated for all services performed prior to receipt of written notice from the Principal Representative of such suspension or abandonment, together with reimbursable expenses then due and all termination expenses as defined in Article 9.2. If the Project is resumed after being suspended for more than six (6) months, the Architect/Engineer's compensation shall be equitably adjusted.

ARTICLE 10. SPECIAL PROVISIONS

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

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

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

10.4 INDEPENDENT CONTRACTOR
Architect/Engineer shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Architect/Engineer shall be
deemed to be an agent or employee of the State. Architect/Engineer 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 Architect/Engineer or any of its agents or employees. Unemployment insurance benefits will be available to Architect/Engineer and its employees and agents only if such coverage is made available by Architect/Engineer or a third party. Architect/Engineer shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Architect/Engineer shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Architect/Engineer 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.

10.5 COMPLIANCE WITH LAW
Architect/Engineer 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.

10.6 CHOICE OF LAW
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

10.7 BINDING ARBITRATION PROHIBITED
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

10.8 SOFTWARE PIRACY PROHIBITION, Governor's Executive Order D 002 00
State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Architect/Engineer hereby certifies and warrants that, during the term of this contract and any extensions, Architect/Engineer has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Architect/Engineer 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.

10.9 EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST, CRS 24-18-201 and 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. Architect/Engineer has no interest and shall not acquire any interest, direct or indirect, that
would conflict in any manner or degree with the performance of Architect/Engineer’s services and Architect/Engineer shall not employ any person having such known interests.

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

10.11 PUBLIC CONTRACTS FOR SERVICES, CRS 8-17.5-101
[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Architect/Engineer 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), Architect/Engineer shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a sub-consultant that fails to certify to Architect/Engineer that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Architect/Engineer (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the sub-consultant and the contracting State agency within three days if Architect/Engineer has actual knowledge that a sub-consultant is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a sub-consultant does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Architect/Engineer participates in the Department program, Architect/Engineer shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Architect/Engineer has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Architect/Engineer 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, Architect/Engineer shall be liable for damages.

10.12 PUBLIC CONTRACTS WITH NATURAL PERSONS, CRS 24-76.5-101
Architect/Engineer, 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 11. MISCELLANEOUS PROVISIONS

11.1 PROFESSIONAL ASSOCIATION PERMITTED
The Architect/Engineer may, with the prior written consent of the Principal Representative, join with him in the performance of this Agreement any other duly licensed Architect or Architects or registered Engineers with whom he may, in good faith, and enter into an association.

11.2 DISSOLUTION OF PROFESSIONAL ASSOCIATION
In the event there is dissolution of the association, other than by death of a member, the State of Colorado, acting by and through the Principal Representative, shall designate which former member shall continue with the work and may make all payments thereafter falling due in connection with the work directly to the person or persons so designated and without being required to look to the application of such payments as among the former members.

11.3 DEATH OR DISABILITY
In the event of the death of one member of an association, the surviving member or members of the association, as an association, shall succeed to the rights and obligations of the original association hereunder. In the event of the death or disability of a sole Architect/Engineer, which shall prevent his performance of this Agreement after the same shall have been commenced by him, such Architect/Engineer, in the event of his disability, or his executors or administrators, in the event of his death, shall be paid such sums as may be due the Architect/Engineer under this Agreement. In such event all drawings, specifications and models theretofore prepared by the Architect/Engineer shall be delivered to and become the property of the State of Colorado, with full authority to use, employ, or modify the same in the construction of the contemplated building, either at the same site or at some other site.

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

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

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

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

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

11.7 STATUTORY DESIGN REQUIREMENTS
Principal Representative and Architect/Engineer understand and agree they are familiar with the provisions of Colorado Revised Statutes, as amended, CRS 24-82-601 to 602, CRS 24-30-1304 to 1305, and CRS 9-5-101 to 112, and to the extent applicable, shall comply with those provisions in the design of this Project. Further, when applicable, this Project shall comply with Headnotes 4 and 5 and Footnote 3 of Section 3, Senate Bill 218 of the 1987 Legislative Session as follows:

Footnote (3) - Due to problems experienced with roofs with minimal grade, all roofing systems on new construction should have a minimum slope of one-quarter inch per foot. In addition, structural systems of buildings built on bentonite should not be slab on grade.

Headnote (4) - Operating and maintenance costs shall be a major consideration in the design and construction of any project involving renovation.

Headnote (5) - Except as otherwise specifically noted, figures in parentheses beneath the appropriation figures in this section designate the gross square footage, within 5%, to which the structures may be built.

11.8 COPYRIGHT/PATENT VIOLATION LIABILITY
The Architect/Engineer shall pay all license fees for the use of any copyright and shall be responsible for and hold the State of Colorado harmless from and against all losses from copyright infringement contained in the Contract Documents or in the product resulting form the Architect/Engineer's instruments of service, in accordance with paragraph 11.18, Indemnification. The Architect/Engineer shall also be responsible for and hold the State of Colorado harmless from and against all losses from patent infringement based on specified processes contained in the Contract Documents, in accordance with paragraph section 11.18, Indemnification, unless the existence of patents on such processes are brought to the attention of the Principal Representative and the Architect/Engineer. On request of the Principal Representative the Architect/Engineer shall defend against any such suits or claims of copyright or patent infringement.

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

Principal Representative and Architect/Engineer understand and agree the attachments and exhibits hereto are and shall be integral parts of this Agreement and the terms and provisions thereof are hereby incorporated, made a part of and shall supplement those recited herein. In the event of any conflict, or variance, the terms and provisions of this printed Agreement shall supersede, govern and control.
11.10 PUBLIC ART LAW, in recognition of the Public Art Law, CRS 24-80.5-101 as amended, if the State determines that this project is eligible for the acquisition of artworks in accordance with this law, the Architect/Engineer agrees to participate in the art selection process as an art jury member and to cooperate with and to advise the State in working with the commissioned artist(s) for this Capital Construction Project.

11.11 DESIGNATED REPRESENTATIVES, as set forth in SC-5.1

11.12 CONSTRUCTION OF LANGUAGE
The language used in this Agreement shall be construed as a whole according to its plain meaning, and not strictly for or against any party. Such construction shall, however, construe language to interpret the intent of the parties giving due consideration to the order of precedence noted in Article 1.6, Intent of Documents.

11.13 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.

11.14 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.

11.15 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.

11.16 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.

11.17 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.

11.18 INDEMNIFICATION
To the extent authorized by law, the Architect/Engineer shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and attorney’s fees, to the extent such claims are caused by any negligent act or omission of, or breach of contract by, the Architect/Engineer, its employees, agents, sub-consultants or assignees pursuant to the terms of this Contract, but not to the extent such claims are caused by any act or omission of, or breach of contract by, the State, its employees, agents, other Architect/Engineers or assignees, or other parties not under the control of or responsible to the Architect/Engineer.
11.19 STATEWIDE CONTRACT MANAGEMENT SYSTEM
If the maximum amount payable to Architect/Engineer under this Contract is $100,000 or greater, either on the Effective Date or at anytime thereafter, this section shall apply.

Architect/Engineer 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.

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

11.20 BINDING EFFECT
Except as otherwise provided in 11.4, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective heirs, legal representatives, successors, and assigns.

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

11.22 MODIFICATION
By the Parties, except as specifically provided in this Agreement, modifications hereof shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with the Office of the State Architect.
By Operation of Law, This Agreement is subject to such modifications as may be required by changes in federal or Colorado state law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

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

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

11.25 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.
STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
STATE BUILDINGS PROGRAM

ARCHITECT/ENGINEER AGREEMENT
DESIGN/BID/BUILD
(STATE FORM SC-5.1)

EXHIBIT C

APPROVED STATE BUILDING CODES